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Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law
Post-Secondary Education and Disabled Students: Mining a Level Playing Field or Playing in a Minefield?

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So first of all, I went to the Grad Advisor and appealed to her on the basis of my disability. What I said was – I have a chronic illness. I'm older than most of the other students, I have a disability of pace, and I need you to recognize that and treat me equitably. And what I got back was a line about – well, we need to create a level playing field for all of the students. And I said to her – when you live with a disability, there is no level playing field, most of the time we're not even on the field – and I said – I don't want fairness, I want equity. And she didn't understand the difference. She kept falling back on – we have to treat everyone the same, we have to be fair to the other students as well. (Jung 2000, 105)

Most universities in Canada provide academic accommodations (course or program modifications, extension of assignment due dates, alternate testing procedures), as well as access to adaptive technology and structural modifications to buildings (e.g., ramps) to facilitate access to education for disabled students. While these policies, practices, and modifications can make it possible, or at least less arduous, for disabled students to earn degrees or diplomas, they are based on the assumption that they are sufficient to create equitable access to "level the field," so that students can compete on merit. They also exist so that universities meet their legal obligations not to discriminate under human rights legislation or the equality provisions in the Canadian Charter of Rights and Freedoms.¹

Balanced against these objectives are the interests of universities in protecting academic (and other) standards and in managing resources and restricted budgets, especially given the potentially high costs associated with the provision of some accommodations or modifications.² The tensions between these objectives and interests are often played out in the language of policy which, on its face, may be seen as fulfilling the legal requirements for access and accommodation but can fall far short of achieving equity, especially on examination of the assumptions about disability that underlie
the policies and the means by which equity – in the form of academic accommodation – is administered and disputes are resolved. The concept of equity in law manifests in the duty to accommodate to the point of undue hardship, which is what is required by most human rights legislation (BCGEU 1999). In the context of practices that have historically excluded disabled people, equity is seen as a goal that ensures not only an equal opportunity to access and participate in post-secondary education but an opportunity that does not create or result in disadvantage for the person seeking access and accommodation.

In this chapter, I critically examine the process that disabled students are required to undertake to be granted academic accommodation at the University of Victoria, in British Columbia. On the basis of an external review of the university’s equity policies and programs, I discuss the way the university approaches its commitment to accessible education. I contextualize this analysis by examining the manner in which power is conceptualized as either a characteristic of the individual or of the social structure. Further, I maintain that seeing power as a “thing” that can be possessed and manipulated inappropriately assumes that a balance of power exists (or can be made to exist) between the instructor and the disabled student with whom he or she is negotiating. Instead, I suggest that Michel Foucault’s concept of disciplinary power provides an accurate picture of the interaction, specifically in terms of the role of choice or agency. Disciplinary power requires not only participation; it invokes an aspect of complicity within the hegemony (i.e., the dominant discourse as represented through university policies and practices) and operates invisibly as a self-regulated activity carried out by disabled students.

In light of this understanding of the disciplinary nature of power, I look at how disability is defined in the university’s policy on Providing Accommodation for Students with a Disability and describe the process through which accommodation is reached. I argue that the biomedical conceptualization of disability represented in the policy individualizes and shapes the accommodation process such that the substantive evidentiary requirements (e.g., medical or psychological documentation from a recognized professional) and the steps involved in reaching accommodation (i.e., self-identifying as disabled, proving need through documentation, and negotiating the actual accommodation with each course instructor) signifies, in effect, a process of appeal based on an assumption that students are non-disabled and are not entitled to accommodation unless they prove otherwise. What is more, the policy language places the onus on disabled students to initiate and maintain the process through to completion, despite the university’s recognition of its responsibility to “provide reasonable accommodation, up to the point of undue hardship, to otherwise qualified students with a disabil-
ity" (Accommodation Policy, section 6.2(a)). The university will act only on a student's request for accommodation; it does not, in practice, see itself as having a positive obligation to initiate proactive solutions or to create equitable access to programs and courses.³

This places disabled students in an adversarial position vis-à-vis the university, such that their objective – to complete a course, to win a scholarship, or to earn a degree – may be thwarted if they are unable or unwilling to identify themselves as disabled, if they cannot provide acceptable documentation that proves the legitimacy of their claim, or if they are unable to reach agreement with an instructor over an accommodation. I look specifically at the requirement that disabled students negotiate with each of their instructors to come to an agreement on the accommodation needed.⁴

Throughout this analysis, I refer to and draw on the reported experiences of disabled students at the University of Victoria as recorded in various studies undertaken between 1994 and 2002. As well, I include examples from my own experience as the graduate student representative on the Advisory Committee on Issues Affecting Students with a Disability and as a disabled student to illustrate the application of policies and practices and the way power operates in these interactions.

**Approaching Equity at the University of Victoria**

How universities approach their commitment to accessible education has been described as either proactive or reactive. Those institutions that are seen to be proactive generally initiate action independent of demands or requests for change by those who are most affected. Institutions that are seen as reactive operate as passive agents of change in response to demands or requests for access or accommodation (Roberts 1996, 6-7). Because the nature of access (i.e., how universities go about implementing equity measures for disabled students) is not guaranteed in legislation or in most provincial policies, funding cuts, rising tuition rates, and financial pressures can undermine the commitment to full access and limit available accommodation services (Killean and Hubka 1999, 5). As Rioux and Valentine point out in Chapter 2, the fixation by governments on deficit and debt control that gained momentum in the 1990s (and continues to grow) has coincided with losses of civil and social rights for disabled people. They describe a resurgence in patterns of policy development based on assumptions of disability as an individual, biomedically based deficit which depicts disabled people as passive, sick, asexual, and apolitical. And they observe that, despite the enshrinement of formal citizenship rights in the Charter and in human rights legislation, substantive citizenship rights found in programs and services do not fully extend to most disabled people. In their view, this has to do with tension over the interpretation of whether the guarantee of
equality is seen as full access to government programs and services, or as a discretionary benefit subject to the need for governments to contain spending. Even in those post-secondary institutions that see equitable access as a worthy goal and have dedicated services to facilitate access and accommodation for disabled students, the theoretical framework of disability under which they operate significantly impacts how policies and practices advance the goal of equitable access.

