



TOURO UNIVERSITY

C A L I F O R N I A

POLICIES AND PROCEDURES CONCERNING REQUESTS TO ACCOMMODATE DISABILITIES AND COMPLAINTS REGARDING ALLEGATIONS OF FAILURE TO ACCOMMODATE AND DISABILITY-BASED DISCRIMINATION

1.0 POLICY

It is Touro's policy that any students with a disability be afforded the same opportunities as every other student within the Touro community. This policy may be utilized when there is a dispute about discrimination, including harassment on the basis of disability, refusal to find a disabled student eligible for academic adjustments and auxiliary aids, denial of a requested prospective reasonable academic adjustment/auxiliary aid, and refusal of a faculty member to implement approved academic adjustments and auxiliary aids. Any adverse treatment in regards to a person's disability will not be tolerated.

2.0 PURPOSE

All divisions of Touro University ("Touro") seek to foster a collegial atmosphere where all qualified students have full access to each of our programs and are nurtured and educated through close faculty-student relationships, student camaraderie, and individualized attention. Adverse treatment of any kind in regards to an individual's disability, is anathema to Touro's mission, history, and identity, and will not be tolerated. Touro will endeavor to resolve claims of policy violations in an effective and timely manner. When a violation is found to have occurred Touro will take prompt and effective remedial action.

Those believing that they have been harassed or discriminated against on the basis of their disability should immediately contact the Compliance Officer or their designee. When Touro has notice of the occurrence, Touro will take prompt and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

3.0 SCOPE

This policy applies to all qualified students of the Touro University community.

4.0 DEFINITIONS

4.1 Individual with a Disability

An individual with a disability is a person who has a physical or mental impairment which substantially limits one or more major life activities of the individual. These persons are protected by Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). Individuals with a record of such an impairment and individuals who are regarded as having such an impairment are also protected by these Federal laws.

4.2 Academic Adjustments/Auxiliary Aids

Title I of the Americans with Disabilities Act of 1990 (the "ADA") and Section 504 of the Rehabilitation Act require an institution to provide academic adjustments and auxiliary aids to qualified individuals with disabilities, unless to do so would cause undue hardship.

Students must provide documentation of disability to the Office of Disability Services ("ODS") from an appropriate professional, which vary depending on the nature of the disability. This documentation may be the student's medical records, or reports created by the student's medical provider or an appropriate professional who conducts a recent assessment of the student. The documentation of disability is kept confidential, though not strictly so, including but not limited to situations where it receives a subpoena. The ODS will determine what information needs to be shared with Touro staff and professors, on an "as needed basis," in order to facilitate academic adjustments/auxiliary aids or other services.

There are a number of possible academic adjustments/auxiliary aids that Touro may be required to provide to qualified students in connection with the scholastic environment. An academic adjustment or auxiliary aid is practical depending on the:

- student's disability;
- the type of academic adjustment/auxiliary aid requested by the student; and
- the academic adjustment/auxiliary aid is effective in meeting the needs of the individual in the context of the educational setting.

An academic adjustment/auxiliary aid enables a qualified student with a disability to have an equal opportunity to participate in our programs. Finally, an academic adjustment/auxiliary aid allows a student with a disability an equal opportunity to enjoy the benefits and privileges of our programs that students without disabilities enjoy.

All that being said, Touro is not required to change the essential elements/requirements of its program to accommodate a student. For example, our Satisfactory Academic Progress Policy is applied uniformly to all students with or without disabilities. Also, there are several academic adjustments/auxiliary aids that are considered appropriate provided that an academic adjustments/auxiliary aid does not cause a fundamental alteration or cause an undue burden to the program. If the latter is the case, Touro will work with the student to determine if there is an alternative academic adjustments/auxiliary aid which can meet the needs of the student that does not cause a fundamental alteration or undue burden. This is because a person with a disability who is unable to meet one or more essential program requirements, with or without academic adjustments/auxiliary aids, is not a "qualified" individual with a disability within the meaning of the law.

Touro does not have to provide as academic adjustments/auxiliary aids, personal use items, otherwise known as personal appliances. Thus, Touro is not required to provide a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off campus.

4.3 Compliance Officer

The Compliance Officer, or his or her designee ("Compliance Officer"), is trained and knowledgeable about the duties of the institution with regard to accommodating students with disabilities in a post-secondary setting.

