



III NACUA
Webinar

**Disability Accommodations:
DEIA, Technical Standards, and Beyond**

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Agenda

- Introduction
- Trends from Developing Enforcement and Other Government Action
- Reasonable Disability Accommodations in the Student Conduct Process
- Audience Q&A and CLE Code #1
- Intersection of Reasonable Disability Accommodations and Technical Standards for Certain Programs of Study and Clinical Placements
- Other Emerging Considerations
- Audience Q&A and CLE Code #2
- Closing Remarks

Inclusion of A in DEIA

Background: EO 14173 (dated 1/21/25)

- Unwinds EO 11246 (issued in 1965 by LBJ)
- Tidal shift: ends decades long practice by the federal government requiring federal contractors to take certain affirmative actions to ensure equal opportunities in employment.
- EO 11246 was enforced by the Office of Federal Contractors and Compliance Programs through both compliance reviews and complaint investigations
 - In response, DOL Secretary Micone's Order 03-2025 (dated 1/24/25) directed OFCCP to cease and desist all investigative and enforcement activity

The State of A: Disability Discrimination Enforcement Remains

Laws Overseeing Disability Discrimination

- Section 503, 504 and ADA

Federal Enforcement Bodies

- OFCCP
 - EEOC
 - US DOE OCR
 - DOJ
- Don't forget... private causes of action!

Disability is the Enigma in DEIA

The Rehabilitation Act and Americans with Disability Act and its Amendments are, at their core, civil rights laws guaranteeing qualified individuals with a disability:

- The dignity of their participation in and representation in society;
- An equitable experience to those without a qualifying disability
- Inclusion in all aspects of living, working, and learning



A collection of colorful silhouettes of people in various poses, including walking, sitting in wheelchairs, and using canes, set against a light gray background. The silhouettes are in shades of green, purple, blue, orange, and pink.

Changes in Law?

Section 503 Proposed Rule

- 503 Prohibits discrimination against individuals with disability by certain federal contractors
- Proposed Rule:
 - Removes 7% utilization goal requirement
 - Removes requirement to invite applicants to self-identify their disability status
 - DOL states that such a requirement is “inconsistent with the ADA” as the ADA does not permit the ER to make any disability inquiries pre job offer and once started, only inquiries may be job related and consistent with business necessity
- Compare to VEVRAA

Section 503: Current Status

- Under current rule and proposed rule, still required to conduct an AAP
- Under current rule and proposed rule, still required to conduct recruitment efforts
- 7% utilization goal currently remains
- Still required to invite applicants and employees to self identify as a person with a disability

Section 504 Overview

- Prohibits discrimination against individuals with disabilities in programs that receive federal funding or are contracted by federal agencies
 - Individuals can file a complaint with federal agency responsible for overseeing the program (DOE, EEOC)
- Private Cause of Action!
- Status of Texas v. Kennedy (Texas v. Becerra)
 - April 11, 2025 joint status report clarifies that Plaintiffs will not seek relief on their challenge that 504 is unconstitutional
 - However, case remains and is not withdrawn

ADA

- Title II: prohibits discrimination by public entities regardless of whether they receive federal funds
- Title III: prohibits discrimination by places of public accommodations
- Private Cause of Action!
- Disparate Treatment/ Impact Claims
 - USSC has not decided whether these are cognizable under the ADA
 - Circuits are split on whether they are cognizable under ADA, 503 and 504
 - USSC has state that discrimination is “most often the product, not of invidious animus, but rather of thoughtlessness and indifference — of benign neglect” and that “the plight of the handicapped... [is] that discrimination against the handicapped is primarily the result of apathetic attitudes rather than affirmative animus.”

Title II: Web Accessibility

- April 24, 2024, the DOJ published final rule that requires state and local governments to make their web content and mobile applications compliant with WCAG 2.1 Level AA
- Private institutions
 - Courts and settlement frequently rely on WCAG 2.0/ 2.1 Level AA as a benchmark
 - Private colleges face direct lawsuit risk from individuals and advocacy groups
 - No built-in compliance timeframes means vulnerability exists right now

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What is happening with the Enforcement Bodies?