In an effort to demonstrate its commitment to equity and diversity, the University of Victoria underwent an external review of its equity policies, programs, and services. The review was designed to determine “if structures, mandates, and policies respecting equity and fairness could be improved to advance the university’s goal to ‘recruit and retain a diverse group of exceptionally talented students, faculty, and staff and to support them in ways that allow them to meet their highest potential’” (Bujara, Scholefield, and Trehearne 2003, 3). The review panel found that, in general, equity services and policies have developed in a reactive and piecemeal fashion at the University of Victoria (21). Specifically, equity programs, policies, and services at the university, including those relating to access and accommodation for disabled students, were brought into being primarily by members of equity-seeking groups, in contrast to other public institutions, which have taken more of a leadership role (21). The review panel found little evidence of conscious concern for educational equity by the university, highlighting, for example, the lack of formal policy relating to and equity services provided for students from particular equity-seeking groups (9). The review panel commented that even though there is a policy on accommodation for disabled students and an office for students with disabilities, the overall approach of the university is reactive, requiring the student to initiate action for the purpose of receiving accommodation. They recommended that the university “assess the ability of the current Students with Disabilities Office to provide effective services to students with visible and invisible disabilities” (27).

An important issue raised in the report is the belief of some university administrators that equity-seeking groups, such as disabled people, Aboriginal people, and other under-represented groups, are special interest groups. This belief, the review panel noted, may explain the view held by some that existing equity policies and programs are the result of pressure from these groups rather than a genuine commitment to equity by the university (20-21). The review panel was concerned that such language is needlessly divisive and that “it fails to comprehend Canadian law and jurisprudence as it has developed over the last twenty years. It conveys to members of designated groups a sense that they must lobby for the opportunities to which they are entitled under law. It suggests strongly that a few administrators have yet to see that the onus for action falls to the University” (20).
This finding was confirmed for the panel by the submissions of disabled students who “discussed the extra effort they must sometimes undertake to achieve an accommodation that would appear to be nothing more or less than what the University is legally obliged to provide” (20).

Accommodation can be conceptualized in two broad forms: accommodation within the general standard (i.e., flexibility for all), and accommodation by means of individual exceptions to the general standard. The University of Victoria’s accommodation policy for disabled students is geared almost entirely to the latter, which is a large part of why the burden of enforcing the policy falls so heavily on individual disabled students themselves. If accommodation is already built into the general academic standard, thus avoiding the need to create exceptions, there is no need for a process to consider exceptions. For example, if examinations are normally written under limited time constraints, a significant number of students with particular kinds of disabilities would need to make an exceptional request for extra time. If, however, the examination is normally done as a take-home with extended time, many disabled students would have no need for additional accommodation. Moreover, many non-disabled students would find such flexibility more conducive to demonstrating their academic capabilities. Nothing in the University of Victoria’s accommodation policy mandates or even encourages reassessment of general academic standards to determine whether accommodation of disability within the general academic standard is feasible or appropriate. This is so despite pronouncements from the Supreme Court of Canada that accommodation within the standard should be the starting point for compliance with human rights legislation (BCGSEU 1999, paras. 65, 68).6

Even where accommodation needs to be addressed via exceptions, the manner of doing so is crucial. If exceptions are treated as within the realm of expectation, requests for exceptions will be treated very differently than if requests for exceptions are treated as presumptively illegitimate. Whereas equality under human rights legislation demands the former (BCGSEU 1999, para. 68), as I will elaborate below, the University of Victoria’s accommodation policy exemplifies the latter.

**Power and the Accommodation Process**

Birkhoff (1996, 7), in a review of perspectives on power in the conflict resolution literature, argues that many of the different views of power generally reflect one of two underlying ontological frameworks: agency or structure. Definitions of power are seen as falling along a continuum that ranges from an emphasis on individual attributes (agency) to an emphasis on the social structure. The accommodation policy’s focus on an individualized biomedical concept of disability is consistent with an agency conception of power, given that students are expected to take the initiative and act independently to
obtain the accommodations they require. There is little recognition of structural or systemic barriers to access, particularly in the reactive environment of the university, where the responsibility for the amelioration of difference lies with the disabled student. And, even in those post-secondary institutions that have adopted a social/political definition of disability, the onus remains with the student to bring a human rights (or similar) complaint should he or she experience barriers to access. Within these frameworks, legal and alternative dispute resolution processes are aimed at balancing power and, in cases of “equity” disputes, they rely on identity as a key determinant of how the power will be balanced.

The idea that power can be balanced – as if it is a commodity, a thing that can be divided up, weighed, or measured – means also that it can be attained and possessed as property. This is the hegemony of power, the dominant discourse of policies and practices that function as though power is a thing that can be manipulated. In the accommodation policy, power is seen to be reasonably balanced by the process of accommodation: the documentation requirements purportedly take discretion regarding the nature of the accommodation out of the hands of the instructor and balance it against the opportunity for the student to have a role in suggesting appropriate accommodations. But how can there ever be a genuine balance of power when the student is ultimately dependent on the professor as evaluator? How can there ever be a genuine balance of power between an individual student and a university bureaucracy, especially a resistant one? As indicated in the following passages, some students are aware of issues of power that affect them in their attempts to access disability-related services:

You get this feeling of being taken advantage of because of the power differences. You get almost to the place that you give them what they want and you don’t rock the boat. (Turner et al. 2002, 33)

There is a lack of understanding of what the consequences are of so many things. I mean tiny, little things. Like I fought for three years to get my own handicapped spot for parking because, I mean, you can’t see my disability so it can’t possibly be there. They treat each situation as if it was the first time they’ve heard of it and there is nothing you can do. Can’t you just go home: because it is not going to change. Go away! (Turner et al. 2002, 27)

This “thingness” of power as represented in processes such as interest-based negotiation characterizes power as inherent to the individual. As mentioned earlier, this implies that individual agency is the driving force in the negotiations and that a failure to negotiate an acceptable accommodation is a failure of communication or lack of ability to develop the most satisfactory
arrangement. This view, however, does not conceive of the relationship between the student and the professor, or between the student and an administrative body such as the Resource Centre for Students with Disabilities that has a hand in facilitating accommodation. In this conceptualization, power, rather than being an inherent characteristic, is a fluid network of relations in which an individual's self-perceptions and behaviours are based on their role or classification in a system of relationships (Foucault 1995, 145-46). In the university context, the identification of students as disabled, based on a biomedical classification, provides an avenue through which they attain a sense of legitimacy and entitlement to services. By voluntarily adopting their role as disabled, students maintain and perpetuate their distribution in a network of relations.

Foucault (1995, 177), for example, discusses disciplinary techniques of power that are intended to produce a "docile" body. These practices of disciplinary power presuppose agency by the individual but not on the basis of power as a thing or as property. Disciplinary power is not the same as physical force or violence; to operate, individuals must be free to act or to have a choice in their response. The actions of individuals in these disciplinary practices reinforce and recreate the disciplinary power. But the legitimizing and normalizing influence of these practices comes through their seeming invisibility, the voluntary adoption of the role that makes the power structure possible: "Disciplinary power ... is exercised through its invisibility; at the same time it imposes on those whom it subjects a principle of compulsory visibility. In discipline, it is the subjects who have to be seen. Their visibility assures the hold of the power that is exercised over them" (187).

