

Disability Compliance

for Higher Education

Successful Strategies for Accommodating Students and Staff with Disabilities

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OF COUNSEL

Single-room housing accommodations in the age of anxiety

By Michael R. Masinter, Esq.

Disability services offices and their residence life counterparts on residential campuses report an upsurge in housing accommodation requests for anxiety. Typically, students with a diagnosis of anxiety from a health care provider seek a single room as an accommodation. Because anxiety is a universal human experience, it does not follow from a diagnosis that the student has a disability, or that a single room is an appropriate accommodation.

Housing accommodations predate Section 504. Many mark Ed Roberts' campaign to attend the University of California, Berkeley, and to reside on campus, as the beginning of the disability rights movement. The university admitted Roberts, but its standard student housing could not accommodate his 800-pound

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DISABILITY & IDENTITY

Disability as identity: Rhetoric or practice?

By Joseph A. LoGiudice, L.M.S.W.

I was invited to interview for a student disability services director position at an Ivy League institution; the invitation arrived in my LinkedIn requesting that I submit my materials for this respective job because of my professional experience and scholarship on disability. Of course, I was flattered by the offer but had mixed emotions about whether it was time for me to move on from my current post at the City College of New York.

When I read the job posting, the themes of transformation, collaboration, advocacy, and revamping disability services appealed to me, especially given that I desire to see a change in how disability is understood at colleges and universities: to finally transform disability services from a medical and legalistic framework to an identity and social model approach.

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Give students with disabilities a full campus experience

By Joan Hope, Ph.D., Editor

The University of Iowa REACH Program serves students with disabilities such as autism, intellectual disabilities, and learning disabilities as they transition to adulthood. Director Bill Loyd shared what makes the certificate program a success. “The university puts a premium on diversity, and our students add to that,” he said.

Q What academic and other experiences are included in the UI REACH program?

A The program has three focus areas: academic, career and transition, and student life. For the academic component, students take a series of courses aimed at developing their skills in areas like reading, writing, health, social skills, and money management. In some terms, students can enroll in courses they choose along with traditional students.

For the career and transition component, students take courses that cover job options, soft skills, job-search strategies, and entrepreneurship. Students also participate in an internship, working in a local business or campus department.

For the student life piece, students live in the residence halls. Their roommates are in the REACH program, but they live alongside traditional students. The REACH staff doesn't provide 24/7 supervision. Some structured activities are organized for the students, and the staff members encourage them to

participate in the campus's 500 student organizations, where they can connect and make friends.

The REACH staff offer one-on-one advising, and REACH provides resident assistants, in addition to the other RAs in the residence halls. REACH also provides peer mentors, who are traditional students who provide an array of support. They might help the REACH student one-on-one in the classroom or assist with identifying campus activities to get involved with. Mentors also help the students learn tasks such as setting alarm clocks and taking public transportation.

Q What are the outcomes for UI REACH students after they complete the program?

A We really want to see them take their rightful place in communities of their choice. The vast majority of them want to gain employment, and at graduation, more than 81 percent of them are employed or planning further postsecondary education. We also want them to make friends and have a social life. And if they chose to live outside their parents' home, we want them to have the skills to live independently. Some have become roommates, and some graduates have even gotten married.

For more information, go to <https://education.uiowa.edu/services/reach>. ■

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iron lung. In a forerunner to accommodations under Section 504, the school redesignated a campus hospital wing as dormitory space to house Roberts. Early Section 504 housing accommodation requests followed a similar logic; when a student's disability-related equipment required so much additional space as to preclude a roommate in a double room, schools were required to house the affected student as the sole room occupant at half the double-room rate. The underlying reason for single-room housing was the provision of necessary additional equipment space; the absence of a roommate was a consequence of space needs but was not the reason for the accommodation.

Over time, the rationale for single-room housing accommodations changed; only rarely do students still need additional space for disability-related equipment. Today what students want is a room without a roommate; thus, the accommodation request is a roommate-free environment, not additional space, albeit still at the reduced rate of half the price of a double room. Because institutions typically have a limited supply of single rooms, they customarily charge a higher rate for a single than for a share of a double room. Recall, though, that the Office for Civil Rights and Department of Justice construe the prohibition against charging for accommodations to require institutions that provide a single room as an accommodation to charge only the rate for a share of a double room.