OFCCP

- July 3, 2025 DOL Secretary's Chavez-DeRemer Order 08-2025 lifted abeyance of OFFCP enforcement activities for Section 503 & VEVRAA
- However, proposed budget has \$0 for OFCCP
 - 503 Enforcement would move to EEOC
 - Reflected in EEOC budget
 - VEVRAA enforcement would move to DOL Veteran's Employment & Training Services

EEOC

- October 7, 2025 US Senate appointed Brittany Panuccio
 - Confirmation gave the Commission a quorum for the first time since Trump fired 2 Democratic Commissioners before their terms expired. Republicans hold a 2-1 majority
- EEOC
 - 60 lawsuits
 - Half related to disability and/or pregnancy discrimination
 - Quarter relate solely to disability
 - Compared to 2024
 - 111 total, 48 ADA claims

Andrea Lucas, Commission Chair: “For 35 years, the ADA has protected workers with disabilities. This landmark law—and the others we uphold—have empowered millions to pursue their full potential and fully participate in the American workforce. Many accommodations cost little or nothing, and resources like [our own page on eeoc.gov](#) and [askjan.org](#) make it easier for employers to get it right. We commend Jewel-Osco for reaffirming their commitment to upholding the tenets of this important law.”

DOJ

- **Continues to Enforce and Prosecute ADA Matters**
- However, Recently rescinded 5 covid related documents and 6 guidance documents designed to educate businesses regarding the requirements of the ADA
 - Stated the recission will reduce the burden on business to review them.

Recent Enforcement Action

PRESS RELEASE

Justice Department Sues Uber for Denying Rides to Passengers with Service Dogs, Wheelchairs

Friday, September 12, 2025

Share



For Immediate Release

Office of Public Affairs

Yesterday, the Justice Department filed a lawsuit against Uber Technologies Inc. for discriminating against passengers with disabilities, including those who use service animals and mobility devices such as stowable wheelchairs. Uber is the largest provider of ride-hailing services in the United States. The lawsuit seeks \$125 million for individuals who have been subject to discrimination and previously submitted complaints to Uber or the Department.

USDOE OCR

- **Continues to Enforce and Prosecute ADA Matters**
- **Press Releases**
 - Focus primary on TIX violations (gender inclusive restrooms, transgender athletes) , Title VI (Anti-Semitism)
 - Only 1 press release under Trump administration is related to disability discrimination enforcement

US Department of Housing & Urban Development

On September 17, 2025, HUD withdrew 9 guidance documents, including:

April 25, 2013 “Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs”

January 28, 2020 “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act”

Accommodation Responsibilities Remain

- Despite changes in federal enforcement priorities/ manpower, legal requirements to accommodate individuals remain.
 - Private Cause of Action Remain
- Consider other reasons for continued adherence to these responsibilities : recruitment, retention, culture, etc.
- Note: EEOC has increased enforcement of PWFA

Intersection of Disability and Student Conduct

- A condition may *explain* why a student behaved the way they did – but does it *excuse* their conduct?
- Is it a reasonable accommodation to be exempted from student codes of conduct or classroom expectations?



A condition may *Explain* behaviors but does not *Protect from Accountability*

- *Zimmeck v. Marshall University* 106 F. Supp. 3d 776 (S.D. W. Va. 2015), aff'd, 632 F. App'x 117 (4th Cir. 2015) (2015): Student was warned of unprofessional conduct including being tardy. Student showed improvement, then fell back to poor behaviors and also failed to sit for a required exam. By her third year she received treatment and medication for her condition. She received an evaluation noting she would be evaluated at the end of the third year. She was told the concerns she would need to discuss included being "tardy, dressed inappropriately, making unsettling comments to patients, failing to follow directions, interrupting teachers, and running through hallways." She refused to meet and responded that she "quit." In a readmission meeting she indicated it was the side effects of her medication that caused the behavior.
- Holding: professionalism is an essential aspect of the program, is clearly stated in the handbook and students sign off on such requirement. No duty to provide accommodations arises until requested by the student and that misconduct, even if related to a disability, is not protected.

Practical Considerations

- Students and their parents who were in a special education environment in K-12 may have experienced different discipline standards in those environments;
- Balancing the need to maintain appropriate conduct and behaviors with understanding conduct may not have been malicious, controllable or intentional – perhaps relevant to type of sanction;
- Working with campus partners towards strategies for compliance.

