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Accommodating Students With Disabilities

Section 504, The ADA & Postsecondary Education

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Basic § 504 & ADA Requirements Postsecondary Education



Applicable Laws

- Section 504 of the Rehabilitation Act of 1973
- The Americans With Disabilities Act
- State Laws & Local Ordinances



Section 504

Section 504 of the Rehabilitation Act of 1973 --
Prohibits discrimination against people with disabilities by *recipients of Federal financial assistance* (both public and private).



Section 504

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....



Program Participation Agreement Provision

School agrees:

“to comply with Section 504 of the Rehabilitation Act of 1973 and the implementing regulations, 34 C.F.R. Part 104 (banning discrimination on the basis of physical handicap)”



Title III of ADA

- Prohibits discrimination on the basis of disability
- Discrimination includes imposing eligibility criteria to screen out an individual with a disability, unless such criteria can be shown to be necessary for the provision of goods, services, etc.



Title III of ADA

ADA requires reasonable accommodations or the provision of auxiliary aids to persons with disabilities, *Unless*: the entity can demonstrate that such steps would:

- fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered, or
- would result in an undue burden



Academic Adjustments and Auxiliary Aids and Services



Academic Adjustments

- School must make modifications to academic requirements necessary to ensure requirements do not discriminate on the basis of disability against a qualified person with a disability.
- Examples of possible modifications are:
 - change in length of time to complete a program
 - substitution of courses
 - adaptation of manner in which courses are conducted



What Is Not Required

- School is not required to change academic requirements that are essential to
 - The instruction being pursued by the student; or
 - Any directly related licensing requirements.
- School is not required to alter the fundamental nature of its program.
- OCR gives appropriate deference to the academic discretion of a school.



Auxiliary Aids

Schools must take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.



Examples of Possible Auxiliary Aids

- Taped texts
- Notetakers
- Interpreters
- Readers
- Adapted classroom equipment
- Braille versions of written materials



What Is Not Required

- School is not required to provide auxiliary aids or services that it can demonstrate would result in a fundamental alteration in the nature of its program.
- Schools are not required to provide devices or services of a personal nature.
- Examples:
 - Attendants
 - Individually prescribed devices
 - Readers for personal use or study



Testing/Course Examinations

- Test format and administration should measure a student's achievement, not the student's impaired sensory, manual, or speaking skills (except where such skills are the factors the test purports to measure).
- Examples of possible modifications:
 - tape vs. print
 - extended time
 - reader



Basic Principles—Academic Adjustments, Auxiliary Aids, and Testing

- If a postsecondary student wants an academic adjustment or auxiliary aid or service, the student is responsible for notifying the school of his or her disability and need for academic adjustments or auxiliary aids or services.
- Academic adjustments and auxiliary aids and services must be provided in a timely manner.



Documentation

- Purposes of documentation:
 - Diagnostic, to establish a disability
 - Prescriptive, to help school work with student to identify appropriate accommodations
 - Show relationship between disability and need for accommodations



Documentation

- Assessment (at student's expense) should clearly identify disability and functional limitations and need for academic adjustment or auxiliary aids or services.
- Documentation should be submitted in time for school to respond to request.
- School may set reasonable standards for documentation and generally may specify how much documentation is needed.



Paying for Evaluation

- School is not required to conduct or pay for a new evaluation to document a student's need for an academic adjustment. This may mean the student must pay or find funding to pay an appropriate professional to do it.
- An institution may choose to conduct its own evaluation at its own cost.
- In order to clarify the documentation and obtain needed information, it is often helpful for the school to simply talk to the student's diagnostician with the student's permission.



Interactive Process

The school and student should engage in an interactive process to determine:

- whether an academic adjustment is required and, if so,
- what academic adjustment is appropriate.



Appropriateness of Auxiliary Aids

- School is not required to ensure students have the most sophisticated auxiliary aids available.
- School does not necessarily have to provide the requested service, only ensure that an appropriate service is provided.
- Aids provided must meet the needs of the student with a disability.



Appropriateness of Auxiliary Aids

- School is not required to produce identical result or level of achievement.
- School must afford equal opportunity to:
 - obtain the same result,
 - gain the same benefit, or
 - reach the same level of achievement.



Communication is Essential

- Communication between the school and student with a disability is essential
 - At the beginning—to ensure appropriate academic adjustments and auxiliary aids and services are provided
 - Throughout the student’s school career—to alert the school if there are problems and to make appropriate changes



Is there ever an instance where the cost or overall expensiveness of an accommodation would justify not providing a student a particular accommodation?