Because many students prefer to have a single room, and because the reduced-rate single-room accommodation is the only disability-related accommodation that puts money back in a student's pocket, it should come as no surprise that students increasingly seek single rooms as accommodations. Because equipment needs and unusual medical conditions only rarely support such requests, students now often rely on anxiety diagnoses to justify the request. The request is simple — the student reports anxiety, anticipates living with a roommate will produce additional anxiety, and, therefore, the student is entitled to a single room, complete with the discounted rate. What is a DS or residence life office to do?

A diagnosis of an anxiety disorder is a diagnosis of an impairment. Because an impairment is a disability only if it substantially limits a major life

activity, a student's diagnosis letter and self-report both may clarify the severity and duration of the anxiety impact. When did the student first become aware of the disorder? When did the student first seek treatment? How has the anxiety manifested?

What has been its impact on social relationships?

Assuming the student and the student's health care professional make a satisfactory case that anxiety substantially limits one of the many major life activities recognized

in Americans with Disabilities Act regulations, the next inquiry should focus on why a single room is necessary for a student who will attend classes, and interact regularly, with other students.

Has the student ever had a roommate, whether at home, summer camp, or school before? If the student has never shared a room with a roommate, then why the certainty that living without one is necessary? If the student previously found living with a roommate difficult, what caused that difficulty? Was it specific to the particular roommate, an all-too-common occurrence, or was it something more than adjusting to different personalities?

Asking these questions in a conversation with the student is the interactive process in action; its purpose is to sift through accommodation requests and make informed professional judgments. Because each student is different, and because anxiety is a universal emotion, disability services professionals may deny some requests as insufficiently supported by documentation and self-reports, while finding others to be well-supported.

In making those case-by-case determinations, institutions should know that a recent search of OCR rulings did not produce any findings of wrongdoing by schools in denying a single-room request. Although OCR repeatedly has found schools to have violated Section 504 by charging a standard, rather than a reduced, rate for a single room, and less frequently for lacking any procedure to handle housing accommodation requests, no findings or resolution agreements overturned a decision to deny a single room for lack of sufficient documentation of need. Creating and following a good process inoculates against disability discrimination; that is just as true for housing accommodations as for exam accommodations.

Review preliminary research from the Berkeley Institute for the Future of Young Americans in the University of California, Berkeley's Goldman School of Public Policy at <http://bit.ly/2UuWiP4>. ■

About the author

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Before you click: Publishing accessible websites

By Zachary W. Taylor, Susan LaRonde, and M. Yvonne Taylor

As technology has advanced in recent years, institutions of higher education have the ability to present digital information in a variety of formats: visual, audio, and interactive. Web accessibility technology has also advanced, allowing students who are deaf, blind, or have other disabilities to access digital content in a variety of formats. For instance, “screen reader” technologies have made it possible for students who are blind to read an entire website, engage with multimedia, and enjoy a web experience that was formerly reserved exclusively for students without disabilities. Technology has increased students with disabilities’ access to and user experience on the internet, yet many institutions of higher education have lagged behind in making their sites fully accessible.

Institutions are being held to higher standards for web accessibility through national legislative mandates. Although the Americans with Disabilities Act of 1990 doesn’t mention the internet, the Justice Department has issued guidelines.

Lawsuits against commercial websites had been burgeoning for years, and according to *The New York Times*, between January 2015 and October 2017, 751 lawsuits were filed. Universities were further put on notice when the University of California, Berkeley was sued, and, again according to *The New York Times*, eight lawsuits were filed against New York–area universities in a two-week period between late September and early October of 2017. Though judgments in those cases have been mixed, failure to comply with ADA web accessibility guidelines could lead institutions to lose federal student loan funding or state per-pupil funding.

Students with disabilities on campus already must exert emotional and physical energy and resourcefulness that students without disabilities simply do not need to exert. By failing to address web accessibility

— the “front door” of the institution — both faculty and staff inadvertently close off higher education for students with disabilities, rendering the campus an inaccessible one.

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But making your university’s website accessible does not have to be a prospect that instills fear. Many options, resources, and best practices exist for your campus, collaboratively, to take steps to make your university’s website accessible to all students and compliant with the law. We have outlined several of these steps below — defined as big-picture and day-to-day issues for developers and content editors/creators — that will greatly improve the web accessibility of your institution’s website.