Technical Standards

- Most often found in health sciences programs
- Often tied to accreditation standards
- Often afforded deference by the courts
 - But must remain current and relevant
 - Designate a responsible party for review and updates
 - Document who was involved in the review, recommended updates or certification they remain accurate and applicable, resources relied on for review
 - Designate a review cycle
 - Documented notification to students of standards during admission process, enrollment, application to classroom as well as clinical components highly recommended
- Related to defined learning outcomes as a requested accommodation that would alter the standard or learning outcome would be a fundamental alteration and thus be unreasonable

Technical Standard Examples

- Communication skills – expects effective oral and written communication with all members of a health care team and with patients in order to gather and convey information.
- Intellectual- Conceptual Skills – require effective interpretation, assimilation, and understanding of complex material in individual, small group, and lecture formats. Must be able to synthesize information effectively in person and remotely, and interpretation of casual communications to reach accurate and fact-based conclusions.
- Cognitive skills – require the ability to measure, calculate, analyze, integrate, and synthesize information, and the ability to comprehend three-dimensional relationships and spatial relationships of structures. Importantly, these skills must be able to be performed in a timely fashion, which introduces the issue of speed (often a major challenge for those with certain disabilities).

Court Deference to Academic and Accreditor Judgement

- *Ohio Civil Rights Commission v. Case Western University*: Totally blind student denied admission. Court found the decision was justified and stated the following:
 - The goal of medical schools is not to produce specialized degrees, but rather general degrees in medicine which signify that the holder is a physician prepared for further training in any area of medicine. As such, graduates must have the knowledge and skills to function in a broad variety of clinical situations and to render a wide spectrum of patient care. All students, regardless of whether they intend to practice in psychiatry or radiology, are expected to complete a variety of course requirements including rotations in pediatrics, gynecology and surgery.
 - In reaching the decision, the court relied on the expertise of the AAMC and medical educators who testified that the use of intermediaries to develop skills of medical diagnostic judgment would interfere with the student's exercise of independent judgment, which was crucial to developing diagnostic skills.

Court Deference has Hit its Limits

- *Argenyi v. Creighton University*: Argenyi began medical school in 2009 and sought to use CART technology, cued speech and an FM system as an accommodation. Creighton provided the FM system for lectures, small groups and labs but denied the CART request. Argenyi again requested CART and the school responded with enhanced notetaking. Argenyi paid for the services himself (\$53,000 annually year 1 and \$61,000 year two). After passing his clinical work and courses Argenyi took a leave of absence and sued. The Court found Creighton failed to provide reasonable accommodations and that it could not establish an undue financial burden. Creighton was ordered to provide the accommodations going forward and pay Argenyi's \$500,000 in attorneys fees.

Is it a workplace accommodation or Student Learning Accommodation – Graduate Students

- Is a Teaching Assistant a student, employee, both?
 - What office processes a request for accommodation
 - HR?
 - Student Access Office?
- Would a flexible deadline accommodation in the learning environment be reasonable in the teaching role when students in a class should receive timely grades to gauge progress?

Emerging Considerations: Disability Discrimination & ADA Cases

- ADA typically follows Title VII
- **Muldrow v. City of St. Louis: USSC 2024**
 - Title VII; sex discrimination; unwanted job transfer
 - lowered the bar for plaintiffs to bring a discrimination claim
 - Only need to demonstrate “some harm” rather than a “significant harm”
 - Does not change the standard for retaliation cases!
 - Actions still need to be “materially adverse” and cause “significant harm”
- Multiple circuits have adopted the Muldrow standard for ADA claims

Post Muldrow: Not “Some Harm”

- Admonishing an employee without formal consequences
 - Rios v. Centerra Group, LLC 106 F. 4th 101 (1st Cir. 2024)
 - Reiterates that “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to a hostile environment
- Administrative error informing employee she would be subjected to more reviews, but was not actually doing so
- Denial of *purely subjective preferential* accommodation
 - Peifer v. Board of Probation and Parole
- Failure to credit plaintiff for her work and assignment of undesirable work
 - Budhan v. Brighworks Sustainability LLC
 - Reiterates that things such as dismissive comments from supervisor, deliberate avoidance, intense scrutiny, increased workload of menial tasks do not amount to hostile work environment.
- No contact orders