Certainly, there is the provision in the law that relieves institutions from providing those things that would be an undue financial burden. It is important to understand that declaring that a requested accommodation is an undue burden and proving it to the satisfaction of OCR and/or the courts is not the same thing. Proving that something is an undue financial burden brings the entire budget of the institution into question not just the budget of the disability services office and/or a particular program. Further, even if it can be legitimately argued that a particular accommodation represents an undue burden, the institution is still obligated to provide access to qualified students with disabilities and must; therefore, consider the availability of alternative accommodations.

Americans with Disabilities Act Responsibilities for Postsecondary Institutions Serving Deaf and Hard of Hearing Students, Second Edition (1998), <http://www.pepnet.org/resources/ADAQA2ndEdition>



How is Undue Hardship Documented by the School?

Example: Vocational school states undue hardship to pay for interpreter for a student who does not want VR. A school told student that he/she needs to pay more for tuition to make up for cost of interpreter.

- A school may not, as stated in the ADA, pass on the costs of accommodations to the student. Therefore, the vocational school mentioned above is in clear violation of ADA.
- A school can document their full budget, laying out all of their revenues, endowments, expenses and so forth for the Department of Justice to review, if it wishes to claim undue hardship.
- It is up to the DOJ to review the college's claim and make a determination as to whether or not they are, in fact, being placed in a position of undue hardship.

Americans with Disabilities Act Responsibilities for Postsecondary Institutions Serving Deaf and Hard of Hearing Students, Second Edition (1998), <http://www.pepnet.org/resources/ADAQA2ndEdition>



Dept. of Ed. Resources

- Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities, <http://www.ed.gov/ocr/transition.html>
- Auxiliary Aids and Services for Students with Disabilities, <http://www.ed.gov/ocr/docs/auxaids.html>
- Frequently Asked Questions About Service Animals and the ADA, http://www.ada.gov/regs2010/service_animal_qa.pdf



Access to Nonacademic Services

www.DeLucaLawLLC.com



Access to Information

Access to information about the school must be accessible to students (and prospective students) with disabilities. This includes:

- Web sites
- Distance learning
- E-mail systems
- On-line services, e.g., course registration
- Business Services, e.g. tuition payment
- E-book readers, e.g. Kindle and iPad



Guidance & Placement Services

- A school that provides personal, academic, or vocational counseling, guidance, or placement services to its students must provide these services without discrimination based on disability.
- School must ensure that qualified students with disabilities are not counseled toward more restrictive career objectives than are students without disabilities with similar interests and abilities.



Admissions and Recruitment

- Schools may not deny admission, on the basis of disability, to qualified students with disabilities.
- Schools may not subject qualified students with disabilities to discrimination in admission or recruitment
- Students with disabilities do not have to disclose their disability before admission, or after admission unless they want academic adjustments or auxiliary aids or services.



SERVICE ANIMALS

- In order to accommodate students with disabilities, schools that have a “no pets” policy generally must modify the policy to allow the presence of service animals.
- A service animal is any dog that is individually trained to work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.





TASKS PERFORMED BY THE SERVICE ANIMAL

The tasks performed by the animal must be directly related to the person's disability.

- For example, a person with diabetes may have a dog that is trained to remind him when his blood sugar reaches a high or low.
- A person with depression may have a dog that is trained to remind her to take her medication.
- Or, a person with epilepsy may have a dog that is trained to detect the onset of a seizure.





A THERAPY DOG IS NOT CONSIDERED A SERVICE ANIMAL UNDER THE ADA

- Because they have not been trained to perform a specific job or task, animals that provide comfort just by being with a person do not qualify as service animals.
- The ADA makes a distinction between psychiatric service animals and emotional support animals.
 - If a dog has been trained to sense an anxiety attack and take action to help avoid the attack or lessen its impact, it is a service animal.
 - However, if the dog's mere presence provides comfort, that would not be considered a service animal.



WHAT QUESTIONS CAN YOU ASK TO DETERMINE IF A DOG IS A SERVICE ANIMAL?

- In situations where it is not obvious that a dog is a service animal, staff may ask only 2 specific questions:
 1. Is the dog a service animal required because of a disability?
 2. What work or task has the dog been trained to perform?
- Staff are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.
- The ADA does not require service animals to wear a vest, ID tag, or specific harness.



WHEN CAN SERVICE DOGS BE EXCLUDED?

- The ADA does not require covered entities to modify policies, practices or procedures if it would “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public.
- Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited.
- In addition, if a particular service animal is out of control and the handler does not control it, or it is not housebroken, that animal may be excluded.



504 Coordinator & Responsibilities



Designation of Section 504 Coordinator

- The Section 504 regulations require that a school designate at least one person to coordinate its efforts to comply with Section 504. *34 C.F.R. 104.7*
- School must notify all students and employees of the name or title and contact information of the designated Section 504 coordinator.