The operation of disciplinary power is exemplified in the following two passages, in which disabled students voluntarily or freely take on a role that supports existing structures of power and demonstrates their willingness to self-regulate by accepting responsibility for that which is rightly the province of the university:

Professors often feel a bit threatened, probably because they know that if they mistreat a disabled student they could be in a lot of trouble. I do not think it could be worth the extra training to rectify this misperception; rather, I find it helps if the disabled student approaches the professor on the most informal level possible, has his/her documentation ready, and helps the professor with all the questions that may arise (when do I write the exams, who will invigilate, etc.). (University of Victoria Accommodation and Accessibility Survey 1994, 27)

I approach all of my instructors via a telephone call before each semester begins. I inform them of my deafness and let them know I will be attending class with an interpreter (this is done to avoid the element of surprise on
the first day). I provide all of my profs with a list of suggestions regarding deafness and speech reading. I approach each instructor during the first class to introduce myself, and my interpreter to give them the info I am providing them with and to explain the audio equipment I use (FM system) as they must agree to wear the microphone (a few have been very reluctant). On the second day I ask that my plea for a note taker be read. This is not a problem in the last few years as I know most of my classmates and they approach me. I did however, in my second year, have to wait 3 weeks without a note taker before the instructor was willing to pursue the matter. Some of my instructors attended the inservice for instruction of the deaf conducted through [the coordinator’s] office. (I have found that those attending are usually the ones who are already knowledgeable and accepting). (University of Victoria Accommodation and Accessibility Survey 1994, 28-29)

Although these particular comments predate the current accommodation policy, they are still pertinent given the current policy's primary reliance on student negotiation with individual professors.

For disciplinary power to operate, it requires not only participation; it invokes in students an aspect of complicity illustrated by their acceptance of responsibility for initiating and following through on the accommodation process described in the passages above. Defining disability from a biomedical perspective, which individualizes the process and makes students responsible for instituting their own "equity," illustrates the disciplinary nature of power in its self-regulating and productive aspects, especially when contrasted with other explanations of power that see it as a thing that can be possessed and manipulated.

Foucault (1995) refers to "power-knowledge," a term that reflects his belief that the two are intimately connected and embedded in each other. Knowledge, seen as a social product, has within it the power to influence what is seen as relevant and not relevant in particular social practices. In the case of documentation requirements, biomedical discourse is the method of legitimating and "normalizing" the experience of students seeking accommodation. It constructs the nature of disability in the policy, places students in a field of surveillance, and situates them in a "network of writing; ... a whole mass of documents that capture and fix them" (189). Practices that are consistent with this construction of disability constitute, and are given legitimacy in, the discourse. Perceptions that are different or radical and that do not fit within the existing constructions are rejected, and behaviours are redefined as inappropriate or deviant and are constrained by social practices that marginalize and exclude. Foucault does not separate the concepts of knowledge-power; he sees both as interactive and dependent on each other.
What is so insidious, however, about the operation of disciplinary power is the process of normalization that follows from individualized practices of accommodation based on one’s identity as disabled. Although no one is immune to the techniques of normalization that exist in our culture on a day-to-day basis, disabled people are particularly vulnerable because of the greater “deviation” from the norm that they present and the pressure to make themselves fit in, especially in a university environment from which they have historically been excluded. Foucault (1995, 184) writes about the establishment of “The Normal” as a principle of coercion in teaching (with the introduction of standardized education), in the organization of medical systems, and in the standardization of industrial processes. He explains that normalization, as an instrument of power, not only indicates one’s membership in a homogenous group; it also plays a part in the classification, hierarchization, and distribution of rank. He states: “It is easy to understand how the power of the norm functions within a system of formal equality, since within a homogeneity that is the rule, the norm introduces, as a useful imperative and as a result of measurement, all the shading of individual differences” (184). The biomedical conceptualization of disability exemplifies the classificatory and measured indices of difference among students with disabilities. Their membership in the so-called homogenous group of students is demarcated by their identification with, and description of, themselves as disabled. Individualized accommodations, which attempt to create a level field, are based on this concept of normalization and, because all in the policy flows from a biomedically defined disabled identity, strengthen and validate the existing reactive processes.

It is against this backdrop of the disciplinary nature of power that I turn to a more detailed examination of the University of Victoria accommodation policy.

**Individualized Policy: Representation of Disability in the Policy**

Much of what is written about disability is from either a biomedical or a socio-political perspective. The dominance of a biomedical interpretation of disability has been criticized for keeping disabled people under the direction of the medical profession and for individualizing disability by emphasizing treatment of the condition or the person with the condition (Linton 1998). This medicalized version of disability “casts human variation as deviance from the norm, as pathological condition, as deficit, and, significantly, as an individual burden and personal tragedy” (Linton 1998, 11). A biomedical understanding of disability assumes it to be inferior to “normalcy” (Corker and Shakespeare 2002, 2), and practices to “rehabilitate” or include people with disabilities are generally directed at normalizing them, that is, engaging in activities that will help them fit as closely to the concept of normal as possible.
A socio-political approach sees disability as a political category, an identity through which people with a wide range of physical, emotional, cognitive, and sensory conditions are bound by common social and political experiences (Linton 1998). This approach generally makes a conceptual distinction between impairment and disability such that disability is seen as a social construction on top of a pre-existing impairment (e.g., Wendell 1989). From this perspective, disability is not in the person; it is in the social environment and in the social practices that restrict the participation of people with so-called impairments. Not all social models of disability exclude the individual’s experience, but the emphasis is on emancipation from restrictive social practices. The idea behind the social model is to demedicalize disability but, as Shelley Tremain (2002, 33) points out, citing Hughes and Paterson (1997), the split between impairment and disability still renders the impaired body the exclusive jurisdiction of medical interpretation.

The accommodation policy at the University of Victoria embraces a biomedical definition of disability. This forms the foundation on which the rest of the policy is constructed. Section 4.2 states:

A disability results from a physical or mental impairment arising from an anatomical, physiological, neurological and/or psychiatric condition. The impairment is such that it results in:
(a) limited access to regular university facilities;
(b) need for modifications in the way that instructional materials are typically presented/accessed; and/or
(c) limitations in the ability to demonstrate knowledge or skills in the manner in which they are typically evaluated. (emphasis added)

This explanation of disability focuses on individual incapacity and relies on medical or psychological authority for verification. As can be seen in the language of this section, the assumption is that the limitation or need is within the person and that it results from impairment. Notice also how the limitation or need is seen in relation to what is regular or typical. This implies that disabled students are expected to conform as much as possible to what is considered normal by the university’s standards. The policy is not based on any questioning of what is regular or typical, or of the privilege attached to what is regular or typical. Support for this can be found in the section of the accommodation policy dealing with the responsibilities of students with a disability:

5.1 Every student who seeks accommodation due to disability has a responsibility to ...
receive or be receiving appropriate treatment for, or remediation where appropriate of, his or her disability (e.g., will be wearing glasses or hearing aids, if prescribed, to enhance their visual or hearing functional level).

