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## Section 5

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### **Beyond the Classroom: Non-Academic Programs**

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#### **Overview**

Institutions must ensure equal opportunity to students with disabilities in class-related activities outside the classroom, as well as in non-academic programs such as housing, student organizations, events, and student activities. This extends to participation by family members and friends, and other members of the public with disabilities, in attendance at public gatherings such as graduation and sporting events. All aspects of the experiences and activities offered by a post-secondary institution are covered by Section 504 of the Rehabilitation Act (Section 504)<sup>1</sup> and the Americans with Disabilities Act (ADA).<sup>2,3</sup>

#### **Types of activities covered and individuals entitled to accommodation**

##### **Activities covered**

By establishing and maintaining academic or non-academic programs, a post-secondary institution has an obligation to provide those programs on a nondiscriminatory basis.<sup>4</sup> This means that the institution must:

- Ensure that people with disabilities have an equal opportunity to enjoy and benefit from the programs, and
- Apply the principles of effective communication discussed in *Auxiliary Aids and Services: The Basics*.

This mandate applies to:

- housing, counseling, recreation, transportation, food service, and research activities;<sup>5</sup>
- extracurricular programs, placement services, and athletics;<sup>6</sup> and
- online learning and other technology.<sup>7</sup>

For example, a post-secondary institution should, when necessary:

- Secure qualified interpreting or captioning services for a student who is deaf or hard of hearing for institution-sponsored events, such as award ceremonies,<sup>8</sup> and
- Consider captioning for announcements made over public address systems at athletic events, such as basketball and football games, which may be required by the ADA and Section 504.

After a lawsuit filed by an Ohio State University (OSU) sports fan about OSU's failure to provide captions, OSU agreed, in 2010, to provide captioning for public announcements, play descriptions, and calls by game officials on its scoreboards and stadium televisions at athletic events.<sup>9</sup> One federal

court has imposed similar requirements on a professional football stadium by applying the principles of effective communication under Title III of the ADA.<sup>10</sup>

*Organizations related to the post-secondary institution.* There is an additional layer of obligation: The institution is responsible for discriminatory acts of any organization to which it provides “significant assistance.”<sup>11</sup> These organizations will often include fraternities, sororities, and student organizations, depending on the nature of the relationship between the university and the organization.<sup>12</sup> For example, a post-secondary institution may sponsor or provide financial benefits or assistance to a group of this sort or to another association, club, or local organization. Or it may allow a group to use the program’s facilities at a significantly reduced fee or no charge. It may provide administrative assistance, staff to one of these groups, or space on a continuing basis. Placing students in internships or work-study positions may also be considered a form of significant assistance to those with whom the students are placed. An institution cannot provide that type of assistance to an organization that discriminates, and the institution has a responsibility to be sure that the organization provides auxiliary aids and services as necessary.

The post-secondary institution should monitor these and other programs connected to the university to ensure the institution’s compliance with the law. In addition, the organization receiving assistance is itself prohibited from discriminating.

### **Individuals entitled to accommodations**

The nondiscrimination requirements protect not just students who are deaf or hard of hearing, but others who seek to participate in or benefit from the institution’s programs or activities. People who are deaf or hard of hearing and entitled to accommodations such as auxiliary aids and services include:

- parents and other family members,
- companions of students, and
- members of the public.<sup>13</sup>

A post-secondary institution must provide “meaningful access” for parents with disabilities to activities that the college offers to all parents. For example, the institution would need to provide accommodations to a father who is deaf and whose son is graduating<sup>14</sup> or a woman who is hard of hearing and who is attending an advising and registration session for new students with her son.<sup>15</sup>

### **Real-life example: Letter to Thomas M. Cooley Law School**<sup>16</sup>

A 2010 letter of finding by the Office for Civil Rights (OCR) of the Department of Education illustrates when and how the effective communication provisions may come into play with respect to organizations, extracurricular activities, and fraternities and sororities.

Thomas M. Cooley Law School gave funding and other assistance to the Student Bar Association (SBA). The SBA offered a series of free, highly-interactive tutorials for law students, covering the law school’s required courses. A law student who was hard of hearing requested Communication Assistance Real-time Translation (CART) for the tutorials. The law school said that the SBA, not the law school, had to provide the accommodation because it was an organization independent of the

law school, that it considered the tutorials optional and “not part of her class requirements,” that the SBA offered the tutorials as a supplemental service, and that tutorials were a “personal service.”