4.4 Interactive Dialogue for Academic Adjustments/Auxiliary Aids

Students who plan to request an academic adjustment/auxiliary aid should contact the ODS promptly, so there is time for the ODS to review the student's documentation and discuss the academic adjustment/auxiliary aid with the student before the student begins the class or program for which the academic adjustment/auxiliary aid is being requested.

In determining what appropriate academic adjustments/auxiliary aids are to be provided, the ODS (or other designated office) will engage in a dialogue and give careful consideration to the student's request. The student and the ODS will discuss how the student's impairment impacts the student, how the student expects the impairment to impact the student in Touro's program, the types of academic adjustments/auxiliary aids the student has previously received (if any), and the academic adjustment/auxiliary aid being requested by the student from Touro. Academic adjustments/auxiliary aids needed during certain phases of the program, classroom, laboratory, externships, rotations, and for classroom instruction, skills based instruction and skills practice may differ.

4.5 Decision of Academic Adjustment/Auxiliary Aids

The ODS will decide the appropriate academic adjustments/auxiliary aids to be provided to the student. They will consider any past academic adjustments/auxiliary aids that have been effective for the student. Alternate academic adjustments/auxiliary aids may be provided if there is an alternative that would be equally effective for the student.

Generally, within 30 days after receiving a complete set of required medical documentation and engaging in a dialogue, the ODS will list the approved academic adjustments/auxiliary aids in writing to the student. The ODS will then inform the appropriate professors and Touro staff in the same timeframe of the academic adjustments/auxiliary aids they are responsible for providing to the student, how to provide the academic adjustments/auxiliary aids, and when to provide the academic adjustments/auxiliary aids. The ODS Officer will also keep a written record of these contacts about the student's academic adjustments/auxiliary aids. The student must inform the ODS when academic adjustment/auxiliary aid is not being fully implemented. The ODS will intervene with relevant staff members to ensure the academic adjustment/auxiliary aid is provided to the student. The student must not delay in bringing implementation issues to the ODS's attention.

A faculty member may not unilaterally make a determination as to whether the student has a disability, the extent of the student's disability or the appropriateness of an approved academic adjustment/auxiliary aid.

4.6 Denial of Academic Adjustments or Auxiliary Aids

A denial of an academic adjustment/auxiliary aid may be justified if the student fails to follow procedure and supply the appropriate requested documentation. Further, a denial of an academic adjustment/auxiliary aid is warranted when Touro acts in good faith and when an attempt is made to assess the complainant's limitations or explore possible academic adjustments/auxiliary aids. A denial of academic adjustments/auxiliary aids may take place when the complainant's request is unreasonable for a variety of reasons, including, but not limited to: (a) a request for the academic adjustment/auxiliary aid is based on a stale evaluation¹ by an appropriate healthcare provider, and has not provided an updated evaluation upon Touro's request,

¹ Touro defines a stale evaluation as one that is 1) not applicable or related to the technical standards of the program; 2) is over three years old; or 3) has been previously provided to another school or program that is not Touro and is a course of study that is dissimilar to the current program to which the student is enrolled.

(b) the academic adjustment/auxiliary aid would result in an undue burden to Touro², (c) the complainant never notified Touro of the academic adjustment/auxiliary aid requirement, (d) providing an academic adjustment/auxiliary aid requested by a student with a disability would fundamentally alter the course or program requirements³ or (e) the aid sought is to be applied retroactively (e.g. when a student has not previously requested accommodations or otherwise self-identified, and seeks accommodations for exams previously taken or grades previously received) when a student did not self-identify. Where such determinations arise, regarding a requested academic adjustment/auxiliary aid, the School will work collaboratively with the student to identify whether any alternative academic adjustments/auxiliary aids may be provided (see below regarding “Disagreements and Complaints about Disability Accommodations Determinations”).

4.7 Retaliation

Retaliation is any kind of intimidation, harassment, reprisal, adverse action, or negative action taken against an individual that would not have occurred but for his or her: (1) filing or otherwise participation in the filing of or investigation of a complaint about alleged discrimination, (2) participation as a party or witness in an investigation relating to such allegations, or (3) participation as a party or witness in a court proceeding or administrative investigation regarding such allegations. Retaliation does not exist in the absence of an adverse action. An individual is protected from retaliation even when the complaint at issue is ultimately found to lack merit, as long as the complaint was made in good faith.