This language individualizes the disability, making it the student’s responsibility to ameliorate the difference, with the goal of moving toward what is considered normal. While many students probably will indeed use technologies such as hearing aids and glasses to enhance their ability to fit with the dominant methods of learning, the policy does not take into account that alternative forms of communication – American Sign Language, large print, audiotape, or Braille – are also valid. The problem is that they are not typical or regularly used in an academic setting. This section of the policy also conveys the potential for coercion. Not only must the students be receiving treatment or remediation for their disability, but their choices are limited even further by the requirement that the treatment be prescribed. The university can potentially deny accommodation should the student opt for an alternative treatment or remediation, especially if it requires the expenditure of additional resources for accommodation by the university.

The Accommodation Process
Because biomedicine views disability as an individualized limitation or deficit, it follows that equity processes designed on this model also focus on the individual as the starting point for action. This is clearly represented in sections 7-10 of the accommodation policy, which set out three main elements requiring positive action by students: self-identifying as disabled, supplying appropriate and verifiable documentation, and negotiating and arranging the actual accommodation with their instructors and other appropriate university officials.

Although presented in the accommodation policy as linear, the process – especially those aspects that are not visible and which the student carries out individually to satisfy the policy requirements in order to be granted accommodation – can be complex, time-consuming, and, in some cases, too costly or overwhelming for students to pursue. For example, students who suspect they may have a learning disability but are unable to pay the cost of a psycho-educational assessment would not be eligible for services of the Resource Centre for Students with a Disability (RCSD) or for academic accommodations through that office. Since neither the university nor the province will bear the cost of such testing, economic class intersects with disability as a barrier to education. True educational equality for students with learning disabilities would entail public responsibility for the costs of testing.
Although many requests for accommodation are routine, they can become quite arduous for the student, even if ultimately successful.\footnote{11} Furthermore, time and effort devoted to negotiating accommodation can take away from study time. Also, an often-ignored issue is the impact of the nature of disability on one’s ability to successfully carry out the steps in the accommodation process. If the process becomes an onerous one, the disability may become a barrier to negotiating the accommodation, precluding the demonstration of the need for accommodation. Nevertheless, disabled students must take the initiative to engage with, and carry to completion, the accommodation process.

Self-Identifying as Disabled and Timely Requests
Section 7.1(a) of the accommodation policy states: “New students are encouraged to self-identify at the time of application (e.g., by indicating the presence of a disability on the University of Victoria Application Form). Delays in notifying RCSF staff may result in accommodation requests not being processed in time for the term/course in which the accommodation is sought.” The 2004-5 Undergraduate Application for Admission includes a section at the end of the form allowing students from four designated groups (Aboriginal, disabled, visible minority, and minority sexual orientation/transgender) to self-identify.\footnote{12} In addition, there is an extra box that can be checked regarding disability: “Because of my circumstances, I may need assistance in order to participate in my program. Please forward this information to appropriate services available to students with disabilities.” If the student checks the box identifying that he or she has a need for assistance, it triggers a letter of introduction from the RCSF. However, on the original application form, there is no explanation of the kinds of assistance available to disabled students, or how and by whom the information will be used.\footnote{13}

There is no requirement to self-identify; that is, a disabled student is not required to request individualized accommodation. However, if a disabled student wants individualized accommodation, the invitation to self-identify ultimately turns into a requirement, even if the student does not share the policy’s biomedical understanding of disability (i.e., that the need or deficit is within them). As noted earlier, the accommodation policy nowhere encourages accommodation within the general standards, thereby enabling a decrease in the need for individualized accommodation. There is no prompting to build into academic standards the flexibility that would move away from a single “typical” or “normal” standard geared to those who are non-disabled. Thus, a high proportion of disabled students will ultimately be required to self-identify in order to make the necessary requests for individualized accommodation. This involves self-identification not only to the
staff in the RCSD but, repeatedly, to all of one's instructors or other university officials who have a role in the accommodation process. The disadvantages associated with openly taking on a disabled identity for the purpose of academic accommodation can manifest in "blatant discrimination, lowered expectation for success, and being actively discouraged from applying for certain programs by administrative and teaching staff" (BCEADS 1995). Self-identification brings disabled students under the potential scrutiny of university officials; it allows for surveillance of their activities as they are singled out in the process of accommodation.

The policy's encouragement to self-identify as disabled at the time of application ignores the legitimate concerns that self-identification as disabled may lead to a discriminatory refusal to admit. As documented throughout this book, disability is commonly viewed as a limitation, deviance, or pathology; thus, self-identification as disabled has a potentially stigmatizing impact. In this climate, it is understandable that some students are reluctant to self-identify as disabled, especially given the paradox that the biomedical or psychological evidence required for accommodation points to and emphasizes the individual's particular physical, emotional, sensory, or cognitive limitations or deficits – in other words, what one cannot do – in a university environment that thrives on and rewards stamina, ability, independence, and mental fitness – what one can do.

A disabled student needing individualized accommodation does have the option of waiting until after admission to self-identify. However, he or she runs the risk of being told that the request is too late to be met for the term or course requested (Accommodation Policy, section 7.1(a)). While requirements for timely requests (sections 1.3 and 5.1(a)) may at first glance seem necessary from the university's perspective, the question of the amount of lead time required is very much dependent on the university's overall approach to accommodating disability. When the university is well-prepared for the kinds of accommodation requests that can be anticipated, a lot of lead time may not be required to accede to the request. For example, if course materials are already in electronic format, the production of alternate format versions can be done quickly. Although self-identification may still be required, providing the student with the alternate format version will likely be a hassle-free process for all concerned. In contrast, when course materials are not available in electronic format, the production of an alternate format version can be a laborious and time-consuming process. Similar comments can be made about other types of accommodation. The general point is that only if the university is ill-prepared is there usually a need for a lot of advance notice. If the university's approach is essentially reactive, problems with a timely response to accommodation requests can be expected. Conversely, in adopting a proactive approach, the university
anticipates and plans for various accommodations that will be needed (based on input and involvement of disabled students and faculty members). The likely outcome is a more efficient process with fewer delays.

