

The American Occupational Therapy Association Advisory Opinion for the Ethics Commission

Ethical Considerations for the Professional Education of Students With Disabilities

Assisting individuals with disabilities and valuing diversity are core tenets of the profession of occupational therapy. According to the American Occupational Therapy Association (AOTA, 2014b),

The occupational therapy profession affirms the right of every individual to access and fully participate in society. . . . We maintain that society has an obligation to provide the reasonable accommodations necessary to allow individuals access to social, educational, recreational, and vocational opportunities. (p. S23)

Most often, the individual with a disability is a client, but sometimes he or she is a student in an occupational therapy educational program. Regardless of whether the student has a disability, educational programs must balance the needs of their students with their obligations to the future clients whom program graduates will serve. Occupational therapy classroom and fieldwork educators must treat students fairly and act in accordance with the AOTA *Occupational Therapy Code of Ethics* (2015) (referred to as the “Code”; AOTA, 2015a) and federal and state laws.

This Advisory Opinion discusses ethical issues that may arise during the classroom and fieldwork portions of the educational process of occupational therapy students who have disabilities. First, a brief background of key legislation is provided, including the Americans With Disabilities Act of 1990 (ADA). Next, Section 504 of this act is applied to two case studies that describe situations that may arise in the classroom and in fieldwork education. Last, the Advisory Opinion summarizes key issues. When the term *educational program* is used, it applies to both the academic and the fieldwork portion of the educational program, unless otherwise stated.

BACKGROUND

The ADA (1990) extended civil rights to individuals with disabilities. Similarly, the Rehabilitation Act of 1973, in particular Section 504, defined exactly how services must be provided to people with disabilities who request assistance. These legislative mandates pertain to all aspects of American life, from housing and education to employment, recreation, and religion. In any situation in which an otherwise qualified person might be prevented from achieving his or her potential because of a disability, the ADA and the Rehabilitation Act demand assurances that opportunities be available for all.

The ADA and Section 504 of the Rehabilitation Act of 1973 are antidiscrimination acts, not entitlement acts. As such, they are outcome- neutral, and the responsibility for initiating accommodation rests with the student. The ADA and Section 504 require that individuals, such as

those entering higher education, receive the opportunity to participate in educational and vocational endeavors for which they are otherwise qualified. An equal opportunity to participate does not mean that there will be equal outcomes. Just like their nondisabled peers, some students with disabilities will fail coursework and fieldwork. The ADA focuses on whether students with disabilities in higher education have equal access to an education. It is not intended to optimize academic success: “The intent of the law, again, was to level the playing field, not to tilt it” (Gordon & Keiser, 1998, p. 5).

Because the ADA’s intention is to protect against discrimination on the basis of a disability, a student can receive such protection only if he or she has substantial impairments that affect major life activities and if he or she is found to be disabled relative to the general population (Gordon & Keiser, 1998). Some conditions warrant intervention but may not rise to the level of impairment as defined by the ADA. Furthermore, documentation of a specific disability does not translate directly into specific accommodations. Reasonable accommodations are individually determined and should be based on the functional impact of the condition and its likely interaction with the environment (course assignments, program requirements, physical design, etc.). As such, accommodation recommendations may vary from individual to individual with the “same” disability diagnosis and from environment to environment for the same individual (Association on Higher Education and Disability, 2004b).

Individuals must meet specific requirements for diagnosis and documentation as having a disability to qualify for protection under the ADA. The diagnosis must be made and documented by a qualified professional, such as a physician, neuropsychologist, or educational psychologist: “The general expectation is that people conducting evaluations have terminal degrees in their profession and are fully trained in differential diagnosis” (Gordon & Keiser, 1998, p. 13). The Association on Higher Education and Disability (2004a) provided additional information on best practices in documentation of a disability in higher education. The report based on the evaluator’s findings must also be sufficient to allow for careful administrative review.

The coordination of the documentation and services for students with disabilities is usually managed through an administrative office at the college or university. This office is frequently called the Office of Disability Accommodations (ODA). The ODA determines whether the student qualifies for accommodations and what accommodations are allowable by disability law and regulations.

The above process assumes that the student is aware of his or her disability and self-identifies. If a student chooses not to self-identify, he or she is within individual rights to pursue post-secondary education. However, such a student is not protected by the law. Simply stated, unless a student self-identifies as being eligible for protections under the ADA and Section 504, no associated privileges are afforded. Because occupational therapy practitioners in their professional role assist people with impairments in their efforts to be successful, it is sometimes difficult for a faculty member to refrain from making special arrangements for a student who seems to have a disability but who has not self-identified or who has not completed the process to qualify for accommodations. However, educators must consider fundamental fairness to all students, including those who may struggle for a variety of other reasons but who do not qualify for special treatment.

It is not unusual for a disability to be discovered after a student enters professional school or even as late as Level II fieldwork. Sometimes students with learning or emotional disabilities have

succeeded up to the point of professional school through extremely hard work and dedication. However, the demands of professional school and fieldwork can push such a student past his or her ability to compensate.

