National Association of College and University Attorneys
Presents:

Back to School: Challenging Disability Issues in a Return to Campus

Webinar

August 26, 2024

12:00 PM – 2 :00 PM Eastern
11:00 AM – 1:00 PM Central
10:00 AM – 12:00 PM Mountain
9:00 AM – 11:00 AM Pacific

Presenters:

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Back to School: Challenging Disability Issues in a Return to Campus

Phil Catanzano is currently a co-founder of Education & Sports Law Group. Prior to starting Education & Sports Law Group, Phil was Senior Counsel at Holland & Knight for seven years and, prior to that, an attorney at the U.S. Department of Education's Office for Civil Rights for almost a decade where he investigated institutions accused of discrimination on the basis of disability, gender, or race/ethnicity, among others. Phil has also served in Title IX coordinating roles and supportive roles for accessibility services offices on an interim basis. In the accessibility context, this includes advising and conducting programmatic reviews around accommodation processes, physical accessibility, and digital accessibility. A primary aspect of Phil's practice is representing institutions involved in investigations or compliance reviews with federal regulators from the U.S. Department of Education and the U.S. Department of Justice. Phil also teaches higher education law and disability law at Harvard University's Graduate School of Education, as well as at Boston College. Using this classroom experience, Phil often shares with audiences the practical benefits and challenges of creating an accessible classroom environment.

Abra Francois is Associate General Counsel at Tufts University. She joined Tufts from the U.S. Department of Education, Office for Civil Rights (OCR) where she practiced for six years. As a Supervisory Civil Rights Attorney, Ms. Francois enforced several federal civil rights laws that prohibit discrimination in colleges, universities, and K-12 schools. She investigated complaints of discrimination, conducted compliance reviews, provided trainings, developed legally sufficient policies and procedures, and negotiated agreements to resolve compliance concerns. Prior to joining OCR, Ms. Francois worked at the U.S. Environmental Protection Agency (EPA), where she practiced in the areas of employment and civil rights law. She provided legal counsel to offices throughout the national organization and represented the EPA in appeals before the U.S. Equal Employment Opportunity Commission.

Ms. Francois started her career as an Assistant Corporation Counsel at the New York City Law Department, where she litigated individual labor and employment cases in federal and state court on behalf of New York City agencies.

Ms. Francois is a graduate of Simmons College and Boston College Law School.

Kirsten Behling serves as Associate Dean of Student Accessibility and Academic Resources at Tufts University. She oversees the day-to-day management of the StAAR Center; including expanding awareness of the center across the institution. She fosters collaborative relationships, expands disability diversity awareness, and works to ensure that each aspect of the collegiate experience is inclusive for all. Kirsten attended Bates College as an undergraduate and graduated from Boston University with her Master's degree. She is the author of two books focusing on access in higher education: Reach Everyone, Teach Everyone: Universal Design for Learning and Disability Services in Higher Education: An Insider's Guide. When not at Tufts, you can usually find her on some outdoor adventure with her two kids.

Materials

Shay Humphrey, Suzanne Messer, Jeffrey Metzler, and Elizabeth Taylor, "Accommodations or Alterations? Navigating Student Accessibility" (NACUA Annual Conference 2024).

Bindu Jayne, Nikki Schmidtke, Kylie Stryffeler, and Jesse Krohn, "Pregnant Pause: Campus Pregnancy Accommodations in a Shifting Regulatory Landscape" (NACUA Annual Conference 2024).

Barbara Lee, Steven Locke, and Jill Zellmer, "Accommodating Student Mental Health Needs: Leaves, Returns, and Other Challenging Issues" (NACUA Annual Conference 2023).

Latosha Dexter, Daniel Sypolt, and Esther C. Haley Walker, "Get Well Soon! Practical Strategies for Mental Health Leave & Withdrawals" (NACUA Higher Education Discrimination Law Workshop, Spring 2023).

Laura Rothstein, "Section 504 at Fifty Disability Policy and Practice in Higher Education Why 504 and the ADA Remain Relevant and Important" 48 JCUL 153 (2023).