As noted above, the accommodation policy does not seriously address accommodation within the general standard that would avoid the need for individualized accommodation, and hence self-identification. There is thus an overreliance on self-identification that is linked to the biomedical model. Nevertheless, some level of individualized accommodation is inevitable and will require self-identification. In that context, however, the expectations of the fact and timing of self-identification need to take account of the power dynamics underlying students’ reluctance to self-identify.

Documentation
Self-identification as disabled for the purpose of academic accommodation involves more than simply announcing this to RCSD staff. All claims must be supported with documented proof “acceptable to the University” from “medical doctors, psychologists, and/or other appropriate clinicians... [who] must be appropriately certified and/or licensed to practice in their professions” and “the disabling condition must be demonstrable by medically accepted clinical or laboratory diagnostic procedures” (Accommodation Policy, section 8.2). As well, according to section 9, if the university does not find the documentation acceptable, it is not bound by professional opinions and has the right to obtain further opinions, which may also mean referring the student for a further independent assessment by a professional of the university’s choice. The use of documentation to justify the provision of services and accommodations to disabled students is contentious. Not only can obtaining documentation be onerous, costly, and time-consuming for the student, but there are inconsistencies across departments and faculties as to how information is handled (BCEADS 1995). There are also concerns about the dissemination of documentation, despite the accommodation policy’s acknowledgment of privacy protection rights (section 2.3). Students are frequently required to provide documentation not only to the RCSD but also to individual departments in order to be accommodated, which creates a network of writing, as referred to above (Foucault 1995, 189). This gives the university access to detailed information about the student, in some cases widely dispersed across different offices on campus.

The rigidity of this requirement of “medically accepted clinical or laboratory diagnostic procedures” (Accommodation Policy, section 8.2) has been confirmed in an audit of access policies at BC post-secondary institutions. Roberts (1996) found that the University of Victoria has instituted rigid and narrow documentation requirements that give medical professionals and psychologists authority over the academic prospects of disabled students. Such rigidity in documentation is likely discriminatory and in violation of
the Charter in light of the recent Supreme Court of Canada decision in Martin v. Nova Scotia (Workers’ Compensation Board). Martin (2003) ruled that excluding chronic pain from regular workers’ compensation coverage, and limiting workers’ compensation benefits for those with chronic pain to a four-week functional restoration program, is discriminatory under section 15(1) of the Charter and is not saved by section 1. The court held that distinguishing injured workers with chronic pain (which is characterized by the lack of “objective” evidence) from those with other more easily documented disabilities is still disability-based discrimination. Further, the court held that the blanket denial of compensation benefits that were available to other injured workers went too far in pursuing the objective of preventing fraudulent claims and abuse of the compensation system, because it more than minimally impaired the rights of injured workers with chronic pain. In other words, the absence of objective evidence of the condition is not a sufficient reason to exclude a subgroup of disabled people from the benefits accorded to other disabled people.

As Martin applies to disabled students who wish to access accommodation, the lack of a medically accepted diagnostic procedure should not prevent students from accessing accommodation services. There needs to be flexibility in the documentation requirements that enables professionals to confirm a disability, even in the absence of “objective” evidence, on an evaluation of what the person reports. The diagnosis of some conditions, such as fibromyalgia or myalgic encephalomyelitis, is arrived at through the elimination of other illnesses as the cause of the symptoms. There are no medically accepted clinical or laboratory diagnostic procedures to determine the presence of either of these conditions, yet they are often chronic and debilitating and would require academic accommodations in order for students to manage their programs. While the university has an interest in some validation beyond self-reporting to guard against fraudulent claims, rigid documentation requirements are an overreaction that will work hardship on many disabled students.

The accommodation policy also demands that the documentation be “current” (section 8.5). Where a condition is variable or changing, the university’s interest in current documentation may be legitimate, depending on the individual’s particular circumstances. But for a permanent condition, why is current documentation necessary? The requirement of currency assumes that disabled students have ongoing contact with physicians and other medical professionals about their disability and its impact on day-to-day activities. But as Krogh and Johnson point out in Chapter 7, a 2002 report by the Council of Canadians with Disabilities reveals that the most common reason people with disabilities go to a doctor is not to receive medical care but to have their impairment documented so they may receive the disability supports they require.
The accommodation policy sets out the university's expectation of documented information:

Documentation should outline the nature of the disability and provide a detailed explanation of the functional impact of the disability on the pursuit of post-secondary education. When possible, the documentation should give explicit recommendations for remedial and/or coping strategies that will assist the student in his or her pursuit of a program or post-secondary education. (Accommodation Policy, section 8.3)

The policy advises further that "a diagnosis alone ... is not sufficient to support a request for accommodation." It must be accompanied by information about the functional impact so that the university is able to determine the appropriate accommodation. It is not clear why a diagnosis alone cannot be sufficient documentation. For example, if a student is diagnosed as visually impaired, what more is needed to entitle the student to large-print materials? There is no conceivable academic advantage to the visually impaired student over non-disabled students. Moreover, it is hard to imagine that anyone who did not have a genuine need would put up with the bulkiness of large-print materials. The administrative time and cost of producing the alternate format may explain the requirement of documented need, but there is no necessity for an onerous documentation requirement.

Even where the appropriate academic accommodation is less obvious, the proposal that medical documentation include recommended accommodation raises serious concerns. What is problematic about this practice is the assumption that medical professionals are best suited to speak to issues of academic accommodation, that is, that they are knowledgeable about and can recommend specific academic adjustments and so-called coping strategies for the student. As Moss and Dyck (1999, 378) point out, the power and legitimacy attributed to biomedical knowledge is utilized to legitimate and justify unrelated, and sometimes competing, practices, such as those involved in reaching academic accommodation in a university setting. Expertise in identifying an impairment and in identifying appropriate academic accommodation can be quite different. Once a disability is acknowledged, the student's input as to what works for him or her may be the most important expert opinion.

A rigid medicalized documentation process puts professional opinion above the experience and knowledge of students about their own bodies and their learning or evaluation needs. And, although it is indicated in the same section (8.3) that "students should be consulted by the instructor and the RCSD as to the most appropriate accommodations in their specific case," the language, in the context of the whole policy, appears to be advisory
rather than mandatory. The authority clearly lies with the professional to decide whether the student is entitled to accommodation based on the diagnosis and its associated functional limitations.

While the university does have an interest in documentation, both to justify resources devoted to accommodation and to guard against fraudulent claims, the documentation requirements cannot be allowed to trump everything else. Although fraudulent claims are a legitimate concern, such concerns should not be determinative; policy should not be based on a presumption of fraud that needs to be rebutted. Rigid and onerous documentation requirements risk defeating the very purpose of the accommodation policy, namely, to make education accessible to disabled students.

