



## Fundamental Alteration Policy

### I. Purpose

The purpose of this policy is to affirm the University of Oklahoma's (OU) commitment to provide reasonable accommodations and/or academic adjustments as defined in OU's Policy to students with disabilities, except in cases where the accommodation or adjustment would fundamentally alter the Program of study. This policy also includes procedures for an interactive process that may be used to determine whether an accommodation would fundamentally alter a Program of study.

### II. Scope

This policy applies to all OU students, faculty, and staff in Norman, Oklahoma City, and Tulsa campus programs at any geographic location with respect to the issue of whether an accommodation or adjustment to a Program is a fundamental alteration of the Program.

### III. Definitions

#### A. Fundamental Alteration

Students must be able to perform the essential functions of a Program with or without reasonable accommodations that do not fundamentally alter the Program. Accommodations or adjustments that waive or substitute elements of the Program that are fundamental to the nature of the Program are not reasonable accommodations or adjustments. Reasonable accommodations/adjustments and services necessary due to disability do not fundamentally alter the nature of the Program.

#### B. Essential Functions

Required elements and/or technical standards of a Program are those necessary to ensure mastery of defined content. An accommodation or adjustment cannot alter or exempt a student from demonstrating competency with regard to the essential functions of a Program.

#### C. Program

OU's courses, activities related to study, events related to study, and programs of study (collectively referred to as "Programs").

### IV. Responsible Office

Norman Campus Program Students: The Accessibility and Disability Resource Center (ADRC), with support from the offices of the Senior Vice President and Provost Norman Campus and the Office of Access and Opportunity, is responsible for administering this policy and ensuring compliance for Norman campus-based programs and students.

OKC Campus Program Students - The Office of the Senior Vice President and Provost – Health Sciences, through the Office of Academic Affairs, is responsible for administering this policy and ensuring compliance for Health Sciences OKC-based programs and students.

Tulsa Campus Program Students - OU-Tulsa Student Affairs is responsible for administering this policy and ensuring compliance for Tulsa campus-based programs and students.

### V. Policy

It is the policy of OU to support equal access to OU's courses, activities, events, and programs of study (collectively referred to as "Programs") by providing qualified students with disabilities with reasonable accommodations and/or academic adjustments. Accommodations or adjustments that would result in a fundamental alteration of the Program of study are not considered reasonable and are prohibited.



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Policy Level: 4

Approval Authority: Vice President, Division of Access and Opportunity

Date of Approval:

Subject Matter Expert Department: Accessibility and Disability Resource Center

Date of Last Review:

Date of Next Review:

Signature:



VI. Procedures

- A. Essential Program objectives are identified by the faculty and college/program as the core learning outcomes (such as skills, knowledge, aptitudes, or licensure requirements) that all students must demonstrate, with or without reasonable accommodations, and that are part of the interconnected curriculum of the degree or academic program.
- i. The faculty member and college/program establish essential objectives and requirements:
    - a. The college/program should have clearly articulated the overall purpose of the Program;
    - b. The college/program should identify the required mastery of specific skills, knowledge, aptitudes, principles, and concepts necessary for successful completion.
  - ii. The Norman campus college/program is expected to convey to the Senior Vice President and Provost and Vice President for Access and Opportunity the framework it uses to set academic and program standards. HSC and Tulsa colleges/programs shall convey this information to the HSC Senior Vice President and Provost and OU-Tulsa Student Affairs, respectively.
  - iii. In those instances where a college/program establishes these standards, as opposed to instances that trigger an individualized assessment at the instructor's request or instructor's refusal to comply with an assigned accommodation, the college/program must ensure a fair discussion with the respective Provost and their designees along with the ADRC. When determining if a requested accommodation would be a fundamental alteration of a Program, the college/program will utilize a process similar to the process noted below and shall include a representative from the ADRC or equivalent HSC or Tulsa campus office, as appropriate, in its deliberations.
- B. Fundamental Alteration
- i. Students must be able to perform the essential functions of a Program with or without reasonable accommodations. The University is not required to waive or substitute elements that are fundamental to the nature of the Program, and the provision of reasonable accommodations and services due to disability cannot fundamentally alter the nature of the Program.
  - ii. There are some situations where teaching methods or testing adjustments may not be required as an accommodation because the adjustments would constitute a fundamental alteration. In situations where accommodation may present a fundamental adjustment in teaching methods or testing that may constitute a fundamental alteration, the ADRC, or equivalent HSC or OU-Tulsa official, as appropriate, and the student will identify equally effective alternative accommodations in conjunction with the faculty and the academic area responsible for the Program.
  - iii. It is not up to an individual instructor to decide what is fundamental to the nature of a program. Under the Americans with Disabilities Amendments Act of 2008, "A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. However, if the public entity can demonstrate that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to modify" (ADA Title II Technical Assistance Manual). Through various Department of Education Office of Civil Rights case resolutions, the federal government has clarified that colleges and universities must:
    - a. Determine whether an accommodation may fundamentally alter an essential objective of a Program through a group of knowledgeable and trained individuals at the college and the disability services office (OCR No. 01-16-2120; 03-14-2248),
    - b. Ensure the group pursues a thoughtful, careful, rational review of the Program's essential objectives and requirements (OCR No. 01-16-2120), and