Valerie Fletcher, Erin Williams Benson, and Goldie Adele, "Leveraging the Field: Rethinking Physical Accessibility & Moving Beyond Compliance to Inclusion" (NACUA Higher Education Discrimination Law Workshop, Spring 2023).

Sampling of NACUA New Cases and Developments

Williamson v. Univ. of Louisville (W.D. Ky. Aug. 9, 2023)

Memorandum Opinion and Order granting Defendant's Motion for Summary Judgment. Plaintiff, a former student at the University of Louisville who was approved for 1.5x time for assignments as an accommodation for a learning disability, brought discrimination and retaliation claims against the University after he failed to complete assignments for a summer online course with no time limits other than the end of the term. Less than four hours before that deadline, he emailed the professor that he was having trouble with his auto-reader. When she required him to document this issue with technical support, he accused her of refusing to provide the accommodation and eventually filed a grievance. When the fall term began, he dropped two of his four courses to "focus" on the grievance process, which resulted in ineligibility for his Pell Grant, a balance due, and a block on future registration. In granting summary judgment to the University, the court held that plaintiff's discrimination claim failed for lack of evidence that the University held animus toward the disabled or that it treated comparable non-disabled students differently. Though the court found plaintiff had satisfied his prima facie case of retaliation because his Pell Grant was revoked shortly after he filed his grievance, it held he failed to show that his loss of eligibility due to his shift to a part-time schedule was pretextual.

Bennett v. Hurley Med. Ctr. (6th Cir. Nov. 9, 2023)

Opinion affirming Summary Judgment in favor of the Defendant. Plaintiff, a nursing student at the University of Michigan-Flint and clinical intern during Fall 2020 at the Hurley Medical Center who had a history of panic attacks, brought disability discrimination claims against the Center because it withdrew permission for her to have her service dog accompany her on clinical rotations on patient floors after patients and staff had allergic reactions caused by his presence. In affirming summary judgment in favor of the Center, the Sixth Circuit held that plaintiff's intentional discrimination claim failed because she did not show that the hospital's decision was motivated by anything other than the allergic reactions, which posed a direct threat to the health and safety of patients. Turning to her failure to accommodate claim, the court found that (1) accommodations necessary to permit the dog's presence on patient floors, such as screening all patients for allergies, moving patients to other non-specialized floors, and reassigning staff during the COVID-19 pandemic, were not reasonable and (2) the Center repeatedly consulted with medical experts on the feasibility of each of plaintiff's suggested accommodations and reasonably offered to permit the dog to be present in a crate on a separate floor, and was willing to consider permitting the dog to accompany plaintiff wearing a Shed Defender but plaintiff failed to follow up on procuring the garment for Pistol.

Scruggs v. Grand Canyon Univ. (D. Ariz. Nov. 21, 2023)

Order granting Defendant's Motion for Summary Judgment. Plaintiff, a former nursing student at Grand Canyon University who suffers from a weakened immune system and other complications as a result of childhood cancer treatments, brought discrimination, contract, and unfair trade practices claims against the University after she was dismissed from the program when she failed a required course for not submitting forms to extend her excused absences when complications from a strep infection further delayed her return to school. Her disability discrimination claim failed because plaintiff had not notified the University of her underlying weakened immunity or other complications. The court also rejected plaintiff's contention that the medical documentation policy was confusing, noting that she was familiar with the University's absence policy and used it to her benefit in the past. Her breach of contract claim related to the University's nondiscrimination policy failed because her alleged injuries were redressable under the ADA and Rehabilitation Act. Her unfair trade practices claim failed because she provided no evidence that the University had represented to her that her nursing credits would be transferable to another nursing program.