Negotiating Equity
Once the documentation requirements have been satisfied, students are eligible to register with the RCSD for disability-related services and will usually have met with a service provider in the RCSD office. To reach accommodation, however, the student is expected to take the lead role in initiating and working out the details of the accommodation with the instructor or professor. The RCSD will provide a letter to the instructor at the student's request, outlining the student's functional limitations, and may also include recommended accommodations based on the documentation received. Generally, however, the RCSD will not intervene unless asked to do so by either the instructor or the student.

Most requests for accommodation appear to be relatively uneventful. Yet, many students report difficulties in coming to an acceptable accommodation with some professors. Section 10 of the Accommodation Policy deals with "Reaching Accommodation." Section 10.1 of the accommodation policy directs students and instructors to "discuss the appropriate accommodation in light of the nature and requirements of the particular course." If the instructor rejects any RCSD recommendation and the instructor and the student cannot agree on an accommodation, the instructor is required to explain in writing the reasons for rejecting the requested accommodation (Accommodation Policy, section 10.4). If the student is not satisfied, he or she may request that the chairperson or director of the instructors' academic unit make a recommendation. If either the student or the instructor is dissatisfied with that recommendation, the dean can be asked to review it. If the dean's decision is in favour of the requested accommodation, it will be implemented. If the dean's decision is against the requested accommodation, the student can appeal to the Senate Committee on Appeals. Notice the entire absence of the RCSD in these processes. The onus is entirely on the student to negotiate with or challenge the instructor.

The rationale behind the practice of the instructor and student negotiating accommodation between themselves is that disabled students know what
they need and are, therefore, in the best position to communicate this to their instructors. As a process of coming to agreement, negotiation relies on the capacities and strengths of the individuals involved, and takes place only if the student initiates the process. In this context, the policy is imbued with assumptions about power that focus on the autonomy of individuals as agents of their own destiny and as the source of knowledge and action (Thomas and Corker 2002, 28). In other words, it assumes that both parties are starting from a place of equal strength and capacity. This is not to say that disabled students do not have the capacity to act on their own behalf; it is the assumption that they are in an equal bargaining position that is problematic.

From this perspective, successful negotiation relies on one’s skill or negotiation power—usually defined as “the ability to persuade someone to do something”—usually something they would not otherwise do (Fisher, Ury, and Patton 1991, 178). Power is assumed to be relatively balanced between the student and instructor on the basis of the involvement of the RCDP—usually in the form of a letter with recommendations for accommodation—and the right of review and appeal that exists for both parties in the negotiation. However, as I argue above, conceiving power as something that resides in individuals limits the way a conflict over an accommodation can be understood and explained. The conflict itself is individualized as a problem between the student and the instructor, but because the student is ultimately dependent on the professor for a grade, the prospect of a refusal of accommodation by the professor can be daunting.

A 1994 University of Victoria Accommodation and Accessibility Survey reported students’ experiences with faculty around disability. Although this survey predates the current policy, the fact that the current policy gives a primary role to the individual professor makes the survey results still relevant. One student stated: “There is always, initially, an uneasy feeling when I approach a prof with the issue of my needs. It depends on the professor’s attitude whether this feeling goes away or increases. I feel on the defensive and get angry inside. I don’t want to have to defend the fact that I have special needs. It is hard to be dependent on other people’s kindness and understanding” (University of Victoria Accommodation and Accessibility Survey 1994, 31). Students may be successful with one instructor and unsuccessful with another depending on the instructor’s knowledge and awareness of disability and accommodation issues. For example, Karen Jung (2000) looked at the accommodation policy as it was experienced by women with chronic illness at the University of Victoria and found reports of inconsistencies between instructors in what they deemed to be acceptable accommodations. One woman recalled: “The problem was that I was having a hard time typing... So the only thing I could come up with was taping, for me to tape my assignments... And that worked for one course... And then
I came up against the next professor who just said, flat out – No! No to the taping. It’s not fair to the other students” (Jung 2000, 105). This reflects a lack of awareness among faculty of the concept of equity. It also shows that the training provided to them of what it means to provide academic accommodation for students is inadequate. As well, this example indicates that it is not a matter of asking for and receiving – or discussing – accommodation. The process of negotiating can be fraught with many obstacles for students, the most salient being the impact of power on the negotiation (and its outcome) between the student and the instructor (or other university official). Students who are unwilling or unable to approach their instructors, or who do not want to have a conflict with an instructor who is resistant to the accommodation, may suffer the consequences of a dropped course, compromised health, lower grades, or even complete withdrawal from school (BCEADS 1995).  

In this climate – which some disabled students have described as hostile – there is little recourse except to notify the RCSD of the problems or, as a last resort, to appeal to the campus ombudsperson for assistance (Turner et al. 2002). However, this does not acknowledge the risks that students take in reporting an instructor, particularly if the course is mandatory and the instructor is responsible for evaluating the student’s progress in the course and in grading work. A recent research project about conflict and its resolution at the University of Victoria canvassed the experiences of students identified on the basis of their membership in a marginalized group. One disabled student reported: “In my class, someone had to use the ombudsperson with an instructor. And I saw how negative that turned out. You want to get a good grade and you don’t want to alienate the instructor” (30). Another stated: “Well I find that I’m not really getting a lot of help from the university ... passing the buck thing; they don’t want to take the time to try and help someone with marks or whatever. So you get stuck and you try and go to another person, then another person. Sometimes you just, it’s easier to just forget about it, just leave it the way it is. Just try and struggle through on your own” (22). While instructors are encouraged to become familiar with the accommodation policy and participate in an orientation for new faculty that includes training on diversity issues and academic accommodation, it is just one of many pieces of new information to which they are exposed. Accommodation issues are unlikely to become a priority unless instructors are faced with a student who needs accommodation. And even then, there is no certainty that the instructor will consult with the policy or the RCSD before making accommodation decisions. It may be understandable and expected that not all professors will be knowledgeable about, or even supportive of, legal and moral obligations for the accommodation of disability. That premise, however, is incompatible with individual professors’s being the primary decision makers about accommodation. Any concerns
about academic freedom requiring a primary decision-making role for individual professors are easily met by the dictates of human rights legislation. The sanctity of abstract notions of academic freedom no more trumps human rights legislation than do abstract claims about the sanctity of a collective agreement (Renaud 1992).