The SBA then provided CART services for a few weeks but discontinued them based on cost. It offered alternatives such as Dragon Naturally Speaking software (to be paid for by the student) or a volunteer interpreter, neither of which would allow the student (who did not use sign language) access to the interactive tutorials. The SBA then said it was not responsible for paying for CART services.

In OCR’s letter, it recounted the Section 504 regulation’s prohibitions on aiding or perpetuating discrimination by providing “significant assistance” to an organization or person that discriminates in providing any benefit or service to beneficiaries of the recipient’s program or activities (in this case, the students of the university). The criteria to be considered are:

- The substantiality of the relationship between the recipient and the other entity, including financial support, and
- Whether the other entity’s activities relate so closely to the recipient’s program or activities that they fairly should be considered activities of the recipient itself.<sup>17</sup>

OCR found that the law school:

- Collected mandatory fees, from which most SBA funding derived, with tuition;
- Allowed the SBA to use the law school’s name and maintain a presence on its web site;
- Provided a free office suite on law school premises;
- Loaned SBA computer equipment; and
- Allowed use of its classrooms for the tutorials.

OCR concluded that because of the substantial relationship between the SBA and the law school, and because their activities were so closely related, the activities of the SBA could be considered activities of the law school. OCR held both entities in violation of Section 504. Specifically, OCR found that the law school and the SBA denied the student an equal opportunity to participate in the tutorial program by failing to provide her with tutorial services that were as effective as those provided to other students, and the law school aided or perpetuated discrimination by providing significant assistance to the SBA.<sup>18</sup>

## Practitioner’s pointers

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### Student organizations and extracurricular activities

All students, including deaf or hard of hearing students, should have the opportunity to participate in the college experience, such as; student groups, fraternities/sororities, and campus sponsored clubs/organizations.

- Inform students they can request services for extracurricular activities.
- Have students follow a standard request processes when requesting services for extracurricular events and meetings.

- If a centralized process for funding interpreters for these types of events is in place, the disability services office should be responsible for arranging and scheduling services rather than the event organizer. This will ensure the services are in place.
- If a decentralized process is used in which the event organizer funds the interpreters for their events, consider arranging and scheduling the service through the disability services office. No matter which office funds such activities and events, utilizing staff with relevant experience to make the arrangements can ensure that appropriate services are in place.

## Campus events

Campus events are an integral activity at a college or university and should be accessible to all.

- For smaller events like performances, theatre or public lectures, create an institutional policy that includes a statement to be placed on all event advertising. This statement should have contact information for the office designated to provide accommodations, such as ASL or CART, at these events. Be sure to have a posted policy related to how much advance notice is necessary to provide the requested service.
- Create a plan for responding to “short notice” or last minute requests. Most providers have a designated way to respond to these types of requests because unplanned situations do arise. Whenever possible, honor these “short notice” requests. These situations may be critical for the individual making the request.
- Have working assistive listening devices available at events. Have information available at the venue about how to access these devices. Some of these devices should be hearing aid compatible.
- Larger events such as graduation ceremonies should follow a similar process to request accommodations. Keeping in tune with universal design concept, many campuses now provide large screen captioning for the ceremony or event. In addition to meeting the institution’s obligation for access, captions may also accommodate attendees who do not have disabilities or do not typically use accommodations in day-to-day settings. If large screen captioning is provided, be sure there is still a process to request services for those whose primary method of communication is American Sign Language.
- Several recent cases outline the need to proactively provide access to athletic events and stadium communications. Athletic event organizers can assist in establishing a process for providing access to stadium and event communications, even if no request is made.

## Endnotes

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<sup>1</sup> N29 U.S.C. 794, <http://www.law.cornell.edu/uscode/text/29/794>. The Section 504 regulations of the Department of Education (ED) are at 34 C.F.R. part 104, <http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>.

<sup>2</sup> 42 U.S.C. 12101 et seq., <http://www.ada.gov/pubs/adastatute08.htm>. The ADA regulations of the Department of Justice (DOJ) are at 28 C.F.R. part 35 (title II), [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm); 28 C.F.R. part 36 (title III), [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm).

