Who IS Otherwise Qualified?

Jane E. Jarrow, Ph.D.
Disability Access Information and Support (DAIS)
We All Know The Words…

“No OTHERWISE QUALIFIED individual with a disability in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”
Why Does It Matter?

• Discussion about documentation of disability at professional meetings and on our listservs always seems to focus on IF the student has a disability. If this is a student with a disability, then it is our responsibility to find accommodations that will work, right?
Why Does It Matter? *(continued)*

• The question asked is often, “What else can I do to help this student, because the (myriad of) accommodations I have put in place aren’t working? The student is still struggling.”

• We SHOULD ask, “Are there any reasonable accommodations I can assign that will give this student full access?” If not, the student may not be otherwise qualified to participate.
Students shouldn’t feel they have to “earn” the right to reasonable accommodations, but it isn’t wrong to ask if they are eligible to receive them!
“No otherwise qualified individual with a disability in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Otherwise qualified – with or without reasonable accommodation, this student meets all the same eligibility criteria and standards -- academic, technical, professional, and behavioral standards -- as does anyone else.
Then What Is a “Reasonable Accommodation?”

• It is **NOT** reasonable if:
  
  • It poses a direct threat to the health or safety of others
  
  • It means a substantial change in an essential element of THIS student’s curriculum.
  
  • It means a substantial alteration in the manner in which the program or service is offered to others.
  
  • It creates an undue administrative or financial burden.
“No otherwise qualified **individual with a disability** in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

• An individual with a disability is someone who has a physical or mental disability that substantially limits one or more major life activities.

• The Feds give us lots of hints as to what might be a disability (i.e., a list of impairments with the possibility of more acknowledged)

• The Feds are not nearly as good at telling us what “substantially limits” means

• For now, just keep in mind that the regs refer to an “otherwise qualified individual with a disability” – they are connected!
“No otherwise qualified individual with a disability in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

• Don’t have to be a citizen to be protected – just need to be IN the United States

• If they are not in the US, there is no LEGAL obligation (trust me on this!)

• If the student is not otherwise qualified, it doesn’t matter where they are. If the student is not in the United States, it doesn’t matter if they are otherwise qualified.
“No otherwise qualified individual with a disability in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

• It may be OK to exclude someone with a disability from an opportunity or deny them access to something if the reason they are being excluded/denied has *nothing to do with the disability*

• If the reason the student is being excluded would also have excluded a student without a disability, it is likely NOT to be discriminatory
“No otherwise qualified individual with a disability in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

We’ll come back to this one, because there may be judgment calls as to what constitutes “participation,” “benefits,” and “discrimination” -- it is easier to discuss this in the context of some examples.
“No otherwise qualified individual with a disability in the United States shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

- A reminder - 504/ADA promise nondiscrimination anywhere throughout the institution.

- The distinction between “program” and “activity” is important -- from a Study Abroad program to campus visits for potential students, from admission to the institution to admission to the Nursing program.

- Each program or activity has their own, separate criteria for participation, and a student can be “otherwise qualified” for one program, but not another activity.
Who Is Otherwise Qualified?

• (Technical issue) 504 says “otherwise qualified” – the ADA just says “qualified” – not sure why there is a difference, but it doesn’t seem to make any difference in practice.

• Not all technical, professional, behavioral standards will be stated in writing, and some will be stated in places you don’t normally think of!

• “Otherwise qualified” is not a permanent condition.
Don’t Overuse the Concept!

• There is no such thing as “not otherwise qualified” when it comes to an individual class.

• While otherwise qualified is defined as being able to meet all the same requirements with or without reasonable accommodations, the concept (and evaluation) of reasonable accommodation exists, and is useful, outside of any consideration of “otherwise qualified.”

• “If your only tool is a hammer, everything looks like a nail!”
The Process:
There are five issues to be considered:

1) “otherwise qualified” – Does the student meet all the same requirements that everyone else is expected to meet? Are there any reasonable accommodations that can be made so that the individual can meet those expectations?

2) “person with a disability in the United States” – I combined these two phrases from the regs because if either one of these requirements is not met, 504/ADA are not an issue. Does this student have a physical or mental impairment that substantially limits one or more major life activities? Is this something that is happening inside the US border, thus making it subject to US law?
The Process:
There are five issues to be considered:

3. “solely on the basis of disability” – Is this student being treated differently than other students in like circumstances because of their disability?

4. “be denied access to, or the benefits of, or be subjected to discrimination under” – Is the student being denied access? Is the student being denied a benefit that other students are offered? Is the student being subjected to differential treatment (being discriminated against)?
The Process:
There are five issues to be considered:

5. “program or activity” – Is this a program or activity offered by the institution? If so, **WHAT** program or activity is it?

*Hmmm… In what order should we ask those questions? Think “graphic representation” instead of “flow chart.”*
Think “Graphic Representation” instead of “Flow Chart”…
(and don’t forget to trust your gut!!!)
Person with a disability in the United States.

Program or Activity

Otherwise Qualified (with or without reasonable accommodation)

Solely on the Basis of Disability

Be denied access to, benefits of, or subjected to discrimination under

AHEAD Association on Higher Education And Disability®
Let’s Try Some Examples!
WHY Is the Concept of Otherwise Qualified Important?

• Don’t think you can or should apply the concept to every decision that needs to be made

• “Reasonable accommodation” is an issue much more frequently

• Understanding the idea of otherwise qualified is one more “tool” for disability service providers to have, and use, in guiding our interactions with and for students with disabilities.
WHY Is the Concept of Otherwise Qualified Important? (continued)

• If you find yourself in a quandary as to whether or not to provide an accommodation, sometimes it is helpful to step back and look at whether the student is otherwise qualified for the experience (because if not, then there is no obligation to provide accommodation, reasonable or not).

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(If there is time...) Q & A
MORE Questions?
Jane Jarrow
JaneJarrow@aol.com
Just ask!!!
Session Evaluation

• Your feedback helps shape future programming.

• Thank you for attending!