Academic Progress and Students with a Health Condition or Disability Guidelines

Introduction
The University’s Equal Opportunity Policy records the University commitment to ensuring students have access to assistance to reasonably accommodate their health condition or disability. The University has established the Disability Liaison Unit and the medical and counselling services to provide support for students’ requirements arising from a health condition or disability.

These Guidelines address:

• what is a disability;
• the legal obligations on the University to accommodate disability including a health condition;
• the services available to assist students who have a health condition or disability;
• how, in the academic progress process, to approach consideration of a student whose academic performance is not satisfactory where the student has a health condition or disability.

Background
Federal and State anti-discrimination laws make it unlawful for the University to discriminate based on a student’s disability in certain circumstances. Decisions by the University, including a decision about academic progress, are affected by this obligation.

Disability is defined by the law by reference to internationally recognised standards. It covers:

- loss of physical or mental functions, for example, a person who has quadriplegia, brain injury, epilepsy or who has a vision or hearing impairment;
- loss of part of the body, for example, a person with an amputation or a person who has had a pacemaker implanted;
- infectious and non-infectious diseases and illnesses, for example, a person with AIDS, hepatitis or tuberculosis, a person with allergies or who carries typhoid bacteria;
- the malfunction, malformation or disfigurement of a part of a person’s body, for example, a person with diabetes or asthma or a person with a birthmark or scar;
- a condition which means a person learns differently from other people, for example, a person with autism, dyslexia, attention deficit disorder or an intellectual disability;
- any condition which affects a person’s thought processes, understanding of reality, emotions or judgement or which results in disturbed behaviour, for example, a person with a psychiatric condition or personality disorder.

The law provides special protection for disability (which may include a health condition) that:

- is present; or
- once existed but doesn’t any more, for example, a person who has had a back injury, a heart attack or an episode of psychiatric illness; or
- may exist in the future, for example, a person with a genetic predisposition to a disease, such as Huntington’s disease or heart disease or a person who is HIV positive; or
- someone thinks a person has, for example, assuming a person living with someone with an infectious disease also has the disease or assuming that a gay man has HIV AIDS.

A health condition a student may raise will include any medically recognised health condition, and will include an injury such as a broken limb.
A student experiencing the normal range of emotions of feeling upset, stress, anxiousness and sadness are not a health condition or a disability. A student experiencing problems or challenges in their life is not a health condition or a disability. These factors if not well managed can become risk
factors for the development of a health condition or a disability and for which University provided a wide range of support services.

**Requirements when responding to a health condition or a disability**

The law requires that first, the University must not treat a person with a health condition or a disability unfavourably because of the health condition or disability. This does not protect a person with a health condition or a disability from unfavourable decisions. Rather, decisions need to be made for reasons other than the person’s health condition or disability. In an academic progress process, this means decisions are made because of academic performance, and not a health condition or a disability.

Second, the University must not impose a rule that disadvantages people with a health condition or a disability and that cannot be reasonably justified having regard to all the circumstances of the situation. This does not mean the University cannot have rules. But rules that disadvantage people with a health condition or a disability need to be scrutinized to identify if they can be altered to reduce or eliminate this disadvantage. These rules do not have to be changed if there is some other compelling reason that warrants the rule being maintained unchanged. This conclusion is not reached lightly and compelling reasons should be closely scrutinised.

This calls for flexibility in the usual way of doing things, to have regard to any unintended impact on students with a health condition or a disability. This is an important consideration when applying academic progress rules to a person experiencing the effects of a health condition or a disability. Some approaches to this consideration are set out in the section below.

Third, the University also has a positive obligation to make reasonable adjustments to the way it conducts education so that a person with a health condition or a disability can participate or derive substantial benefit of a course. During the year this involves the University looking at how it assists students with a health condition or a disability. In addition to traditional medical and counselling services, the University has the Disability Liaison Unit to consider and arrange relevant modifications to the way education is delivered by the University. For example modifications are made to assessment conditions, such as modifications to:

- deadlines for assignments;
- exam venues and physical conditions;
- allow the use of a computer and other assistive software;
- provide for deferred exams or other special consideration.

Changes are also made in teaching conditions such as:

- the provision of teaching materials in an accessible format;
- the provision of a note taker;
- the provision of assistive technology;
- the provision of Auslan interpreting assistance.