- <sup>3</sup> See United States' Brief as Amicus Curiae in opposition to Emory University's Motion to Dismiss (Emory Brief), *Barker v. Emory University*, NO. 1 02-CV-2450-CC (N.D.Ga., filed December 2002), p. 8, [www.ada.gov/briefs/barkopbr.pdf](http://www.ada.gov/briefs/barkopbr.pdf).
- <sup>4</sup> See Emory Brief, endnote 3, pp. 7-8; U.S. Department of Justice, "Americans with Disabilities Act Technical Assistance Letters," Doc.#488, [http://www.justice.gov/crt/foia/readingroom/frequent\\_requests/ada\\_tal/tal488.txt](http://www.justice.gov/crt/foia/readingroom/frequent_requests/ada_tal/tal488.txt) (May 2, 1994), stating that fraternity houses, owned and operated by a university, "like all other aspects of a university experience, are part of the place of education, and are covered by title III".
- <sup>5</sup> Emory Brief, endnote 4 above, at page 4 and footnote 3 of the brief.
- <sup>6</sup> ED section 504 regulation, 34 CFR 104.43, 104.45 (Housing), 104.47 (athletics, social organizations, counseling, placement).
- <sup>7</sup> See DOJ and ED letter of June 29, 2010, to college and university presidents about use of emerging technology, sometimes known as the "Kindle letter," [http://www.ada.gov/kindle\\_ltr\\_eddoj.htm](http://www.ada.gov/kindle_ltr_eddoj.htm).
- <sup>8</sup> See Letter to J.F. Drake State Technical College, No. 04-10-2010 (OCR 12/17/2009).
- <sup>9</sup> See *OSU Adds Captioning for Hearing-Impaired*, COLUMBUS DISPATCH (Ohio), Sept. 26, 2009, at C2; <http://nad.org/news/2010/11/score-accessibility-osu-provide-stadium-captions>.
- <sup>10</sup> *Feldman v. Pro Football, Inc.*, No. 09-1021, 419 Fed.Appx. 381, 2011 WL 1097549 (4th Cir. Mar. 25, 2011), <http://www.leagle.com/decision/In%20FCO%2020110325102> (an unreported and thus non-precedential decision). The U.S. Court of Appeals for the 4th Circuit decided that the effective communication provision of the ADA required provision of auxiliary aids (such as captioning or printed lyrics) beyond assistive listening devices, which were useless to the deaf plaintiffs, to ensure full and equal enjoyment of the entire football game "entertainment experience" at a professional stadium. The court found that plaintiffs were entitled to all aural content broadcast over the public address system, including game-related information, the words to music, play information, referee calls, safety/emergency information, and other announcements.
- <sup>11</sup> See 34 CFR 104.4(b)(v), 104.47(c) (Section 504 regulation); 28 CFR 35.130(b) (DOJ's ADA regulation).
- <sup>12</sup> See example under analysis of Letter to Thomas M. Cooley Law School, above.
- <sup>13</sup> See DOJ ADA regulations, 28 C.F.R. 35.160(a) and (b) (title II), 36.303(c)(1) (title III); ED section 504 regulation 104.3(l)(4), *Definitions, qualified individual with a disability*.
- <sup>14</sup> See Letter to National Holistic University, No. 09-03-2042 (OCR, Western Division, San Francisco (California) 06/11/2003).
- <sup>15</sup> See Letter re: Bemidji State University, No. 05-10-2037 (OCR 06/11/2010).

- <sup>16</sup> Letter to Thomas M. Cooley Law School, finding of violation as to “significant assistance” to student organization and failure to provide auxiliary aids, No. 15-08-2067 (OCR 11/03/2010)
- <sup>17</sup> Factors considered included whether the university conferred significant financial benefit by providing facilities at no or little charge and at convenient locations on the premises, providing publicity, and distributing information about the organization; the history of involvement between the organization and the recipient; and coordination between the organization and the recipient.
- <sup>18</sup> The Department of Justice (DOJ) takes the same approach to this issue, as illustrated in a letter assessing a university’s responsibility for accessibility in fraternity housing. See DOJ letter #488, endnote 4, above.