Touro prohibits any conduct by any Touro community member that may be regarded as retaliatory. Retaliation against any individual, whether said person submitted a complaint through the method described in section 6.4 below, or for any other reason will not be tolerated. A student may also file a Complaint if the student feels that he or she has been retaliated against based on disability. Any individual who believes he/she has been subjected to retaliation may file a separate complaint under this procedure.

² The factors to be considered in determining whether an academic adjustment/auxiliary aid causes an undue burden to Touro include, but are not limited to: (a) the nature and cost of the requested academic adjustment/auxiliary aid, and (b) the overall financial resources of the School and the effect of the academic adjustment/auxiliary aid on expenses and resources of the School.

³ The factors to be considered in determining whether an academic adjustment/auxiliary aid is a fundamental alteration include, but are not limited to, the following: (a) the purpose or objective of the course, requirement, standard, testing practice, procedures or rule in question, (b) the purpose or objective related to the requirements for the student’s program or degree, (c) the mastery of skills and knowledge required by a student in the course, (d) the minimum level of mastery that must be demonstrated by students, (e) the purpose of the chosen instructional methods, evaluation methods, and evaluation requirements, and (f) whether the evaluations to (a) through (e) above are generally consistent between all instructors of a course, or in a program.

5.0 CONFIDENTIALITY

Touro has independent obligations to report or investigate potential misconduct, even if a complainant does not wish to initiate an official process. Therefore, absolute confidentiality cannot be promised with respect to a complaint that is received by the Compliance Officer or their designee.

Touro wishes, however, to create an environment in which legitimate complaints are encouraged, while also protecting the privacy of all involved in an investigation. Complaints about violations of these policies will therefore be handled in strict confidence, with facts made available only to those who need to know in order for Touro to promptly and thoroughly investigate and resolve the matter.

6.0 COMPLAINT PROCEDURES & IMPLEMENTATION

6.1 Types of Complaints Covered Under This Procedure

The purpose of this procedure is to provide the resolution of student complaints and is not limited to any of the following: (a) complaints by individuals with disabilities when the complainant believes that he or she has been retaliated or discriminated against on the basis of disability, (b) refusal to engage in the interactive process, (c) unreasonable denial of a requested reasonable academic adjustment/auxiliary aid, or (d) refusal to implement approved academic adjustment/auxiliary aid by a member of the community (including faculty and staff) whether the academic adjustment/auxiliary aid has been denied or if a previously approved academic adjustment/auxiliary aid has not been implemented. If the complainant does not wish to resolve the complaint informally, the receiving school authority must promptly forward the complaint to the Compliance Officer or their designee who will initiate an investigation, generally, no later than twenty (20) days after receipt of a complaint.

6.2 Duty to Cooperate and Facilitate

All members of the Touro community are required to cooperate fully with any investigation of discrimination, including harassment occurring in relation to any campus activity. A faculty member, staff member, or student who has relevant information and refuses to cooperate with an ongoing investigation will be subject to disciplinary action for, among other things, insubordination. Likewise, all Touro employees are required to ensure that complaints about discrimination, including harassment and retaliation are directed to the appropriate administrative office for investigation and evaluation. Touro is committed to conducting an inquiry that is thorough and impartial.

6.3 Compliance Officer

The Compliance Officer, or his or her designee, shall coordinate the enforcement, compliance, communication and implementation of Touro's policy.

The Compliance Officer shall communicate the policy via the following, without limitation: student orientations and catalogues, campus websites and publications, Student Affairs, Disabled Student Services, and Academic Affairs.

The Compliance Officer's designee in Nevada is:

Touro University Nevada:

Dr. Anne Poliquin

702-777-4769

anne.poliquin@tun.touro.edu

The Compliance Officer's designee in California is:

Touro University California

Dr. James Binkerd

707-638-5883

james.binkerd@tu.edu

6.4 Duty to Report Violations

Any member of the Touro community including faculty, employees, or vendors have a duty to report violations of this policy where individuals know, or should know, of accusations or actions which violate Touro Policy and will notify the Compliance Officer or their designee or the anonymous compliance hotline at 646-565-6000 Ext. 55330.