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- c. Ensure the group considers a series of alternatives and modifications that do not fundamentally alter the Program even if it is not the accommodation originally requested (OCR No. 01-16-2120).
  - iv. The determination of whether accommodations “would fundamentally alter the nature of its service, program, or activity” is reviewed on a case-by-case basis by the ADRC or equivalent HSC or OU-Tulsa office, using the procedure noted below. This procedure aims to distinguish the nature of how the course has typically been taught from the truly essential objectives and requirements of the Program. Through this procedure, instruction and assessment methods may be examined to determine how the Program information is taught and whether there are opportunities for an alternate format of materials, alternative teaching and learning methods, additional skills, or strategies, among other considerations.
- C. Fundamental Alteration Question - If an instructor/college/department is concerned that an accommodation provided by the ADRC fundamentally alters an essential requirement or course objective of a course or academic program, the instructor/college must notify the ADRC Director or equivalent HSC or OU-Tulsa officer, as appropriate, or their designee and the appropriate Dean or their designee of the objection in writing within five University business days of receipt of the Accommodation Notice. The instructor’s failure to timely notify the Dean or their designee and the ADRC Director or equivalent HSC or OU-Tulsa official, as appropriate, or their designee within five University business days of the Accommodation Notice shall result in the ADRC’s decision being considered final with respect to that student’s accommodation request for that Program and semester.
- i. Pending the outcome of the fundamental alteration review, the specific accommodation in question shall be provided to the student on a temporary basis.
  - ii. Upon request by the instructor/college/program, the Dean or their designee shall, within five University business days, convene the area’s Fundamental Alteration Review Committee (“FARC”), which shall be comprised of two college-specific faculty members appointed by the Dean or designee. The FARC will hold an in-person, videoconference, or telephonic hearing on the matter within five University business days of the committee being convened. The FARC may be advised by a member of the University’s Office of Legal Counsel who represents the campus or program involved. The Director of the ADRC or their designee, where the Director made the disputed accommodation, shall serve as the third member of the review committee.
  - iii. The instructor or the college hosting the Program bears the burden of persuading the FARC that the accommodation is a fundamental alteration of the Program by demonstrating the unreasonableness of the request, the fundamental requirements of the Program, and/or the possible alternatives offered to accommodate the student. At the FARC’s discretion, the matter may be heard on the documents submitted by the parties, including the student, and/or through an oral hearing.
  - iv. Likewise, the ADRC Director or equivalent HSC or OU-Tulsa officer, as appropriate, or their designee shall have the opportunity to present their office’s position regarding the accommodation to the FARC.
  - v. After the FARC reviews the information from the parties, it shall render a decision in writing, including the reasons for its decision no later than three University business days from the date of the hearing and shall notify the parties, the student, and the Dean of the relevant Program.
  - vi. The Fundamental Alteration Review Committee’s decision must be unanimous to overcome the presumption that the initially provided accommodation is reasonable. Where a decision is not unanimous, the originally approved accommodation shall be provided, and a decision noting that the FARC did not reach a unanimous result will be provided to the parties, the student, and the dean of the relevant Program.