Responsibilities of 504 Coordinator

Section 504 Coordinator is the person designated to coordinate the school's efforts to comply with laws protecting students with disabilities.

Responsibilities may include:

- Ensure nondiscriminatory educational practices
- Establish and monitor a Section 504 referral/identification/review process
- Conduct staff awareness and training activities concerning Section 504
- Implement Section 504 grievance procedures for the school



Designation of 504 Coordinator

- The Section 504 Coordinator could be someone already employed by the school.
- A general education administrator or school counselor who is knowledgeable about federal laws and regulations would be preferred.
- Section 504 Coordinator must be someone who physically works at the school



Section 504 Grievance Procedures

School must adopt grievance procedures that:

- Incorporates appropriate due process standards; and
- Provides for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation.



Elements of 504 Grievance Policy

- Step 1 – Seek informal resolution
 - Process directed by 504 Coordinator
 - Must be completed timely
 - Student not required to seek informal resolution



Elements of 504 Grievance Policy

If informal resolution does not work, or student does not choose to seek informal resolution:

- Step 2 – student submits written complaint to 504 Coordinator
- 504 Coordinator conducts investigation of complaint & provides written disposition
- If discrimination or harassment found to have occurred, disposition will include steps that the school will take to prevent further instances



Elements of 504 Grievance Policy

- Additional considerations:
 - Policy should provide student with the right to appeal the decision from Step 2
 - Student not required to use school's grievance policy
 - No retaliation against persons who utilize this policy



Case Study:

Palmer College of Chiropractic v.
Davenport Civil Rights Commission

June 27, 2014 – Iowa S.Ct.



Background

- Case involved a blind student at a chiropractic school located in Davenport, Iowa
- Student requested that the school make accommodations for his visual disability
- When school denied request, student filed a complaint with the local civil rights commission



Was Student Qualified to Participate w/ Reasonable Accommodation?

- Accommodation not reasonable if:
 - it imposes undue financial or administrative burden on school, or
 - Requires fundamental alteration in the nature of the program offered
- Neither party raised issue of an undue burden with respect to the possible accommodation



Deference to School's Professional or Academic Judgment

- Appropriate when determining whether an accommodation would constitute a fundamental alteration of a school's program
- **HOWEVER:** extent to which deference is appropriate depends upon several factors
 - School obligated to seek suitable means of reasonably accommodating individuals with disabilities
 - School must submit factual record indicating that it conscientiously carried out this obligation
 - Cannot merely look to accepted academic norms
 - Reasonable alternatives may often involve new approaches or devices beyond existing accepted academic norms



What Happened?

- Student requested accommodations for certain visual components of curriculum
 - Sighted reader
 - Modifications of practical exams
- School denied student's request
 - Expressed doubt that student could use sighted reader to assist with diagnostic portion of program
 - Stated that requested accommodation would violate school's technical standards, thereby compromising compliance with accrediting agency



Court Held that School Violated Student's Civil Rights

- School failed to engage in the interactive investigative process required by federal and state disability law
- Court determined that the requested accommodation would not fundamentally alter the school's curriculum
 - Affiliated school previously graduated blind students
 - No evidence accommodation would cause adverse action with accrediting agency
 - Court also noted existence of blind medical doctors and students



What Can Schools Learn from the *Palmer* Decision?



Lesson #1: Evaluation of Requests for Accommodation

- Critical that the school evaluate the request for academic accommodation on a case-by-case basis.
- Schools are still entitled to some deference for their professional or academic judgment.
- *HOWEVER*, this deference may be given little weight if the school fails to conscientiously fulfill its obligation to evaluate the specific request.



Lesson #2: Schools Must Have Effective Policies

- Schools must have an effective policy in place detailing the procedures for addressing requests for academic accommodations.
- Staff members and faculty must be educated to ensure that they understand this policy and their obligations as they relate to evaluating accommodation requests.
- As part of this policy, schools must designate a Section 504 coordinator to be responsible for processing and evaluating the request.



Policy Statement Should Include:

- contact information for students or prospective students seeking an accommodation,
- a general description of the process used for evaluating the request,
- the timeline within which the school will respond, and
- the process by which the student can seek a redetermination or submit a grievance if the request is denied.



Lesson #3: Collaborative Effort to Determine Reasonable Accommodations

Multiple parties engaged in a collaborative effort to determine whether reasonable accommodations can be made without creating a fundamental alteration to the education program.

- ✓ Students
- ✓ School Administrators
- ✓ Instructors
- ✓ Third Party Service Providers



If the school determines that a reasonable accommodation cannot be made, then it must maintain a detailed account of:

- the student's request,
- the parties involved in evaluating the request,
- the alternatives considered, and
- the specific reasons for determining that the accommodation is not reasonable.



Thank You!

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