Warman v. Mount St. Joseph Univ. (S.D. Ohio Jan. 3, 2024)

Order granting-in-part Defendant's Motion to Dismiss. Plaintiff, a former nursing student at Mount St. Joseph University who had been diagnosed with multiple disabilities, including depression, anxiety, and brain tumors, brought various civil rights and Fourth Amendment claims under §1983 and disability discrimination claims against the University and multiple officials after he was denied a religious exemption to the University's COVID-19 vaccination policy. Plaintiff also alleged that campus police had questioned him about his decision not to receive a vaccine. In dismissing plaintiff's civil rights claims, the court found that the University officials who established the vaccination policy were private persons and employees of a private entity who neither acted in a public function nor exercised state coercive power. It ruled that plaintiff's Fourth Amendment claim against the campus police officer failed, finding that no seizure took place because a reasonable

person in the circumstances alleged would have believed they were free to leave, and that the officers were, accordingly, entitled to qualified immunity. In dismissing his disability discrimination claim, the court noted that though he had submitted medical documentation indicating "a medical need to avoid taking COVID vaccines," he had not alleged what condition gave rise to this need. The court declined to exercise supplemental jurisdiction over state law claims.

Bullock v. The Univ. of Tex. at Arlington (5th Cir. Feb. 15, 2024)

Opinion reversing dismissal and remanding for further proceedings. Plaintiff, a student at the University of Texas at Arlington who suffers from major depressive disorder and post-traumatic stress disorder, brought a disability discrimination claim under the Rehabilitation Act against the University after a professor declined to apply her approved accommodations retroactively when her accommodation letter was initially sent to the incorrect email address, alleging that this resulted in lower grades for the semester, including one failing grade. Plaintiff originally filed her claim in state court, which dismissed for lack of jurisdiction, and the state appellate court affirmed. The federal district court dismissed the claim as time-barred, reasoning that the federal claim was filed more than 60 days after the state trial court dismissed the claim. In reversing and remanding, the Fifth Circuit found that the district court erred in starting the 60-day clock on the date of the trial court's dismissal rather than 60 days after entry of the state appellate court's judgement when its plenary power to alter its judgment expired and its judgment became final.

Abreu v. Howard Univ. (D.C. Cir. Feb. 23, 2024)

Opinion affirming-in-part and reversing-in-part dismissal and remanding for further proceedings. Plaintiff, a former medical student at Howard University with ADHD and situational phobia related to test-taking anxiety, brought disability discrimination and contract claims against the University after it dismissed him from its medical school for repeatedly failing a required examination. The D.C. Circuit reversed the district court's dismissal of plaintiff's failure to accommodate claim, noting that it had subsequently decided in Stafford v. George Washington University that the three-year statute of limitations for personal injuries under D.C. law, rather than a one-year limit, applied to claims under Title VI, in which Congress was similarly silent as to a limitations period. It affirmed dismissal of plaintiff's contract claim, noting that (1) references to compliance with the Rehabilitation Act and the ADA in the University's Policies and Procedures Manual were insufficient to obligate the University to do something that was not already otherwise required, and (2) plaintiff had not been expelled prematurely under the terms of the medical school's Policies & Procedures Manual.

Dawit v. Meharry Med. Coll. (M.D. Tenn. Mar. 1, 2024)

Memorandum Opinion granting-in-part and denying-in-part Defendant's Motion for Summary Judgment. Plaintiff, a former student at Meharry Medical College who was granted testing accommodations for internal Meharry exams related to Obsessive Compulsive Disorder and General Anxiety Disorder, brought failure to accommodate, contract, and negligent misrepresentation claims against the College after it dismissed him following three failed attempts at Step 1 of the United States Medical Licensing Examination. Plaintiff did not request testing accommodations from the National Board of Medical Examiners (NBME) for his first attempt, and he withdrew his requests for his second when he did not allow NBME sufficient processing time and

for his third attempt when NBME informed him he needed more recent medical documentation. In permitting his discrimination and contract claims to proceed, the court found the fact that the School had previously permitted other students to attempt the exam a fourth time sufficient to state a prima facie case of discrimination and to raise a question of pretext. In granting summary judgment in favor of the School on his negligent misrepresentation claim, the court held that the alleged misrepresentations were at most statements of the School's intention to provide reasonable accommodations and its plans to apply a subsequently adopted policy to plaintiff in the future, rather than statements of present or past facts.