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- vii. When the accommodation is found to be a fundamental alteration by unanimous decision of the FARC, the ADRC or equivalent HSC or OU-Tulsa official, as appropriate, or their designee shall notify the student immediately of the result and the reasons for the decision and will set a time to meet with the student to determine an equally effective alternative that will afford equal access for the student and allow the essential functions of the Program to be completed without fundamental alteration.
- D. To determine the essential requirements for a Program, the Fundamental Alteration Review Committee shall consider the following questions:
  - i. What fundamental Program objective does this accommodation alter?
  - ii. What practical function does this fundamental objective serve in the Program?
  - iii. What documentation of the fundamental Program objective exists (e.g., syllabus, professional association certification requirement, technical standard)?
  - iv. How does the requested accommodation alter this fundamental Program objective?
  - v. Has this accommodation been approved for students without disabilities or for any other situation or reason in this instructor's class in the current semester, in the past, or by other instructors of the same Program? If so, why?
  - vi. Is there an alternative way the student could demonstrate competencies without undermining the essential Program objectives? For example, is there an alternative accommodation that would not alter the essential objective of the Program?
- E. The Fundamental Alteration Review Committee should:
  - i. Carefully consider whether appropriate alternatives to the accommodation are available, including consideration of feasibility and cost.
  - ii. Determine if the essential requirement in question can be modified for a specific student with a disability without fundamentally altering the Program.
  - iii. Ensure that the determination that an accommodation fundamentally alters a Program is not based only on the past tradition of the University or instructor, such as an assertion that the instructor has "always" taught a course in this manner or required certain deliverables without a valid basis for the determination.
  - iv. Include a careful, thoughtful, and rational review of the Program and its requirements.
  - v. Include consideration of the nature and purpose of the Program, whether the challenged standard/criterion is required in similar Programs in other institutions, whether the challenged standard/criterion is essential to a given vocation or occupation for which the Program is preparing students, and whether the standard/criterion is required for accreditation or for licensure or certification in a related occupation or profession.

## VII. Appeal

### A. Students –

#### Norman-based Programs:

Within five University business days of the receipt of the FARC's decision, students on the Norman campus may appeal a decision by the Fundamental Alteration Review Committee modifying or denying their accommodation in writing to the Vice President of Access and Opportunity or their designee, in concert with the Office of the Provost. The Vice-President of Access and Opportunity or their designee shall respond in writing to the appeal following their review and render a decision which shall be final as it relates to the Program.

#### Tulsa-based Programs:

Within five University business days of the receipt of the FARC's decision, students in Tulsa programs offered through the Tulsa campus may appeal a decision by the FARC modifying or denying their accommodation in writing to the Senior Vice President and Provost of the campus responsible for their program. The Senior Vice President and Provost or designee shall respond in writing to the appeal following internal review and render a decision, which shall be final as it relates to the Program.



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## HSC-based Programs:

Within five University business days of the receipt of the FARC's decision, students in HSC-OKC geographic programs may appeal a decision by the FARC modifying or denying their accommodation in writing to the Health Sciences Senior Vice President and Provost. The Senior Vice President and Provost shall respond in writing to the appeal following internal review and render a decision, which shall be final as it relates to the Program.

Following receipt of a determination of the appeal, the student will contact the ADRC to discuss either approval of the accommodation in question should a fundamental alteration not be supported, or an equally effective alternative should the fundamental alteration decision of the Fundamental Alteration Committee be determined to exist.

- B. Colleges - Within three University business days of their receipt of the decision from the Vice-President of Access and Opportunity or equivalent HSC or OU-Tulsa officer, or their designee, colleges may appeal in writing to the Senior Vice President and Provost of the respective campus, who may consult with the Office of Institutional Equity; the Vice President for Access and Opportunity; and/or the Office of Legal Counsel.
- i. If the Provost determines that a fundamental alteration has occurred, the Provost shall immediately notify the college and the ADRC in writing of the decision. The ADRC or equivalent HSC or OU-Tulsa office shall notify the student and shall work with the student to determine an equally effective alternative accommodation.
  - ii. If the Provost determines that a fundamental alteration has not occurred, the Provost shall immediately notify the ADRC and the college in writing of the decision, and the ADRC or equivalent HSC or OU-Tulsa office shall implement the original or agreed-upon accommodation.
  - iii. The Provost's decision shall be final.