Appendix I of the accommodation policy, which sets out the guidelines for reasonable accommodation, proposes conditions deemed to be effective for reaching accommodation: “The development and implementation of accommodations are most effective if there is a mutually respectful and trusting relationship between the student and the instructor. Often, the most creative and flexible accommodations are produced mutually by the two parties.” The role of the RCSD in this process is to provide guidance, if asked, but it does not take an active role in facilitating a mutually respectful and trusting relationship between the student and the instructor. This is left to the initiative of the student or the instructor. And, given the association of disability with deviance and lowered expectations of success, as well as the view by some that disabled students at the University of Victoria are members of a special interest group, it is difficult to see how mutually respectful relationships can be developed without intervention by the university in some manner.

The hands-off attitude taken by the RCSD in matters of negotiation between the instructor and the student is a manifestation of the university's reactive approach to disability. If the RCSD is not instrumental in administering direct accommodation services, such as providing a private room for an exam, it is unlikely to know whether the student was successful in reaching an appropriate accommodation unless the student reports back to it.18 The process of obtaining an accommodation through negotiation can be random for the student, especially when the RCSD does minimal follow-through to determine the outcome of a particular negotiation.

An effective accommodation policy needs more proactive involvement by the university as an institution. Effective decision making needs to:

1 move away from a biomedical conceptualization of disability that emphasizes self-identification
2 include disabled students in setting and implementing policy
3 ensure that all university personnel involved in administering the accommodation policy are knowledgeable about, and committed to, creating equitable access for disabled students
4 encourage the reassessment and adjustment of general academic standards to ensure accommodations are in compliance with human rights legislation.
Although there may be dangers in over-centralizing the administration of the accommodation policy in an office that does not appreciate the academic diversity across different programs, more localized involvement could be at the departmental or faculty level, rather than at the level of the individual instructor. In any case, any decentralization still needs to involve knowledgeable and committed people. An effective accommodation policy needs to provide support to disabled students requiring accommodation, not cast them in the role of adversaries of their instructors or the university. The rights of disabled students need to be enhanced by a process that accepts academic accommodation as not only legitimate but also indispensable.

**Conclusion**

This chapter critically examines the process that disabled students must undergo to access academic accommodations and disability-related services at the University of Victoria. It highlights the need for more flexibility in the way accommodation is approached, with less reliance on one's identity as disabled as a means of instituting equity. It reviews the policy on *Providing Accommodation for Students with a Disability*, which governs the conduct of disabled students, and discusses and critiques some of the assumptions and rationales underlying the policy. Because biomedicine is the predominant theoretical formulation that defines disability in the policy and sets out the requirements and process that students must engage in to access accommodations, the university's approach to equity has been individualized and reactive. I refer to my own experiences and to the experiences of other disabled students through reported studies to illustrate the operation of power in the university's policies and practices.

Each of the steps in the accommodation process serves to strengthen and perpetuate modern relations of power that are based on a biomedical concept of disability and that produce the subjects they subsequently come to represent: self-identification as disabled is sustained through ongoing surveillance and "compulsory visibility" (to use again Foucault's term); documentation requirements individualize and separate students based on a network of writing; and, negotiation to implement equitable accommodations for disabled students fosters the illusion that power is a characteristic that inheres in individuals, who are agents of their own destiny. Looked at from this perspective, the accommodation process at the University of Victoria does little to advance the principles of equity for disabled students. For some the expectation that the accommodation process will ameliorate existing barriers to education has not been met. Consequently, the experience for disabled students at the University of Victoria is more like negotiating a minefield than competing on a level playing field.
Acknowledgments
Teri Hibbs is the primary author of this chapter, which is based on research undertaken as part of her graduate program in dispute resolution at the University of Victoria. The analysis in this chapter draws on her experiences as a disabled student, as a legal advocate for disabled people, and as the graduate student representative on the Advisory Committee on Issues Affecting Students with a Disability. All first-person references in this chapter are hers. Dianne Pothier's supplementary contribution draws on her experience as a (disabled) faculty member of the Dalhousie Law School Studies Committee (which, among other things, deals with the examination of accommodation requests from law students with disabilities), as Dalhousie Law School's Faculty Advisor for Students with Disabilities, and as a faculty member of Dalhousie University's Presidential Advisory Committee on Accessibility for Students with Disabilities (which was involved in the drafting of Dalhousie's accessibility policy in the mid-1990s).

Notes
1 At the University of Victoria, the policy Providing Accommodation for Students with a Disability governs the conduct of disabled students who seek accommodation. Section 4.3 states in part: "These accommodations stem from the university's legal and moral duty to take reasonable measures, to the point of undue hardship, to accommodate students with a disability."

Although in McKinney et al. v. University of Guelph et al. (1990), the majority of the Supreme Court of Canada decided, in a case involving employment issues, that universities are not government actors for all purposes regarding Charter application, it is likely that student access to post-secondary education would engage Charter application as per the principles in Elhardt v. British Columbia (A.G.) (1997) for effectuating a specific governmental policy or program. It is perhaps worth noting that the University of Victoria's accommodation policy, at Section 2.1, misquotes section 15(1) of the Charter, mistakenly indicating a closed list of grounds.

2 Section 1.2 of the University of Victoria accommodation policy states: "Providing accommodations that permit students with a disability to access courses shall not reduce the standards, academic or otherwise, of the University."

Budget considerations are expressed through the concepts of reasonableness and undue hardship in the University of Victoria accommodation policy. Section 1.1 of the policy states: "The University of Victoria will provide reasonable academic accommodations, to the point of undue hardship, to all otherwise qualified students who have a disability."

This is so despite section 6.2(d) of the accommodation policy, which states that the university has a responsibility to "make their courses or programs accessible to otherwise qualified students with a disability up to the point of undue hardship and, except with respect to the essential course or program requirements, modify any course or program requirements that are discriminatory on the basis of disability. The Resource Centre for Students with a Disability (RCSD) and other University units have been authorized and designated to assist in meeting this responsibility." Even in the case of physical accessibility, the onus remains (at least partially) on students to bring forward concerns about barriers to accessibility, as evidenced by stickers on windows and doors across campus advising those reading them to notify the RCSD of barriers to access.

3 Section 10.1 of the accommodation policy sets out the requirement for disabled students and instructors to negotiate. The remaining subsections, 10.2-10.7 plus section 11, provide the rules and time limits for appeals if agreement on an accommodation cannot be reached.

5 The review panel conducted its review on campus on 10, 11, and 12 February 2003. The report, dated 19 June 2003, was released to the larger university community in early July 2003.

6 The court in Meitorin (BCGSEU 1999) expressly rejected its previous stance that adverse effects discrimination (which accounts for most disability discrimination) exclusively engages accommodation by means of exceptions to general rules.