Adams v. The Vanderbilt Univ. (M.D. Tenn. Mar. 19, 2024)

Memorandum Opinion granting Defendant's Motion to Dismiss. Plaintiffs, the parents of a student at Vanderbilt University who died by suicide, brought negligence, disability discrimination, and contract claims against the University, after the student made suicide attempts in Fall 2020 and Spring 2021 before his passing in Summer 2021, all in University dormitory rooms. In dismissing plaintiffs' wrongful death claim, the court declined to find a "special relationship and resulting affirmative duty of care … where a university requires a student to live on campus, the student has reported suicidal thoughts to the university, and the student has previously attempted suicide," noting that no Tennessee court has recognized such a duty and under an "Erie-guess" the Supreme Court of Tennessee was unlikely to do so. In dismissing their disability discrimination claims, the court noted the lack of allegation that the student had ever requested an accommodation. In dismissing their contract claim, the court found no factual allegations of an express contract or breach of an implied contract created by the student-university relationship.

Mundy v. Bd. of Regents for Univ. of Wis. Sys. (W.D. Wis. Mar. 19, 2024)

Opinion and Order denying Defendant's Motion for Summary Judgment. Plaintiff, a former graduate student in bacteriology at the University of Wisconsin-Madison who was diagnosed with an anxiety disorder, twice sued the University after it became clear she would not successfully complete the requirements for a master's degree. At the time, department officials proposed to move her from the "research track" to the "coursework track" and make exceptions to the coursework track requirements so that she could exit the program with a degree. Preferring the research track degree, plaintiff refused and sued for disability discrimination. After that action ended in summary judgment in favor of the University in January 2022, plaintiff demanded that the University immediately award her the coursework track degree with a graduation date of August 2020. When the department concluded she had not met the requirements for that degree, plaintiff sued again, this time alleging retaliation. In denying the University's motion for summary judgment, the court held that although it was clear she had not satisfied the requirements for the degree, a reasonably jury could find that officials changed their stance of generosity toward plaintiff due to her first lawsuit.

Royan v. Chi. State Univ. (N.D. Ill. Apr. 5, 2024)

Memorandum Opinion and Order granting summary judgment in favor it the University. Plaintiff, a former Doctor of Pharmacy Student at Chicago State University who had been diagnosed with clinical depression and an eating disorder, brought discrimination and due process claims against the University after she abandoned her first attempt at her clinical rotation following a dispute with

her supervisors over her progress and subsequently failed a remedial rotation. Plaintiff further alleged that the then acting dean violated her due process rights by moving slowly in adjudicating her appeal. The acting dean, whose responsibilities concluded at the end of the month in which plaintiff submitted her appeal letter through counsel, forwarded the letter to university counsel, and the new dean denied the appeal, finding the program had followed its policies. In granting summary judgment to the University on her disability discrimination claim, the court found that she failed to establish that she was a qualified individual due to her failed rotations and that she would otherwise be unable to demonstrate pretext. In granting summary judgment in favor of the former dean on plaintiff's due process claim, the court found that the former dean was not obligated to resolve her appeal before he left the role and was not responsible for the adjudication thereafter.

Greene v. Bd. of Regents of Univ. Sys. of Georgia (N.D. GA. July 18, 2024)

Memorandum Opinion granting Plaintiff's Partial Motion for Summary Judgement as to whether he has a disability within the meaning of the Rehabilitation Act. Plaintiff, a tenured professor who suffers from "allergic fungal sinusitis," which "flares up" four to six times per year and causes him to entirely lose his voice. In granting summary judgement in favor of the plaintiff's, the court found that the fact that the plaintiff's condition was episodic did not prevent it from being a disability because he was significantly impaired by the condition for seven to ten days "when afflicted."