If the student is otherwise qualified, the educational program must determine whether he or she can perform the essential job function of being an occupational therapy student, with or without reasonable accommodation. For a more complete discussion of essential job functions and reasonable accommodations in academic and practice settings, see the work of Gupta, Gelpi, and Sain (2005). A variety of documents have helped clarify the essential job functions of an occupational therapist or occupational therapy assistant (AOTA, 2014a, 2014b, 2015b; U.S. Department of Labor, National O*NET Consortium, 2003, 2004). In the field of health education, essential job functions are generally referred to as *technical standards*. Many occupational therapy programs include the technical standards as part of the admissions process (e.g., Samuel Merritt College, n.d.; Stony Brook University, 2004; University of Kansas, 2003; University of Tennessee, n.d.).

The last federal law relevant to this Advisory Opinion is the Family Educational Rights and Privacy Act of 1974 (FERPA), which protects the privacy of all students' educational records. Generally, "institutions must have written permission from the student in order to release any information from a student's educational record" (Van Dusen, 2004, p. 4). This protection of privacy applies to all students, regardless of disability.

Protection of confidential information is part of FERPA, the ADA, and Section 504. The Association on Higher Education and Disability (1996) stated that "disability related information should be treated as medical information and handled under the same strict rules of confidentiality as is other medical information" (p. 1). The student alone determines whether to share information, decides what information to share, and selects which faculty members may receive information: "The Department of Justice has indicated that a faculty member generally does not need to know what the disability is, only that it has been appropriately verified by the individual (or office) assigned this responsibility on behalf of the institution" (Association on Higher Education and Disability, 1996, p. 1).

APPLICATION TO PRACTICE: CASE STUDIES

Two case studies illustrate how to apply ethical reasoning to students with disabilities.

Case 1

Ashley is an occupational therapy student with a learning disability. She is your advisee and in her first semester in the occupational therapy program. She makes an appointment with you and tells you about her learning disability and the difficulties she has had, shows you a psychological report describing her disability, and asks to be given extra time to complete exams and assignments. You advise her to go to the university's ODA. Ashley does not want to go to the ODA because she thinks that the university would label her as a student with a disability. You inform Ashley of the risks of not seeking accommodations and encourage her to reconsider. She leaves your office undecided.

You do not hear from Ashley again until after midterm exams, when she discovers she has a failing grade in two classes. She admits that she did not go to the ODA and states that she thought she could make it on her own. Ashley says that one of her instructors gave her more

time, and she can't understand why the other occupational therapy instructors did not. Ashley finally agrees to go to the ODA, but she also wants to be able to retake her midterm exams in the two courses she is failing. She wants more time for taking exams and turning in assignments. The ODA determines that Ashley does qualify as a student with learning disabilities and that her accommodations can include time and a half for exams, but she must turn in assignments on the dates they are due in the syllabi. She also is not allowed to retake the two midterm exams.

Your behavior as Ashley's advisor demonstrates understanding, caring, and responsiveness (Core Value: Altruism) to Ashley's situation. By recommending that Ashley go to the ODA, you followed procedures (Principle 4 of the Code, Justice), which requires that you are familiar with and comply with institutional rules and federal laws, in this case the ADA and Section 504. The instructor who gave Ashley more time on the exam before accommodations were in place demonstrated altruism but violated Principle 4 of the Code, because university procedures stipulate that accommodations should not be given until the ODA determines that the student is entitled to them and specifies what the accommodations should be. Making accommodations without consulting the ODA may result in an unfair disadvantage for other students who may have extenuating circumstances affecting their performance by denying them an equal opportunity for extra time.

Principle 1 of the Code (Beneficence) applies to all faculty involved in this case. In particular, Principle 1E reads, "Occupational therapy personnel shall provide occupational therapy services, including education and training, that are within each practitioner's level of competence and scope of practice" (AOTA, 2015a, p. 3). Although academic and fieldwork educators typically may think of competence in terms of educating students without disabilities, knowledge of laws related to educating students with disabilities is also required.

Case 2

Tanisha is preparing for her first Level II fieldwork experience. She has a diagnosis of anxiety disorder, for which she has received accommodations during the academic portion of her education. As the academic fieldwork coordinator, you encourage Tanisha to contact the ODA to determine what accommodations she qualifies for during clinical education. Tanisha states that she does not want to reveal to the fieldwork site that she has a disability because she plans to apply for jobs in this city after graduation. She says she feels more confident now and wants to prove to herself that she can perform without assistance. After you explain the risks and benefits of disclosure, Tanisha decides not to disclose or ask for accommodations from her clinical site.

You contact Tanisha after Week 2 to review her progress. Tanisha says things are OK. At Week 4, **Jeremy**, Tanisha's clinical educator, calls you to say that he is concerned about Tanisha's difficulty with time management and turning in documentation on time. He says that Tanisha's level of knowledge seems solid but that she sometimes "shuts down" in stressful situations. Jeremy asks whether Tanisha has some learning or emotional issues that he should know about. He wants your advice on how to help her be more successful.

