

National Association of College and University Attorneys Presents:

Disability Accommodations: DEIA, Technical Standards, and Beyond

Webinar

October 15, 2025

1:00 PM - 3:00 PM Eastern 12:00 PM - 2:00 PM Central 11:00 AM - 1:00 PM Mountain 10:00 AM - 12:00 PM Pacific

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Disability Accommodations: DEIA, Technical Standards, and Beyond



Kate Duran is Associate Legal Counsel at the University of Montana, part of the Montana University System under the governance of the Montana Board of Regents. In that capacity her primary obligations are to the flagship University and the three affiliate campuses in western Montana. UM's Office of Legal Counsel is only a two person team, and Kate practices in all areas of higher ed law. Kate joined UM in Fall 2019.

Prior to coming to UM, Kate worked as a Deputy Attorney General (DAG) for the Office of the New Jersey Attorney General for 7 years.

As a DAG, she represented New Jersey's state institutions of higher education in all sorts of litigation and administrative matters, from employment to contract disputes. Kate also was part of the Open Public Records Act team where she defended the state in numerous matters regarding alleged failures to disclose public records and follow open meeting laws. Prior to her work at the N.J. A.G., Kate practiced criminal defense, gaining the trial experience that was necessary for her work as a DAG.

Kate is admitted to practice before the Montana Supreme Court, Colorado Supreme Court, New Jersey Supreme Court, New York Supreme Court, United States District Court for the District of New Jersey, and the Third Circuit Court of Appeals.



JP Hasman is the Senior Associate General Counsel at Saint Louis University where he has served since joining the General Counsel's Office in 2018. In his role JP regularly works closely with his campus partners, including in Human Resources and Student Development on all matters related to workplace, academic and housing accommodations. Prior to joining the General Counsel's Office at SLU, JP began his legal career in 2001 as a Field Attorney with the National Labor Relations Board in the St. Louis Regional Office and then entered private practice in St. Louis where he exclusively represented

management in all aspects of their labor and employment needs. JP is a graduate of SLU where he earned his BA in History in 1998 and the Catholic University of America, Columbus School of Law, JD 2001.

Materials

- I. Technical Standard Review (attached)
- II. John Nolan, Catherine Criswell Spear, and Jeffrey Weimer, "Navigating Legal and Compliance Challenges in Student Accommodations" (Spring 2025 CLE Workshop)
- III. Kyle T. Fogt, Carl Crosby Lehmann, Emily Pontius, and Neil Goldsmith, "Complex Employe Accommodation Issues" (Spring 2025 CLE Workshop)
- IV. Maryland Department of Disabilities, "Planning for People with Disabilities and Others with Access and Functional Needs Toolkit" (2025) (provides a good example of planning toolkit from Maryland, which will not apply to every state)
- V. USA Today, "CDC Backtracks on Remote Work Ban for Employees with Disabilities" (September 21, 2025)
- VI. U.S. Department of Justice, "Religious Liberty Protections for Federal Employees in Light of Recent Legal Developments" (Slip Opinion, same rational could apply to people with disabilities) (September 18, 2025)
- VII. U.S. Department of Housing and Urban Development, "Memorandum for Notice of Withdrawal of FHEO Guidance Documents," (September 17, 2025)
- VIII. Ogletree Deakins, "<u>Labor Secretary Lifts Abeyance on OFCCP Disability and Veteran</u> <u>Matter</u>" (July 2, 2025)
- IX. U.S. Department of Labor, "Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended" (July 1, 2025)
- X. The Associated Press, "<u>Trump Administration to Slash Funding for Enforcement of Fair Housing Laws</u>" (February 28, 2025)
- XI. Thomas Kent, Ian Oakley, and Scott Schneider, "<u>Accommodations, They Are A-Changin': Groff, Mental Health, and Beyon</u>d" (2024 CLE Winter Workshop) (includes Accommodation Approval Form on P.2 and Flow Chart for the Interactive Process on P.4-5)
- XII. NFPA, "Emergency Evacuation Planning Guide for People with Disabilities" (November 2022)

Technical Standard Review

Technical Standard (List Current Date of Review and Date of Last Review):
Any Entity or Authority that Requires or Sets Technical Standard:
When and how is Technical Standard Communicated to Applicants?
When and how is Technical Standard Communicated to Current Students?
Persons involved in the Current Review:
Resources Consulted:
Are proposed revisions appropriate or needed:
If yes, the following is the proposed revised technical standard:
The following is a rationale for the revisions:
Who will the Revised Technical Standard be applied to? All current and future students or just future students and rationale why:
How will revised Technical Standards be communicated to those impacted?
If revisions are not to be proposed explain reasoning here:
Date Technical Standard is to be reviewed next:

Office Responsible for Technical Standard Review Document retention:			

Position responsible for ensuring next review:



Attendance Record Webinar

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

October 15th, 2025

If you are an attorney applying for Continuing Legal Education credits (CLEs), you must sign this attendance record to verify your attendance. Please complete and return this form no later than Wednesday, October 22nd to the CLE Credit Submission Portal (www.nacua.org/submitCLE).

Total OLL Ground	120			
Organization				
PRINTED Name				
SIGNATURE				
State & Bar Numbe	ur (If Applying for C	Y =/		

*Total CLF Credits = 120 minutes



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Webinar

Disability Accommodations: DEIA, Technical Standards, and Beyond

October 15th, 2025

- Attorneys from MD, MA, MI, SD, or DC: These jurisdictions do not have CLE requirements and therefore require no report of attendance or filing.
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	Amanda McLean Meetings and Events Coordinator



CLE Verification CodesWebinar

Disability Accommodations: DEIA, Technical Standards, and Beyond

October 15th, 2025

FOR KANSAS, NEW YORK, OHIO AND PENNSYLVANIA ATTORNEYS ONLY

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Date / Time	Session Title	Verification Code 1	Verification Code 2
10/15/2025 1:00 PM ET	Disability Accommodations: DEIA, Technical Standards, and Beyond		



Kate Duran, Associate Legal Counsel, University of Montana John (JP) Hasman, Senior Associate General Counsel, Saint Louis University

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 thought 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

- o OFCCP
- o EEOC
- **OUS DOE OCR**
- o 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





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 inquires 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
 - o 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
 - o 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
 - o 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
 - o 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
 - o No built-in compliance timeframes means vulnerability exists right now



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
 - o 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."

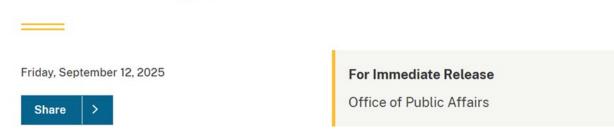
DOJ

- 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
 - o 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



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
 - o 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 ad 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 froward 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
 - o Title VII; sex discrimination; unwanted job transfer
 - o lowered the bar for plaintiffs to bring a discrimination claim
 - o 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
 - o 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, Er implemented vaccine requirement, Ees who received religious exemption were required to mask, were additional PPE, and reassignment to different patient area. Vaccinated ees 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 or New York, Slip Copy (2025)
 - Court found that because Ciotti plead that 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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