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Amanda McLean
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Webinar

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Back to School: Challenging Disability Issues in a Return to Campus

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Agenda

- Overarching Focus: interrelationship and collaboration between general counsel and accessibility services
- Updates and Important Topics
  - Title IX updates & disability issues
  - Pregnancy and lactation issues (that could be Title IX or disability)
  - Digital accessibility updates (very high level, see separate June 6th session)
- The Value of Strong Accessibility and Legal Relationship
  - Example 1: Students and Documentation Issues
  - Example 2: Faculty says the Student Must Be In Class
  - Example 3: Vendor Challenges
  - Example 4: The End of the Road (deciding "not otherwise qualified")
- Audience Q&A

Key Relationships: Accessibility & Legal Staff

- A critical relationship, but often ignored until challenges arise.
- Accessibility staff commonly make technical, individualized decisions that can implicate several federal and state laws.
- OCR and state agencies not shy about exercising enforcement authority; many advocacy groups in the disability space.
- Litigation can be detail and document focused because of individualized analysis.
- One approach: Abra Francois and Kirsten Behling!!!

Disability & Title IX Regulations?

- 2024 Title IX regulatory updates live for some; enjoined for others.
- Regulations do not specifically address ADA or Section 504 (“redundant” and requiring fact-specific, case-by-case decisions).
- Disability not a defense to conduct , but think about access & training
- Preamble focused on effective communications (remember, these apply to K-12, too), auxiliary aids and services, accessible materials, but also consider more common examples:
  - Extra time to review
  - Breaks during hearing/interview processes
  - "*Wait, wait, wait – does that mean I must provide 1.5 time to both parties?*"

Disability & Title IX Regulations, cont.

- While any additional provisions a recipient adopts in its grievance procedures must be applied equally to the parties, identical treatment of both parties is not always required in implementation of those provisions.
- The fact that the parties had an equal opportunity to receive an accommodation or an interpreter as needed is enough to satisfy Title IX.

Potential Process Challenges

- Documentation not requested/considered in a timely way
  - For example, what sort of documentation makes sense for an individual who states that they have a "processing disorder"?
  - Wrong answers only: "please provide your entire medical record..."
- When requested, documentation often shared with people who don’t understand purpose or how to consider
  - How is information secured? As part of the Title IX file? Discoverable?
- Interactive process: what does it look like? When does it end?
- Execution is key: Internal miscommunications around services common

Key Questions

- Who makes final determinations on accommodations in a Title IX process? Appeal options?
- Does the team doing this know the answer – or how to get the answer – to questions like:
  - What types of accommodations are available? Are they feasible?
  - How does technology work?
  - How to communicate a difference to another party without disclosing disability?
- Training re: notice of disability and process. Note that Title IX Coordinator, advisor, or investigator may receive first notice. Do they know who to take that to?
  - Train role players not to make assurances in the moment.

Pregnancy & Parenting

- Typical pregnancy issues fall under Title IX but could also fall under ADA/Section 504 in certain situations, as well as Title VII.
- When pregnancy-related issues arise, that is commonly where disability law becomes important.
  - "Although a normal, healthy pregnancy is generally not considered a disability, a pregnant student may become temporarily disabled and thus entitled to the same right and protections of other students with a temporary disability." *Salt Lake Community College*, June 2022
- Common for there to be coordination between Title IX and HR (for employees) and accessibility services groups (for students).
- Examples:
  - ✓ Clear policies and procedures
  - ✓ Consideration for how pregnancy may create complications for pre-existing disability-related accommodations
  - ✓ Creating a streamlined process for requests so student/employee aren't having the same conversations repeatedly and – even worse – getting different answers from different people/units

Common Pregnancy Accommodations?

- Excused absences/leave
- Extended time
- Frequent breaks
- Change in seating assignments (to allow access to bathrooms or, later, lactation rooms (see next slide for lactation)
- Remote participation
  - ✓Challenge: institution has pushed to move classes back to in-person classes, generally.
  - ✓This may be an exceptional circumstance and, because of timing, may not align with prior fundamental alteration requirements, e.g., requesting remote participation for one semester may be different than requesting remote participation for an entire year.

Common Lactation Accommodations?

- Lactation is a pregnancy-related condition that must be accommodated
- Best practice to have a Pregnancy Accommodations Policy and should include a space that is:
  - Clean and relatively convenient
  - Shielded from view
  - Free from intrusion from others
  - May be used by a student for expressing milk or breastfeeding as needed

Make sure faculty/staff understand privacy of accommodations. This is an area where some faculty/staff feel comfortable sharing that a student is breastfeeding. This should be treated as confidentially as any disability related accommodation.