The Complaint procedure provides students the opportunity to file a complaint when they feel they have been discriminated against or retaliated against on the basis of disability. Touro then has the responsibility to objectively investigate the allegations in the complaint and determine whether the student has been discriminated or retaliated against. If Touro determines that discrimination or retaliation occurred, Touro must take appropriate steps to correct the discrimination or retaliation and prevent it from reoccurring.

6.4(a) Reporting Procedure

Complaints should be filed as soon as possible after the date of the alleged misconduct, and a written complaint is preferable but not absolutely required.

A complaint, which must be submitted within the earlier of the following two dates: (a)

180 days after the alleged misconduct; or, (b) the end of the semester in which the alleged incident occurred. A complaint should include the following information:

- a. Complainant's full name, home address, email, telephone number, and Touro Student/Employee ID number.
- b. Name of the person against whom the complaint was made, including job title or student status, if known.
- c. A clear statement of the facts that constitute the alleged discrimination or retaliation, including dates on which the acts were committed and any information to identify witnesses.
- d. The term and year of his/her most recent active student status within the University.
- e. A student who is seeking admission to Touro should include the term and year in which he/she sought admission to the University.
- f. The specific harm that resulted from the alleged act and the remedy sought.
- g. The complainant's signature and the date on which the complaint was submitted.

6.4(b) Intake Interview After Reporting

After receipt of a complaint, the Compliance Officer or their designee will meet with the complainant as soon as possible, but generally, not later than thirty (30) days after receipt. The complainant must make himself/herself available to meet.

The meeting will be an intake interview where the Compliance Officer or their designee must inform the complainant about the investigation procedure and timeline. The student may sign a formal complaint form at that time (under the above guidelines) if he/she has not already done so.

A thorough and impartial investigation of complaints will occur, which includes documented interviews of the complainant, the accused, and witnesses with relevant knowledge. Also, a review of relevant documents, if any, and other evidence also occurs.

6.5 Disagreements and Complaints about Academic Adjustment/ Auxiliary Aid Determinations

A student, who disagrees with a decision made by the ODS concerning the outcome of the academic adjustment/auxiliary aid review process, including whether the student is a qualified individual with a disability or the adequacy of the student's documentation regarding the student's disability, the functional limitations of the disability, or approved academic adjustments/auxiliary aids, a denial of the student's request for disability-related services such as a request for academic adjustments/auxiliary aids, delay in the provision of an approved academic adjustment/auxiliary aid, or non-

implementation of an approved academic adjustment/auxiliary aid by faculty or staff may take the following steps:

a. Promptly make an appointment with the Compliance Officer after the decision has been made. Within 10 days of receiving the student's complaint, the Compliance Officer will discuss the disputed decision with the student, while providing necessary information. A student must make this appointment within 180 days of the date the discriminatory act occurred. The Compliance Officer will forward the relevant information to a Fact Finder who will inform the student in writing, generally, within ten (10) calendar days whether they decide to change or uphold the original decision. This decision may take longer to process and investigate depending on the nature of the allegations. If the decision is to change the original determination, the Compliance Officer will ensure that the changes to the original determination are implemented based on the Fact Finder's determination (If an instructor does not implement an academic adjustment/auxiliary aid, see below regarding procedure for how to address that.)

b. If the student disagrees with the Fact Finder's decision, the student may file a written appeal to the Dean of Student Services/Affairs or his/her designee within ten (10) days of the Fact Finder's decision. The appeal must contain the decision that the student disagreed with, and the reasons for the disagreement, including any relevant documentation. The Dean of Student Services/Affairs or his/her designee will contact the student and Compliance Officer to gather relevant information, will liaise with the complainant, and will provide a written determination response to the appeal, generally, within ten (10) calendar days of the date the appeal was received or longer if additional investigating or processing is necessary. The written determination will include the reasons for the determination and what remedial action that will be taken (if any). This determination is final.

