# WTCS Best Practices for Developing Technical Standards

## 2019

The WTCS Health Sciences and Disability Services Work Group has created this document to inform college staff who may help students choose and enter their career pathway in accordance with literature on providing equal access to educational programs for students with disabilities and federal law (Americans with Disabilities Act Amended, 2008; Section 504 Rehabilitation Act, 1974; Blacklock & Montgomery, 2016; Ailey & Marks, 2016; Ferro-Lusk, 2017; Meeks & Jain, 2018).

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**Definitions**

**Technical standards:** The “nonacademic criteria essential for the student *to participate* in the program; they include the attitudes, experiences, and physical requirements the student must possess in order to learn and perform the essential requirements of the program” (Blacklock & Montgomery, 2016). In short, technical standards are what students need in order enter a program.

Example: Student must be able to detect a heartbeat

**Essential requirements (functions):** “The expected or *desired outcomes acquired* through participation in the program and include the skills, knowledge, and judgments that all students must demonstrate to graduate” (Blacklock & Montgomery, 2016). In short, essential functions are what students need to be able to master to successfully complete a course or program.

Example: Student must be able to interpret an Electrocardiogram (ECG) strip

**Reasonable accommodations:**  Accommodations and modifications of policies and practices intended to provide equal access for otherwise qualified students with disabilities that **do not** fundamentally alter the nature of the service, program, or activity or give rise to an undue financial or administrative hardship (ADA National Network, 2019).

**Undue hardship (burden):** "Undue hardship" means significant difficulty or expense relative to the operation of a public entity's program when considering the entire operating budget ([Searls v. John Hopkins Hospital](https://www.leagle.com/decision/infdco20160121d03), 2016) . Colleges that attempt to reject an accommodation based on undue hardship would need to demonstrate a college-wide budgetary process. According to case law, and comment from Office for Civil Rights representatives, proving undue hardship is not likely to be successful, especially at a public entity (Easton, Leiter & Mobley, 2019; [Reyazzudin v. Montgomery County, Maryland](https://www.employmentlawblog.info/2015/06/reyazuddin-v-montgomery-county-maryland-no-14-1299-4th-cir-june-15-2015.shtml)). Where an accommodation would result in an undue hardship, the public entity must determine if another accommodation is available that would not result in an undue hardship (ADA II 4.3200).

**Otherwise qualified:** To be qualified, the individual with a disability must meet the essential academic and technical (technical standards) required for admission and participation in a program with or without accommodation (ADA II 2.800; 34 CFR §104.3(l)(3)).

**The Importance of Technical Standards**

Technical standards and essential functions are both important for clearly communicating to students what is expected upon entering and exiting a program. Having both gives students clarity around what the criteria are for getting into the program (technical standards) and for successfully completing the program (essential functions). Technical standards clarify program requirements. They are an important document that provides consistency and transparency to students, faculty, administrators, and disability services.

Students should have access to the technical standards of their program of interest prior to enrollment in order to determine and secure accommodations. This requires recruitment, career services, advising, and faculty to have access to the standards, be knowledgeable of the accommodations request process, and provide this information to the student.

*“Technical standards should not be used as a mechanism to deny the admission of persons with disabilities into programs. Instead, technical standards should be a way to conceptualize the recruitment of diverse highly qualified students.” (Ailey & Marks, 2016).*

If technical standards are written in a way that may be perceived as discriminatory against students belonging to communities protected by federal law, students may choose to file a complaint with the Office for Civil Rights (OCR) (Bagenstos, 2016; Lipton, 2017).

Bagenstons (2016) details one such case in which *“Palmer College had rejected a blind applicant because he could not meet its technical standard for ‘sufficient use of vision’ to perform ‘the review of radiographs’. The (Iowa Supreme) court held that the school was required to modify that technical standard, relaying on evidence that many chiropractors are not called upon to visually interpret radiographic images in their practices and that other medical schools had successfully accommodated blind students (p.3)”.*

|  |  |
| --- | --- |
| *Discriminatory technical standard:* | *Sufficient use of vision to review radiographs* |
| *Acceptable revision of technical standard:* | *Ability to review radiographs* |

Additional cases involving technical standards ruled both in favor of the student and the college are available in the works of both [Bagenstos (2016)](https://journalofethics.ama-assn.org/article/technical-standards-and-lawsuits-involving-accommodations-health-professions-students/2016-10) and [Lipton (2017)](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/).