The big picture

1. Talk to your institution’s website developer about accessibility. Have staff members in that division received any training or do they know of any resources? Do they understand the importance of web accessibility for the institution and for members of the disability community? Can the institution provide professional development for all employees, including faculty, staff, and students? If your institution does not employ a dedicated web developer, address this need with your supervisor or budget manager within your unit. As technology continues to advance, publishing a robust and accessible website will only become more important for institutions of higher education across the world.

2. Know who has permission to edit your website. How many people are allowed to make edits? And do these people understand and practice web accessibility?

3. Trim the fat. Are there old webpages that could be removed from your website? Before you make all webpages accessible, consider conducting a content audit and removing any unnecessary

pages. This may drastically cut down on the amount of work you have to do. Moreover, students, faculty, and staff should not be able to access old, outdated versions of documents and information, such as financial aid application processes or institutional handbooks, bylaws, and policies.

The day-to-day for developers

1. Be sure the language of the website is defined. Your entire website should have its language defined so people with disabilities know what spoken language the page is written in. As the United States — and beyond — becomes more polylingual, the spoken language of your website should be defined to inform the diverse audience of the site.

2. Make sure videos have closed captions. Services such as YouTube or Vimeo can auto-caption a video as soon as it is uploaded, but you will need to read through the captioning to ensure its accuracy. If the video is hosted internally, many institutions offer disability and accessibility services that may include closed captioning of visual content.

3. Use a readable font. To maximize readability, fonts such as Tahoma or Verdana are common across different devices, web browsers, and software applications. These fonts are simple and readable in print and on screen. As a rule of thumb, fonts should read at size 12 or 14 at the minimum across multiple devices (e.g., computer screen, cell phone, tablet).

Typically, fonts can be resized by modern web browsers, but content editors should be aware of any website text that is not resized and provide clear instructions as to how to increase or decrease font size. More detail can be found on WebAIM's website: <https://webaim.org/techniques/fonts/>.

4. Make sure there is strong contrast between the font and its background color. If your institution's colors are too similar (e.g., light green and white or dark red and black), you may need to consider a different color scheme for its website. There is a great synopsis of this information on Penn State University's accessibility website: <http://accessibility.psu.edu/color/contrasthtml/>.

The day-to-day for content editors/creators

1. Add alt text to pictures. This is an essential requirement for meeting basic accessibility standards. People with visual impairments need to be able to understand imagery through rich, informative descriptions that are read aloud by screen readers.

2. Give hyperlinks and menus informative titles. These titles should inform people with disabilities what a hyperlink or menu is and where it leads if the person clicks on it. In addition, the hyperlink text itself should be informative. Instead of saying "Click here," you should tell the user what the hyperlink is and what it leads to.

3. Ensure infographics are web-accessible. Often, infographics can contain text, pictures, and hyperlinks — all elements that need to be web-accessible. You can use Adobe Acrobat to check an infographic for web accessibility. A great guide can be found on the Adobe Acrobat website: <https://www.adobe.com/accessibility/products/acrobat.html>

4. Understand and identify heading sizes. For example, make sure you use a heading 3 — and not a heading 4 — after a heading 2. If you skip heading sizes, the screen reader or assistive technology will report there's an error on the page. There should be only one heading 1 on each webpage on your website. ■

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It's all about process!

By Linda Sullivan, M.A., and Enjie Hall, M.R.C., P.C.

Grievance, complaint, appeal ... words that make a disability services provider's blood pressure rise. As students become more aware of their rights and the availability of academic accommodations, complaints at colleges and universities around the country have increased substantially. This is particularly true for health science programs due to the high-stakes nature of these programs.

Increased complaints from disabled learners have risen from antiquated models of the accommodation process, lack of suitable accommodations, and failures to deliver timely reasonable adjustments. Too often, health science programs have not included the presence and voice of a health science disability services expert in their deliberations around student requests.

In 2018, the Office for Civil Rights released a new *Case Processing Manual* (see <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>) that helps university officials understand how OCR processes complaints.