6.6 Procedure if Instructor Does Not Implement an Academic Adjustment/Auxiliary Aid

If an instructor fails to implement an academic adjustment/auxiliary aid for a student that has been approved, the student should promptly notify the student's Learning Specialist or Compliance Officer. The University encourages students to first discuss the issue with the instructor; however, this step is not required. When the Learning Specialist or Compliance Officer receives information from a student that an instructor is not implementing an approved academic adjustment/auxiliary aid, the University will take the following steps:

1. Attempt to resolve the matter with the instructor. Any proposed resolution may include discussions with the student, if appropriate.

2. The Compliance Officer will ensure that the student's approved academic adjustments/auxiliary aids are implemented during resolution and pending a final decision on the matter.
3. The Compliance Officer will refer the matter to a Fact Finder within ten (10) days, who will consider the Learning Specialist or Compliance Officer's basis for the approved academic adjustment/auxiliary aid, the instructor's objections, and reasons therefore. After reviewing all the evidence gathered, the Fact Finder will determine whether the student was treated differently from other students based on disability; whether the student was harassed based on disability; whether the student was retaliated against, or whether the student was denied an academic adjustment/auxiliary aid that Touro should have provided to the student; or whether the academic adjustment/auxiliary aids that were offered or provided were adequate and appropriate. A final decision will be issued, generally, within ten (10) calendar days of receiving the referral from the Learning Specialist or Compliance Officer. If the instructor raises the issue of undue burden or fundamental alteration, the University will follow the procedure set forth.
4. If the student disagrees with this disposition, the student can appeal the decision per section 6.5(b).

Faculty and Staff Compliance

6.7 Complaints about Faculty or Other Employees

Complaints against faculty or other employees shall be submitted according to the procedures set forth above. Upon receipt of a complaint against a faculty member or an employee of the Touro, the Compliance Officer shall conduct a thorough and impartial investigation regarding the circumstances surrounding the complaint. This investigation shall include documented interviews of the complainant, the person against whom the complaint is written, and witnesses with relevant knowledge, if any; as well as a review of relevant documents and any other evidence. A determination will be made by an impartial Fact Finder.

6.8 Preponderance of the Evidence and Written Determination

This standard weighs the evidence in an investigation. One party's evidence outweighs the evidence of the other. All investigations conducted at any of Touro's schools rely on the preponderance of the evidence standard. A written decision will be provided to the Complainant that includes the outcome of the investigation, reasons for the decision, and whether corrective actions must be taken, if any. Consistent with the Fact Finder's decision, Touro will take prompt, effective, remedial action to resolve any identified discrimination and to ensure that the effects are remedied and to ensure that it will not recur again.

6.9 Discipline

Employees, faculty, staff and students who violate Touro's policies may be subject to disciplinary action. All disciplinary actions shall comply with applicable local, state and federal laws. Individuals who retaliate against someone who files a complaint, or against a witness, representative, or advocate for a complainant, will be subject to further disciplinary action.

Consistent with this Policy, Touro will take prompt effective action to resolve any identified retaliatory acts, and take steps to avoid a recurrence.

7.0 **EXTERNAL REMEDIES**

Members of the Touro community are always subject to local, state, and federal laws, and nothing in these procedures is intended to limit or postpone the right of an individual to file a complaint or charge with appropriate federal, state, or local departments or agencies.

Among other options, students may contact the Headquarters of the

Office of Civil Rights
U.S. Department of Education,
Lyndon Baines Johnson Department of Education
Building, 400 Maryland Avenue, SW,
Washington, D.C. 20202,
by phone at (800) 421-3481,
or via email at OCR@ed.gov.

Or the student may contact the appropriate Regional Office at:

San Francisco Office (California)
Office for Civil Rights
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813
Telephone: 415-486-5555
FAX: 415-486-5570; TDD: 800-877-8339
Email: ocr.sanfrancisco@ed.gov

Seattle Office (Nevada)
Office for Civil Rights
U.S. Department of Education
915 Second Avenue Room 3310
Seattle, WA 98174-1099

Telephone: 206-607-1600
FAX: 206-607-1601; TDD: 800-877-8339
Email: OCR.Seattle@ed.gov

8.0 SOURCE DOCUMENTS

34 CFR 106.8 and 106.9

Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, or Third Parties, dated January 19, 2001

“Dear Colleague Letter” from the Assistant Secretary, U.S. Department of Education, Office of Civil Rights, dated April 4, 2011.