OCR Cases on Point

- Institutions should not have rules that limit rights or provide different treatment based on parental, family, or marital status. *See Rivertown School of Beauty*, September 2019
- Institutions should not exclude students from an education program or activity, including any class or extracurricular activity, on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. *See Salt Lake Community College,* June 2022; *Northeastern University*, January 2020; *Fresno City College*, April 2018.
  - Common challenges surround certain study abroad activities, athletics, and other physical challenges
  - Process should be individualized for all

OCR Cases on Point

- If a unit does not have a clear leave policy, institutions should treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student or employees' physician, at the conclusion of which the person should be reinstated to the status which she held when the leave began. *See Salt Lake Community College*, June 2022; *Chicago State University*, March 2018; Fresno City College, April 2018.
- Common challenges:
  - Repeated requests for additional leave
  - Unclear documentation
  - Role itself needs to be filled and leave continuously extended
- No automatic answers; conduct individualized assessments.

Digital Access Updates to Title II of the ADA

- Published April 24, 2024; applicable to public institutions.
- Institutional requirement that institutions make accessible services, programs, and activities through websites and mobile apps.
  - Services, programs, and activities considered broadly.
- Institutions must make sure that their web content and mobile apps meet WCAG 2.1, Level AA within two or three years of when the rule was published on April 24, 2024, depending on their population.
- NACUA June 6 session: "*The DOJ's Final Rule on Digital Accessibility: Practical Considerations for Public Institutions and Changes on the Horizon for Private Institutions*"

Key to Title II Updates are Exceptions

Title II provides a required technical standard, as well as very specific exceptions:

- Archived materials
- Pre-existing conventional electronic documents
- Third party content
- Password protected documents
- Pre-existing social media

Note that "conforming alternate versions" are allowed, but are they a good decision?

Digital Accessibility Strategy

- Policies & procedures to support a digital accessibility program
  - Identify standards, definitions, scope, exceptions
- Establish committees, working groups, resources
  - Expensive endeavor, but issue here to stay – firm foundation can be critical
- Determine roles & responsibilities: not just an accessibility issue
- Provide/Obtain Professional Development Opportunities
  - Train content creators
  - Provide resources for content creators
- Acquire/develop tools to monitor and sustain compliance, including reporting and remediating access barriers
  - Consider additional technology, platforms, outside vendors carefully
  - Procurement policies are central

Example One: Students & Documentation

An incoming first year requested a series of accommodations that extend from housing, to dining, transportation and academic situations. The student presents as having a physical disability that is not apparent and shared that they also have a learning-based disability for which they will need accommodations. When asked for documentation of their diagnoses, the DS office received a pamphlet from a third-party organization outlining common accommodations for their purported issues. They also received a letter from an Emotional Support Animal clearinghouse.

Documentation received was not specific to the student and the second was outdated. Student and their parent adamantly refused to provide more, citing the ADA and arguing the law permits decisions to be made based on a regarded impairment and that gathering additional documentation is burdensome.

- Should the institution proceed without documentation? If so, in what manner?
- What laws are at issue?
- How can accessibility and legal work together?

Documentation

- Institutions have unique approaches; critical to have written documentation guidelines, as well as additional resources to understand the process
- Commonly seeking:
  - Clinical documentation of diagnosis
  - The way that the disability is currently presenting
  - Medical caregivers opinions on what is appropriate to accommodate? Pros and cons?
- Consideration: Institutional template for medical providers
- In many cases, it is appropriate to follow up with providers to better understand the issue and how it presents but still individualize:
  - Example: documentation required for a physical disability that is apparent versus a chronic "invisible" disability that is evolving in how it presents

Example Two: Faculty Says You Have to Be There

The accessibility services office determined a student has a disability that may present an access barrier to attending class when the disability flairs. An accommodation for “flexibility with absences” was approved. When the student shared their approved accommodation letter with the instructor, the instructor told them that attendance is mandatory in their class. The student circled back to the DSP distraught. The DSP spoke with the instructor who shared that their class has a mandatory attendance requirement (though not noted anywhere). The instructor argued that the student could not learn all the information pertinent to the class and ultimately the profession if they missed any classes.