**Legal Issues**

Students must have access to an interactive process for determining accommodations and the ability to appeal decisions through a documented college process.

**Concerns or disagreement**

Concerns or disagreements regarding technical standards should result in convening the team that developed the standards to review and provide rationale.

**Complaint or Grievance**

Employees made aware of potentially discriminatory practices or standards have a responsibility to report concerns in accordance with college processes.

**OCR Complaint**

OCR complaints will be sent to college leadership for resolution. Academic faculty and staff, disability services, and legal will be required to produce documentation supporting their interactive process for providing or denying reasonable accommodations (U.S. Department of Education, 2018). As noted in case law, it is necessary for colleges to demonstrate how they have followed a clear college process when responding to OCR complaints (Colker & Grossman, 2014: Lipton, 2017)

**Off-site Educational Experiences (clinical, practicum, externship sites, etc.)**

It is the responsibility of the college to provide each student with an off-campus site that does not discriminate against students based on the basis of protected class.

Specifically, the law indicates that,

* *A public entity, in providing any aid, benefit, or service, may not, directly or* ***through contractual****, licensing, or other arrangements, on the basis of disability—(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service (28 CFR 35.130(b)).*
* *A recipient to which this subpart applies* ***that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons*** *(34 CFR 104.43).*

**Writing Technical Standards**

**Who:** Technical standards are closely linked to essential program criteria. Subject matter experts such as faculty and deans are essential in creating effective technical standards. Best practice suggests using a team approach that includes faculty, administration, disability services, and students in the development of standards. Colleges should also involve college legal representation and program advisory boards when reviewing program technical standards.

**What:** Technical standards should be written to address “what” a student needs to demonstrate to enter a program rather than “how”.

Example:

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| --- | --- |
| Standard describing *what*: | Student must be able to *detect* a heartbeat |
| Standard describing *how*: | *Hear* a heartbeat through a stethoscope |

**Questions to consider when writing or reviewing technical standards**

* + Does your review team include the appropriate representation from faculty, administration, disability services, students, college legal counsel, and program advisory boards?
  + Are your program technical standards based on guidance from professional organizations and are your standards specific to the program?
  + Is it clearly stated on technical standards that students need to be able to meet the standards with or without accommodation?
  + Are standards focused on program entry level skills vs. skills students will learn within the program/ have upon completion?
  + Have you determined why each action listed on the technical standards is necessary to enter the program?
  + How do your standards reflect both physical and emotional abilities?
    - Do these standards follow the code of ethics for both the college and professional organizations?
    - Remember: you can notice a behavior but cannot attribute it to mental health and you may or may not be able to accommodate behaviors related to mental health.
  + If specific number criteria (such as weight limits) are utilized, have you determined why they are included? Are you able to explain how you arrived at these numbers?
  + Do your standards explain “what” needs to be done, not “how”?
  + Are your technical standards accessible/inclusive to students with diverse abilities while also ensuring patient safety?
  + Do you have a systematic process in place for reviewing your standards regularly?

**References:**

ADA National Network. (2019). What are a public or private college-university's responsibilities to students with disabilities? Retrieved from <https://adata.org/faq/what-are-public-or-private-college-universitys-responsibilities-students-disabilities>

Ailey, S. H. & Marks, B. (2016). Technical standards for nursing education programs in the 21st century. *Rehabilitation Nursing, 0, 1-11*. doi: 10.1002/rnj.278

Bagenstos, S.R. (2016). Technical standards and lawsuits involving accommodations for health professions students. *AMA Journal of Ethics, 18*(10), 1010-1016. doi: [10.1001/journalofethics.2016.18.10.hlaw1-1610](https://doi.org/10.1001/journalofethics.2016.18.10.hlaw1-1610)

Blacklock, B. & Montgomery, T. (2016). Understanding technical standards in health science and medical education. *Disability Compliance for Higher Education, 21 (11).* Doi: 10.1002/dhc

Colker, R. & Grossman, P.D. (2014) *The law of disability discrimination for higher education professionals*. Durham, NC: Carolina Academic Press

Easton, P., Leiter, S., & Mobley, M. L. (2019). *OCR Year in Review*. Presented at Association on Higher Education and Disability (AHEAD) conference. Boston, MA.