7 Recall Section 1.2 of the accommodation policy, which cautions that accommodations "shall not reduce the standards, academic or otherwise, of the University." The perceived
threat to academic standards as a rationale for denying accommodation is similar to the argument used not so long ago rationalizing keeping women out of universities. Because academic standards are social creations that can fluctuate depending on such things as curriculum design, changing enrolment patterns, and so on, they can act as a barrier to access for disabled students if accommodation considerations are not built into their design. See, for example, the article "UVic raises admission requirements" in the 5 June 2002 edition of The Ring: The University of Victoria's Community Newspaper (p. 3), which describes the rise in GPA (grade point average) cut-off for new admissions from 75 to 81 percent in Arts and Sciences for the 2002-3 year, due to an increase in applications and higher retention rates for returning students.

8 And, I suggest, the association of these technologies with disability in the biomedical sense devalues them as tools for learning or teaching.

9 An example of this might be the denial of a request for sign language interpretation if the student can also use hearing aids, even if the student understands and communicates more effectively using sign language.

10 Current BC legislation and policy changes have drastically cut back on support for disabled persons. This has been accomplished through, among other things, a substantially more restricted definition of disability as the basis for coverage. This impacts on the ability of disabled persons to access university education when all their energy is dedicated to meeting their basic survival needs. See Krogh and Johnson, Chapter 7.

In a draft report prepared in 2001 by Pierre Laliberté, the coordinator of the RCSD, entitled Issues Facing Students with Cognitive Disabilities at the University of Victoria (Victoria, BC: University of Victoria Resource Centre for Students with a Disability), the high cost of assessments were discussed in the context of lack of insurance or other funding to cover the costs. It states: "This lack of available funding has resulted in a situation whereby many students with undiagnosed learning disabilities are left without access to much-needed academic accommodation and support services essential to succeed in their program of studies. As reported by RCSD staff, between 5 and 10 students per month contact the center requesting information about testing for potential learning disabilities, many of them referred to the RCSD by their instructors" (3).

11 For example, I recently requested an accommodation that would extend my program end-date and waive the accompanying penalty fees, to compensate for the academic terms during which I was temporarily withdrawn due to disability. Although the accommodation was eventually granted after more than six weeks of intensive and emotionally taxing efforts to negotiate with several departments and administrators, I was, at one point in the process, advised that the university was not certain that my end-date could be extended because "a concern the department might have is use of faculty who, therefore, might not be available to other students" (a university administrator, pers. comm.). As well, process delays by the university (I requested the accommodation a month before classes were scheduled to begin) held up my student loan, requiring that I apply for an emergency loan to purchase essential medical supplies, despite informing the appropriate university administrator of the crisis created by the delay. The university showed no sense of urgency or willingness to expedite the process, leaving me on tenterhooks as to whether the accommodation would be granted while having to deal with financial hardships during the process. Given that a decision to refuse accommodation in this example would not likely meet the legal test of causing undue hardship to the university, it is discriminatory and reflects a lack of awareness of the financial reality of the lives of most disabled people and the adverse impact of being told that one's disability is a drain on the university's resources.

12 The Graduate Application for Admission form does not include this section.

13 At an August 2003 open house for the Society for Students with a Disability (a University of Victoria Student Society constituency group), one student commented that she believed that references to accommodation for disabled students had to do with accessible housing, and because she has an invisible disability, accommodation would not be relevant in her case.

There is a general lack of student awareness of both the existence of and the range of accommodation services and resources offered by the RCSD. The student members of the
(now defunct) University of Victoria Advisory Committee on Issues Affecting Students with a Disability brought this issue to the committee, suggesting that accommodation services and resources be publicized more widely to students. This was met with the concern that the high workload of the RCSD and the lack of available resources for learning-disabled students who do not have documentation may send the wrong "message" to students, and that "care should be exercised in how we advertise the services available" (Minutes of the Advisory Committee on Issues Affecting Students with a Disability, University of Victoria, 23 November 2001).

14 Taking on a disabled identity for the purpose of academic accommodation is not to be confused with those who consciously take on a disabled identity as a means to advance the socio-political awareness of disability issues, though they, too, experience the same discriminatory practices.

15 However, the RCSD has been known to intervene in cases where it believes that the requested accommodation is inappropriate or unreasonable, even when students have used the requested accommodation elsewhere (e.g., for high school courses and exams). Section 9 of the accommodation policy allows the RCSD coordinator to convene and chair a panel to review the coordinator's decision to reject the appropriateness of a student's accommodation request. In effect, the policy gives the RCSD authority to review its own decisions by means of a hand-selected panel that reviews the documentation to determine whether the requested accommodation is appropriate. The student is not permitted to be present at the review and, if the requested accommodation is questioned, may be subjected to an involuntary reassessment by an appropriate professional chosen by the university; "if the Review Panel determines that the documentation is not acceptable and/or the requested accommodation is not appropriate ... the student has the option of appealing to the Senate Committee on Appeals" (Accommodation Policy, sections 9.2(b) and 9.3(b)).

16 For example, after I had satisfied the documentation requirements for a request for a temporary withdrawal (for one semester) because of disability, the official considering the information contacted some of my faculty members and department administrative staff to seek further information about my disability, even though this information was irrelevant to the request. And, although the accommodation request was approved, I was advised by letter that I was not entitled to any further temporary withdrawals in my program. When I expressed my concern that others who had nothing to do with my request were contacted in this matter and that the statement regarding no further withdrawals was a preordained denial of further accommodation, I was advised that my request was being considered under the policy on temporary withdrawals, not the accommodation policy, and that the consultation was based on an "ethic of care" to ensure that a semester of withdrawal was appropriate. No rationale was given for the denial of further withdrawals (even the policy on temporary withdrawals does not set a limit on the number of withdrawals that can be requested due to disability) except to say that this statement was on a form letter, and the official encouraged me to permanently withdraw from the university until my health was better, at which time I could reapply for admission. I had to pursue the matter further, seeking support from the RCSD regarding the discrimination on the basis of disability inherent in this statement, and to have a new letter issued that did not include a denial of future accommodation.

17 I am aware of two students who permanently withdrew from the University of Victoria in the fall semester of 2003 because of difficulties they encountered as they were trying to negotiate accommodations, and because of the lack of support or intervention by the university on their behalf.

18 And, in my experience at the University of Victoria, even when a letter is provided with a recommended accommodation, there is no follow-up by the RCSD with the student to determine whether the accommodation actually took place.

References

[BCGSEU], British Columbia (Public Service Employee Relations Commission) v. BCGSEU, [1999] 3 S.C.R. 3 (Re Melorin) [BCGSEU].


Resource Centre for Students with a Disability (RCSD) website page on academic accommodation: http://www.stas.uvic.ca/osd/academic_accom.iht.html.


University of Victoria. University of Victoria accommodation and accessibility survey. 1994. Victoria, BC.