- What legal issues may arise?
- How can accessibility and legal work together?

Fundamental Alteration & Undue Burden

Institutions not required to grant a modification that would fundamentally alter the nature of the service, program, or activity or impose an undue financial or administrative burden…BUT:

- Fundamental alteration and undue burden justifications are complicated and should not be made in independently. For example:
  - Determining whether something constitutes a fundamental alteration requires conversation with other departmental and institutional staff
  - Undue burden analysis is based on the burden for the institution, not an individual

Helpful OCR Language

Univ. of Mass.-Boston (2018): a determination that a specific standard or requirement is an essential program requirement that could not be modified must be "educationally justifiable" and decision must be made "by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability … **[W]hile [p]rofessors may be an integral part of the interactive process, e.g., [provide] input into what constitutes a fundamental alteration or essential requirements for a course, they are not qualified to solely determine what the requesting student may be entitled to under Section 504 and Title II, as they "do not necessarily have specialized training in the law or disability issues to make informed decisions about what is legally required by Section 504 or Title II."**

Example Three: Vendor Challenges

An incoming transfer student has asked for a sign language interpreter in all their courses as well as at their student club meetings. They had this accommodation at their previous institution. The accessibility office has reached out to the interpreting firm that they usually use and been told that there is a shortage of interpreters, though they can offer computer generated interpreters, and the cost of interpreting has gone up. The institution reached out to other state-suggested providers and have been ghosted twice at important meetings. This has significantly upset the student to the point they now involved an outside advocacy agency. Other institutions in the region are in the same situation.

- What legal issues may arise?
- How can accessibility and legal work together?
- How do you navigate the lack of vendors?

Example Four: The End of the Road?

A graduate student experienced significant mental health challenges their first year. Halfway through the year, they went on medical leave to focus on their mental health. They sought to return a year later, and no one – including their own caregivers – thought they were ready. They tried to return again after another year. Same result. Finally, in year four their caregiver said they may be ready to return and they received appropriate accommodations. Once returned, the student immediately fell behind in classes, they are not using the accommodations provided, and they are reported to be acting out in several different classes. They have a 2.0 GPA that fall and are placed on academic probation, which means they must maintain a 2.0 GPA. The spring is largely the same as the fall and they are on track to receive a 1.8 GPA.

- Imagine the dean of the graduate school wants to separate the student, pointing out that their program is very small and the student is not engaging, diluting the experience for others.
- They receive a fellowship that covers tuition and housing, but they must teach an undergraduate course. They have been unable to do so.
- Accessibility services says they do not have other ideas to accommodate the student.
- What do you do?

Considerations

- Often cases where many campus units are involved, e.g., counseling, academics, behavioral intervention, public safety and, of course, accessibility services.
  - *"But, what if there is no disability involved?"*
  - Possibility that if a student is leaving for medical or psychological reasons they will return seeking accommodations
- Helpful to incorporate accessibility services at the beginning of a process to consult and share information; harder to do so when a student/employee is returning in two weeks. Why?
  - Accessibility services may be able to help map out departure if disability issues already raised.
  - Accessibility services offices can assist in transition back upon end of leave, e.g., collecting documentation, mapping out return.

Not Otherwise Qualified

- Typically, only for extremely challenging circumstances.
- Clear justification and a clear record of accommodations considered.
- Critical to have accessibility services at the table to determine if anything else is possible or have options been exhausted.
  - When determining if a student is otherwise qualified, "it is necessary to take into account the extent to which reasonable accommodations that will satisfy the legitimate interests of both the school and the student are (or are not) available and, if such accommodations exist, the extent to which the institution explored those alternatives." Wynne v. Tufts Univ. Sch. of Med. (Wynne II), 976 F.2d at 792 (1st Cir. 1992); *see* Driscoll v. Bryant College, 393 F.Supp.3d 153 (D. R.I., 2019)


Questions?

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