Top considerations

1 Do you have a grievance process, and do you follow it? Demonstrating participation through the interactive process is key in a complaint inquiry. As with the evaluation of accommodation requests, grievances are evaluated on a case-by-case basis. Institutions are required under Section 504 of the Rehabilitation Act to publish a grievance process that clearly articulates each step of the grievance process, including who the named ADA/504 compliance officer is for the institution, who is the final decision-maker, and the timeline for a grievance to be fully evaluated.

In some DS offices, particularly those with multiple staff, grievances may be investigated and resolved in-house as part of the informal grievance process. In other DS offices, however, grievances will advance to the university ADA coordinator/officer, the Office of General Counsel, a grievance committee, or outside experts.

For formal grievances, it is critical that the person or persons investigating or evaluating the complaint are independent of the original decision-

maker. Having a consistent and clear process allows the investigation to be focused on the protection of the learner's civil rights.

Regardless of the pathway, consistency in approaching the grievance is key. Following the published steps in the OCR guide will assist with maintaining consistency. Commonly, grievances arise from failure to provide reasonable accommodations, the student's belief that comparable accommodations offered/implemented are not effective, or a denial

of accommodations; this is not an exhaustive list. Institutions must ensure practices are not discriminatory and the accommodations provided are based on a clear nexus between disability and the removal or mitigation of barriers to ensure access.

Reconsideration of original decisions

Increasingly, colleges and universities are creating appellate processes for learners to have decisions reconsidered. Colleges who use appellate processes indicate the appeal should be based on a misapplication of the process or law. Often, appeals are time-limited, and require the learner to identify how/why/where the misapplication occurred. The appellate route allows each university and learner an opportunity to reconsider outcomes in the view of the process and furthers the opportunity for colleges to rectify outcomes that are inconsistent with the applicable laws.

The combined grievance and appellate processes provide a greater likelihood for equitable outcomes without the involvement of OCR and/or the Department of Justice. These processes should be well-documented through emails, case notes, and/or investigatory reports, including the process of the investigation, a record of all people interviewed, and the rationale for decisions as they pertain to the law. If a student files a complaint with OCR or DOJ, the investigation documentation is critical to the review the federal agency will conduct.

Make sure to gather this key information in an investigation:

- Date complaint was presented/submitted.
- Name of complainant (student name).
- Name(s) of respondents (instructor name and/or entity such as testing center).

About the Authors

Linda Sullivan, M.A., is the director of the Accessibility Services Office at Harvard University's Division of Continuing Education and ADA coordinator for the division.

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- ❑ Date and time of the alleged incident.
- ❑ Summary of complainant concerns.
- ❑ Summary of information provided by respondent(s).
- ❑ Summary of investigator impressions and fact-finding (accommodation eligibility information and discussion of academic requirements and barriers specific to the complaint).
- ❑ Outcome/resolution (accommodation was provided or not, or a comparable accommodation was provided with stipulated remedies).

2 Is the process consistently applied and informed by disability services expertise? When evaluating a grievance, it is important that the person handling the evaluation situate the complaint in the context of the ADA and/or Section 504, with the focus of providing equitable and equal opportunity for participation in the academic program.

It is strongly recommended that the grievance process be published on the DS website, in handbooks, and/or in a nondiscrimination policy. Learners should be informed of the grievance processes to reinforce the office's awareness and protection of their civil rights.

The right to a grievance process is as protected as other aspects of the provision of accommodations and should be respected as such. A student's relationship with the DS office should not be affected by a complaint. Outcomes and determinations are the result of the analysis under the ADA Amendments Act and/or Section 504 and what was provided to the student.

3 Have you taken into account the inherent complexities in health science education? Considerable student-staff-faculty contact is often found in health science programs as accommodations and modifications are evaluated in the context of the outcomes, licensing, professionalism, and degree conferred with their programs.

Health science education programs are replete with multiple modalities of learning and have technical standards for learners to uphold. The provision of accommodations in health science programs is complex, as the licensing requirements, differences in didactic and experiential learning, and other unique aspects of health science education often require lengthy interactive processes and continual adjustment throughout a learner's participation in a program.

Therefore, it is critical that the person or persons whose responsibility it is to provide accommodations have specialized knowledge of the uniqueness of the health science field, including a knowledge base of well-vetted, time-tested accommodations in practice at institutions around the country. The

investigation of a grievance or complaint in health science environments requires the specialized knowledge of the health science program and fluid understanding of the applicable laws the accommodations or modifications are subject to.