Muldrow: Admin Leave & “Some Harm”

- Courts decisions are inconsistent whether administrative leave with pay pending an investigation is some harm
- At least one court has taken the position that suspension without pay is not “some harm” an adverse employment action. Carter v. Eureka Multifamily Grp.
- “one might reasonably argue that a temporary suspension (even with pay) causes some harm and also concerns a term or condition of the job- all that Muldrow now requires”
- “right to work is the most precious liberty a man possesses”

Cole v. Group Health Plan: “Some Harm”

- Religious Accommodation Request
- Facts: PT for 25, Employer implemented vaccine requirement, Employees who received religious exemption were required to mask, wear additional PPE, and reassignment to different patient area. Vaccinated employees were given orange badges and were allowed to remove their masks. Cole alleged she was subject of scorn, ridicule and embarrassment.
- Held: 8th Circuit reversal of 12(b)(6) dismissal on appeal
 - Denial of a *requested* religious accommodation absent showing of undue hardship may itself constitute adverse action
 - Refusal to consider the request despite working unvaccinated for a year and half prior

Post Muldrow: “Some Harm”

- Unreasonable delay in granting light duty pregnancy accommodation requests
 - Peifer v. Board of Probation and Parole, 106 F. 4th 270 (2024)
 - Delay was for 2 months and Court notes the temporary nature of pregnancy
- “unnecessary medical treatment” as a condition of return to work including counseling and urine testing
 - Ciotti v. City of New York, Slip Copy (2025)
 - Court found that because Ciotti plead that requiring her to engage in “repeated, unwanted, and indeed harassing, counseling sessions– as well as subjecting her to repetitive and utterly unnecessary urine testing... left [Ciotti] devastated” she state sufficient facts to survive a motion to dismiss.

“Some Harm” Standards

- Employees still must demonstrate that they have been left in a measurably worse position by the action
- Incidents have no material effect on the terms and conditions of employment do not meet the standard
 - These can be categorized as “trivial” or “minor annoyances”
 - Discrimination statutes continue to not be civility codes
- Retaliation claims still must meet the “significant harm” standard

Trends: Emergency Evacuations

- Students seeking accommodations related to emergency evacuations, possibly akin to their IDEA plans
- A handful of states have laws which require IDEA team to create an individualized evacuation/ emergency response plan
- No specific requirements for IHEs, ADA guide references areas of rescue assistance

Emergency Evacuations Continued

- Consider how to incorporate students with disabilities generally in your emergency evacuation plans
- Engage in individualized process when requested
 - Some are easy: blackout glasses for those with seizure disorders
- Required Assistance
 - Consider offering voluntary training for employees who may desire to take on this role (akin to “stop the bleed”)
- Classroom locations
 - First floor v. elevator access

Trends: Status of Remote Work

- Law has not changed in this area
- return to work mandates have raised questions about federal enforcement of this particular accommodation
- On September 18, 2025 DOJ issued slip opinion regarding “situational” telework
 - Related to religious accommodations
 - Supporting citations offer strong support for routine telework
- Continue to engage in the interactive process- fact specific

Trends: Applicants & Accommodations

- Ensure that applicants are notified that they may seek an accommodation in the interview/ application process
 - And, of course, ensure you engage with applicants when you learn they need an accommodation
- Ensure you appropriately engage in the interactive process with those who have received a job offer
- Ensure you appropriately inform applicants about how the accommodation processes works for employees if they inquire of such
- If a third party is involved in your hiring process, you are responsible for ensuring they are appropriately accommodating and will be liable for their failures

Trend: Disability as a Protected Class?

Campus Compact for Academic Excellence in Higher Education

“Consistent with the requirements of Title VII of the Civil Rights Acts and other federal employment discrimination statutes, no factor such as sex, ethnicity, race, national origin, disability, or religion shall be considered in any decision related to the appointment, advancement, or reappointment of academic, administrative, or support staff at any level, except as described in section 9 or otherwise provided by Title VII or other federal employment discrimination statutes”

→ *Consider impacts on disability hiring preferences and scholarships*

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Questions?

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