Ferro-Lusk, M. (2017). A systemwide review of technical standards. *Disability Compliance for Higher Education*. Doi: 10.1002/dhe

Liptio, D. A. (2017). A review of legal decisions relevant to technical standards used in pharmacy school admissions. American Journal of Pharmaceutical Education, 81(2). doi: 10.5688/ajpe81237

Meeks, L. M. & Jain, N.R. (2018). Accessibility, inclusion, and action in medical education. *Association of American Medical Colleges.* Retrieved from https://members.aamc.org/eweb/upload/Accessibility,%20Inclusion,%20and%20Action%20in%20Medical%20Education--Lived%20Experiences%20of%20Learners%20and%20Physicians%20With%20Disabilities.pdf

Smith, M. (2009). *Technical standards and essential functions*. Chicago, IL: National Organization of Nurses with Disabilities.

United States Department of Education. (2018). OCR complaint processing procedures. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

**Cases Ruled in Favor of Student**

Featherstone v. Pacific Northwest University of Health Sciences([Lipton,2017](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/))

A recent case that illustrates the importance of considering technological advances when determining whether students are otherwise qualified is Featherstone v. Pacific Northwest University of Health Sciences(No. 1:CV-14-3084-SMJ [E.D. Wash. 2014]). In this case, Zachary Featherstone, who was deaf and unable to lip-read in educational settings, was initially accepted into the osteopathic medicine program at Pacific Northwest University (PNWU).[30](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B30) The university then requested that Featherstone postpone matriculation for a year to allow it to obtain disability services to assist him. Featherstone agreed to the postponement and PNWU subsequently withdrew Featherstone’s application, citing concerns for patient safety in clinical settings, compromised educational experiences for Featherstone’s classmates, and the university’s anticipation that Featherstone would be unable to meet time requirements during performance examinations.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31)

Featherstone responded by filing suit in Federal District Court where he sought to obtain a preliminary injunction to require PNWU to allow him to matriculate with his class. Featherstone’s suit included allegations that PNWU violated Title III of the ADA, Section 504 of the Rehabilitation Act, Washington’s Law Against Discrimination, and nondiscrimination-based claims of breach of contract and promissory estoppel.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31)

The accommodations that Featherstone had requested of PNWU included interpreters for clinical settings and captioning services for classroom environments.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31) While there is certainly a cost associated with the provision of such services, the regulations implementing Title III of the ADA specifically prohibit a person with a disability from being excluded because of the absence of auxiliary aids and services. Examples of the auxiliary aids and services set forth in the regulation include both “qualified interpreters” and numerous types of captioning services.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31) The Federal District Court noted that it was quite common for these services to be provided in educational environments and that Featherstone could produce evidence that he was otherwise qualified with reasonable accommodations.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31)

Once Featherstone met his burden of showing that he was otherwise qualified with reasonable accommodations, PNWU attempted to argue that the accommodations would require a fundamental alteration in their program, be cost prohibitive, and risk patient safety. The Federal District Court determined that the provision of an interpreter would only amount to a communication aid and that since Featherstone would still have to complete laboratory sessions, communicate with patients (through an interpreter), and finish the clinical portions of the program, the provision of an interpreter would not fundamentally alter the program. The court also found PNWU’s claim of limited resources was unsubstantiated as sworn declarations were submitted indicating that interpreting services could be available by the beginning of the school term.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31)

Lastly, the Federal District Court noted that any facility where Featherstone might need to treat a patient would also be required to have sign language interpreting available for patients who might need the service, thereby attenuating the risk of patient harm due to Featherstone’s disability. The court ruled that PNWU failed to establish that it was likely to succeed in proving that the provision of an interpreter and closed captioning would fundamentally alter the educational environment or impose an undue burden on PNWU and ordered PNWU to “immediately re-enroll Featherstone into its 2014-15 class at the College of Osteopathic Medicine.”[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5374926/#B31)

The decision in Featherstone is starkly different from the one reached by the US Supreme Court in the 1979 case involving Southeastern Community College and demonstrates how the law changes along with societal norms, resources, and technology. The case law is surprisingly sparse and few cases address the issue of the provision of technology in the educational setting. This may be attributable to institutions’ compliance with the regulations and to the early involvement of informed disability attorneys who promptly negotiate resolutions in these matters without the need for court intervention. Either way, schools of pharmacy must make themselves aware of the current technology available when making determinations concerning an applicant’s ability to meet technical standards. Because the Featherstone case was a US District Court case, any precedential value it has is limited to the Eastern District of Washington State and would not be binding even on that court. However, the opinion is well based in existing law and should be persuasive to other courts addressing this issue