As the academic fieldwork coordinator, you must consider the ethical principle of Autonomy (Principle 3). Principle 3H is especially applicable to this case:

Occupational therapy personnel shall maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communications, in

compliance with applicable laws, including all aspects of privacy laws and exceptions thereto (e.g., Health Insurance Portability and Accountability Act [and] Family Educational Rights and Privacy Act . . .). (AOTA, 2015a, p. 4)

In a similar fashion, the principle of Fidelity (Principle 6A) requires that “occupational therapy personnel shall preserve, respect, and safeguard private information about employees, colleagues, and students unless otherwise mandated or permitted by relevant laws” (AOTA, 2015a, p. 7). Fidelity (Principle 6L) also applies to this case: “Occupational therapy personnel shall refrain from actions that reduce the public’s trust in occupational therapy” (p. 8). Principle 3H creates tension between your duty to your student and your duty to consumers of occupational therapy services. However, you realize that you have a greater obligation to avoid breaching confidentiality with Tanisha, because you do not have evidence at this point that Tanisha’s behavior is putting clients at risk. If you had information to indicate that clients were at risk, you would have a greater obligation to protect the clients and to focus on Tanisha’s lack of competence in the area of client safety.

You must also consider the principle of Justice (Principle 4), which requires you to be familiar and comply with institutional rules and federal laws, which in this case are the ADA, Section 504, and FERPA. Last, you consider Principle 4F, which states that “occupational therapy personnel shall inform employers, employees, colleagues, students, and researchers of applicable policies, laws, and Official Documents” (AOTA, 2015a, p. 5). It is important that you model ethical conduct for Jeremy and Tanisha.

A more thorough discussion of ethical dilemmas involving confidentiality of students with disabilities during fieldwork education can be found in an article by Brown and Griffiths (2000). AOTA (2000) also provides useful information on this topic, including the following question and answer:

Does the academic program have to tell the fieldwork setting that the student has a disability? The academic program is not required to, nor should it, inform the fieldwork site of a student’s disability without the student’s permission. It is the student’s decision whether or not to disclose a disability. The academic fieldwork coordinator will counsel students on the pros and cons of sharing this type of information prior to beginning fieldwork. If a student decides not to disclose this information, the academic fieldwork coordinator is legally not allowed to share that information with the fieldwork setting. (AOTA, 2000)

A fieldwork setting cannot refuse to place a student with a disability unless that student is unable to perform the essential job functions with or without reasonable accommodations. To refuse placement solely on the basis of the student’s disability is discriminatory and illegal (AOTA, 2000).

After considering the Code and other documents, you decide you cannot directly answer Jeremy’s question about a disability, but you could brainstorm with him about strategies that might help Tanisha be more successful. You could encourage him to document Tanisha’s difficulties and to give her frequent and specific feedback. If these suggestions don’t correct the

problems, a learning contract or site visit could be considered. You could contact Tanisha to help her make an informed decision by providing her with the potential risks of nondisclosure. However, as an autonomous person with freedom to exercise choice and self-direction, Tanisha must make the final decision. Autonomous persons can and do take risks. Tanisha may be risking failure of her first Level II fieldwork, but taking the risk is her choice.

Wells and Hanebrink (2000, p. 9) noted that the decision to disclose or not to disclose, as well as when and how to disclose, is solely the right of the student. The fieldwork site can be held accountable only from the point when they are informed or receive a request for accommodation. Education programs should provide clinical sites with information about educating students with disabilities and the requirements of the ADA and Section 504 regarding education, and they should encourage sites to call the academic fieldwork coordinator when questions arise. The AOTA Self-Assessment Tool for Fieldwork Educator Competency (AOTA, n.d.) is a potential resource for educating fieldwork educators in general. Under Administration Competences, Item 11 is pertinent to this discussion: “The fieldwork educator defines essential functions and roles of a fieldwork student, in compliance with legal and accreditation standards (e.g., ADA, Family Educational Rights and Privacy Act, fieldwork agreement, reimbursement mechanism, state regulations, etc.)” (p. 7).

DISCUSSION

Occupational therapy faculty and fieldwork educators must remain mindful of their obligations both to their occupational therapy students and to the clients those students will someday serve. Client safety is always paramount. However, some students can become competent occupational therapists despite their disabilities if given reasonable accommodations. Although the student has rights and responsibilities, so do the academic and clinical sites:

The institution is always responsible for students who are participating in its programs whether on or off campus. The question is whether the institution has primary or secondary responsibility. The institution has the ultimate responsibility for the provision of reasonable accommodation. The intern site generally assumes the duty for providing accommodation on site; the institution, however, must monitor what happens in that environment to ensure that its students are not discriminated against and are provided necessary accommodations. . . . Students with disabilities have a right under ADA (Title II) to be seen first as capable people with marketable skills and only secondarily as people who happen to have disabilities. (Scott, Wells, & Hanebrink, 1997, pp. 44, 46)

According to the Northeast Technical Assistance Center (1999), faculty should not make assumptions about a student’s ability to work in a particular field. Most often, concerns that students may not be able to “cut it” are based on fears and assumptions, not facts. Remember, too, that employers are also required to comply with the ADA.

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This chapter was previously published in the 2010 edition of this guide. It has been revised to reflect updated AOTA Official Documents and websites, AOTA style, and additional resources.