The University has allocated responsibility to the Disability Liaison Unit to collect and consider medical evidence of a student’s health condition or disability from an appropriately qualified medical professional and, where warranted and in consultation with educators, set adaptations to teaching and examination arrangements to meet a student’s requirements. These arrangements are designed to assist the student have equivalent access to education to that available to a student without a health condition or disability.
Questions an academic progress committee can ask related to a health condition or disability

Having regard to the impact of a health condition or a disability is important when considering a student’s academic progress, particularly a lack of progress or unsatisfactory progress. The key consideration for an academic progress committee is to be satisfied that the student has had the opportunity to seek and/or been offered support for their health condition or disability. Once this is established an academic progress committee may assess the adequacy of the student’s academic progress with the benefit of the assistance providing equivalent access to education as is available to a person with a disability.

1. What is the impact of the health condition or disability on the student’s ability to learn, ability to study, and ability to complete assessment tasks?
2. When has the student experienced that impact on their education and what was the degree of the impact (which may vary)?
3. What action has the student taken to address the impact? Has the student registered with the DLU and sought altered teaching/assessment arrangements if appropriate? Has the student sought special consideration at appropriate times? Has the student accessed services from the medical, counselling and learning support services as appropriate? If not, why not?
4. Was the student’s academic performance unsatisfactory despite reasonable support from the University for their education?
5. If there is reason why the student has not accessed reasonable support from the University for their education, should the student be given an additional opportunity to demonstrate their potential academic performance after seeking reasonable support from the University for their education?

How an Academic Progress Committee can use this information

A student who does not seek support or, when support is offered or drawn to their attention as being available, does not utilise that support should not be permitted to use their health condition or disability to extend otherwise academically unsatisfactory candidature. Likewise a student who, with relevant support from the University, cannot perform satisfactorily academically should not have academically unsatisfactory candidature continued.

The purpose of the University’s support mechanisms and the law is to provide the opportunity to learn, not to keep students in education who cannot from their own independent effort derive substantial benefit from the course. A student who is failing is not deriving substantial benefit from a course.

This means health and disability information can be relevant to consideration of academic progress. If a student reveals health or disability information in the course of an academic progress process, in the student response form or orally in the presence of the committee, the committee is entitled to ask questions about it. Students should be supported to feel comfortable to disclose health or disability information relevant to that decision. Students should not, however, be pressured to provide such information.

A student is entitled to elect not to disclose health or disability information, even where this is an important factor to explain academic performance. The consequence of non disclosure is that regard cannot be had to the impact of a health condition or disability when considering academic performance. Health or disability information known to a student, but not disclosed to an academic progress committee, is not new evidence upon which an unfavourable decision by the committee could be appealed. So the obligation is on the student to raise relevant health or disability information known to them at the time with the academic progress committee.
The Academic Progress Committee may suggest or recommend the student make use of the medical or counselling service, or register and seek the assistance of the DLU.

**What about student privacy?**

The University is subject to obligations in information privacy and health privacy laws in handling sensitive information about a student, such as health or disability information. It is important to have regard to those obligations in an academic progress process. This requires that health and disability information is sought in a fair and not unreasonably intrusive way, and with the person’s consent. The best way to do this is to seek only relevant information from the student directly, or where they permit it from a third person such as a medical practitioner or even the DLU. The student is expected to bring all relevant health or disability information before an academic progress committee at their own initiative, or raise any relevant health issues when responding to a question of the committee, where health or disability is impacting their academic performance/progress. The committee does not initiate independent enquiry of third parties about health or disability information, nor seek information about a student from the University medical or counselling service or the DLU.

Health or disability information should only be sought from a student if it is relevant to a decision being made about a student. If collected the information needs to be securely stored, be made known only to persons with a relevant need to know (that is, not just to the curious), and destroyed when it is no longer required.

**Student support during the hearing**

Even before the academic progress committee hearing commences, the letter advising the student of the hearing invites the student to contact the DLU if they have any requirements to participate in the hearing. If a student contacts the DLU, the DLU will verify any requirements are medically justified and make contact with the Secretary of the committee to put in place any practical arrangements necessary to support the student’s participation in the hearing.

The hearing is a dynamic process and one with significant potential ramifications for a student. The committee must encourage the student’s participation in the hearing. Participation can be achieved through written materials submitted by the student. A student attending is indicating their desire to participate through an oral contribution, either by a submission or responses. A flexible approach by the committee to the manner of the conduct of the hearing may be appropriate where the effects of a health condition or disability appear to emerge during the hearing, to enable that participation. This may include, in the most difficult cases, consideration of briefly adjourning the hearing, rescheduling the hearing, or inviting participation by a further written submission without the need for any further attendance.

As the hearing concludes, the committee may have concerns about the general wellbeing of the student after leaving the hearing. In cases of apparent emotional upset, a referral to the University counselling or other support services may be appropriate.