

The American Occupational Therapy Association Advisory Opinion for the Ethics Commission

Ethical Considerations for Professional Education of Students with Disabilities

Introduction

Assisting individuals with disabilities and valuing diversity are core tenets of the profession of occupational therapy. According to the American Occupational Therapy Association (AOTA; [2004a]), “The occupational therapy profession affirms the right of every individual to access and full participation within 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. 668). Most often the individual with a disability is a client, but sometimes the individual 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 that programs’ graduates will serve. Occupational therapy classroom and fieldwork educators must treat students fairly and act in accordance with the AOTA Ethics Standards and federal and state laws. The AOTA Ethics Standards are comprised of the *AOTA Occupational Therapy Code of Ethics* (AOTA, 2005a), *Core Values and Attitudes of Occupational Therapy Practice* (AOTA, 1993) and the *Guidelines to the Occupational Therapy Code of Ethics* (AOTA, 2006).

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 (ADA), Section 504 of the Rehabilitation Act of 1973, and the Education Rights and Privacy Act (FERPA). Next, the AOTA Ethics Standards will be applied to two case studies that describe situations that may arise in the classroom and in fieldwork education. Last, the opinion will summarize key issues. When the term “educational program” is used, it applies to both the academic and 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, and specifically section 504, defines 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 where an otherwise qualified person might be prevented from achieving their potential due to a disability, ADA and the Rehabilitation Act demand assurances that opportunities be available for all (Rehabilitation Act of 1973; the Americans with Disabilities Act - PL 101-336).

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 as their non-disabled 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 based on a disability, a student can receive such protection only if he or she has substantial impairments that affect major life activities and 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, “[D]ocumentation 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, 2004a).

There are specific requirements for diagnosis and documentation in order to qualify for protection under the ADA as an individual with a disability. The diagnosis must be made and documented by a qualified professional, such as a physician, neuropsychologist, or educational psychologist, among others. “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). Additional information on best practices in documentation of a disability in higher education may be found at the Association on Higher Education and Disability’s (2004b) website <http://www.ahead.org/resources/bestpracticeselements.htm>. 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 if 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 to be successful, it is sometimes difficult for a faculty member to refrain from making special arrangements for a student who appears 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 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 her or his ability to compensate.

If the student is otherwise qualified, the educational program must determine if the student 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 Gupta, Gelpi, & Sain (2005). A variety of documents exist that contribute to understanding the essential job functions of an occupational therapist or occupational therapy assistant (AOTA, 2005b; AOTA, 2004b; AOTA 2004c; U. S. Department of Labor (2003) <http://online.onetcenter.org/link/summary/29-1122.00>; U. S. Department of Labor (2004) <http://online.onetcenter.org/link/summary/31-2011.00>)

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., Medical College of Georgia; Samuel Merritt College; Stony Brook University; University of Kansas; University of Tennessee).

The last federal law relevant to this advisory opinion is the Family Education 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) states 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, what information to share, and selects which faculty member(s) may receive information. "In the U.S., 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

Analysis of two case studies will be used to apply ethical reasoning to students with disabilities.

Case 1

Ashley is an occupational therapy student with a learning disability. Ashley is your advisee and in the 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 Office of Disability Accommodations (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 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 exams and to turn 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 is also not allowed to retake the two midterm exams.

Discussion Case 1

Your behavior as Ashley's advisor demonstrates understanding, caring, and responsiveness (Core value: **Altruism**) to Ashley's situation. By requiring Ashley to go to the ODA, you followed procedures (Code: **Procedural Justice** Principle 5 A), 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 5A of the Code (procedural justice) because university procedures stipulate that accommodations should not be given until the ODA determines that the student is entitled to them and what the accommodations should be. Otherwise other students who may have had extenuating circumstances affecting their performance did not have an equal opportunity for extra time.

Principle 4 of the Code, **Duty**, applies to all faculty involved in this case. Specifically, 4D reads, "Occupational therapy personnel shall be competent in all topics in which they provide instruction to consumers, peers, and/or students" (AOTA, 2005, p. 640). While academic and fieldwork educators may typically think of competence in terms of educating students without disabilities, knowledge of laws related to educating students with disabilities is also required.

Case Part 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 would qualify 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 two to review her progress. Tanisha says things are okay. At week four, 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 appears solid, but that she sometimes "shuts down" in stressful situations. Jeremy asks if Tanisha has some learning or emotional issues that he should know about. He wants your advice on how to help Tanisha be more successful.

Discussion Case 2

As the academic fieldwork coordinator you must consider the ethical principle of **Autonomy and Confidentiality** (Principle 3). Principle 3D is especially applicable to this case and states, "occupational therapy personnel shall protect all privileged confidential forms of written, verbal, and electronic communication gained from educational, practice, research, and investigational activities unless otherwise mandated by local, state, or federal regulations" (AOTA, 2005, p. 640). In a similar fashion, **Fidelity** (Principle 7A), requires that "occupational therapy personnel shall preserve, respect, and safeguard confidential information about colleagues and staff, unless otherwise mandated by national, state, or local laws" (AOTA, 2005, p. 641). **Veracity** (Principle 6E) also applies to this case. The Code states that "occupational therapy personnel shall accept responsibility for their professional actions that reduce the public's trust in occupational therapy services and those that perform those services" (AOTA, 2005, p. 641). The latter principle 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 *as 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 you must focus on Tanisha's lack of competence in the area of client safety.

You must also consider **Procedural Justice** (Principle 5A), which requires that you are familiar and comply with institutional rules and federal laws, which in this case are the ADA, Section 504, and FERPA. Lastly you consider Guideline 3, number 5 (**Ensuring the Common Good**), which states that "occupational therapy personnel in educational settings are responsible for promoting ethical conduct by students, faculty, and fieldwork colleagues" (AOTA, 2006, p. 17). 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's Web site also provides useful information on this topic under the section titled "Occupational Therapy Fieldwork Information for Practitioners Most Frequently Asked Questions". The following question and answer are relevant to this advisory opinion:

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.

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 student's disability is discriminatory and illegal (<http://www.aota.org/Educate/EdRes/Fieldwork/NewPrograms/38242.aspx>) (AOTA, 2000).

After considering the above Ethics Standards and other documents, you decide you cannot directly answer Jeremy's question about a disability, but you could brainstorm with Jeremy about strategies that might help Tanisha be more successful. You could encourage Jeremy 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 assist her with making 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) note 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 in which they are informed or receive a request for accommodation" (p. 9). Education programs should provide clinical sites with information about educating students with disabilities and the requirements of the ADA and Section 504 in regard to education, and encourage sites to call the academic fieldwork coordinator when questions arise. AOTA's [Self-Assessment Tool for Fieldwork Educator Competency](#) (AOTA, n.d.) is a potential resource for educating fieldwork educators in general. Under Administration Competencies, item number seven is pertinent to this discussion. It reads, "[T]he fieldwork educator defines essential functions and roles of a fieldwork student, in compliance with legal and accreditation standards (e.g., ADA, Family Education Rights and Privacy Act, fieldwork agreement, reimbursement mechanism, state regulations, etc.)" (p. 7)

Discussion and Summary

Occupational therapy faculty and fieldwork educators must remain mindful of their obligations to both their occupational therapy students and to the clients those students will someday serve. Patient safety is always paramount. However, there will be students who 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” (Scott, Wells and Hanebrink, p. 44).

“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 and Hanebrink p. 46). According to the Northeast Technical Assistance Center, 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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