For institutions using a committee model for decision-making, a disability services professional should always be included, as it is the role of disability services to serve as the institution's expert for determining reasonable and appropriate accommodations. In recent years, several OCR case outcomes have recommended or, in some instances, required the schools associated with the complaint to identify a person with disability expertise in the educational environment to be a key participant, or leader, on committees that make decisions around student accommodations and complaints, and consider grievances within their purview.

To learn more about the pitfalls of the role of committees without disability expertise, see the February 2016 article in this publication by Elisa Laird-Metke titled "Disability decisions by committee: An increase in risk and decrease in student well-being" (see <http://bit.ly/2CYNNG1>). When institutions use the committee model, officials need to be aware of the grievance process established by their school. Learners should be made aware of the process to arrive at accommodations and the process to dispute decisions upon affiliation with the DS office.

When colleges and universities provide clear processes for accommodations, modifications, and adjustments in courses, programs, and student life, they demonstrate their commitment to student civil rights, equal access, and inclusion. Grievances and requests for reconsideration are a natural part of the accommodation process. To best ensure schools are prepared for these events, DS providers should routinely re-evaluate their public-facing and internal processes for alignment. A well-reasoned, disability-informed process that is clearly communicated and followed protects all parties when complaints arise. ■

About this column

Disability Compliance for Higher Education has partnered with The Coalition for Disability Access in Health Science and Medical Education to bring the readers a monthly column.

Each month, a guest writer from the Coalition brings tested and sage advice to the readers from some of the most experienced disability services providers in the country.

Learn more at <https://www.hsmcoalition.org/> and on Twitter: @hsmcoalition. ■

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Before submitting all the materials, I asked the HR recruiter: Are they prepared to employ a professional who is going to actually transform their service paradigm? I received a welcoming response of “Yes, that is exactly what they are looking for!” However, the phone interview with the search committee demonstrated a vastly opposite landscape on disability culture that I would like to share to highlight the differences between rhetoric and practice.

During the phone interview, questions were posed on how I would determine accommodations and handle confidential data. This is a natural question to ask, but they were seeking an answer around a due diligence process (e.g., legal compliance and medical framework) that requires obtaining objective evidence, analyzing this confidential data, and then making a determination on reasonable accommodations for the student. “What’s wrong with that?” my disability studies brain asked. Basically, we are perpetuating that a person with a disability cannot be trusted to give a reliable self-report of her needs. This assumes that disability identity as a lived experience is silenced from being front and center in this situation. And it also assumes the professional is the expert, not the disabled person with her lived experiences.

The next questions were presented on how assistive technology can provide access to science, technology, engineering, and math students with disabilities. Assistive technology has created the ability for students to utilize programs, devices, and equipment for access to their academic content and activities. However, what is problematic about the nature of the question, aside from focusing only on the STEM field, is assistive technology cannot solve the equal access (i.e., structural ableism) problem alone. The underlying message here is we as student service professionals encourage the use of assistive technology to remove ourselves from engaging fully with disability as an identity and a structural problem.

I asked a question on the reporting structure of the student disability office, and a key executive indicated the university moved the office under

Health Services and utilizes a public health model to disability. Despite the good-faith effort to merge the service within a comprehensive health services center, this is out of step with how we understand disability. It further demonstrates that universities are not listening to our disabled population because public health perpetuates disability as a medical issue that is analyzed “objectively.” Public health may account for the social determinants of the concept, but toward the framework of deficit/limitation — not identity and individual variation.

A seemingly “after-thought” last question was on intersectionality, but along the lines of student services professionals col-

laborating with other offices like a case manager at a social service agency. The question was primed through a prior inquiry on the implementation of universal design at their campus. There was no plan of action on universal design principles, except for the way assistive technology can magically resolve any equal access problem. The intention behind asking was a litmus test on their commitment to expanding their disability knowledge and integrating it under the umbrella of diversity and inclusion.

Most questions focused heavily on professionalization in terms of legal compliance, expertise of the professional, and professional autonomy, without any indication of the disabled person playing a vital role in this process. Intersectionality has no meaning if it is interpreted to be offices that focus on coordinating an accommodation and not on the cultural, political, and social aspects of disability identity.

Overall, the questions underscored the interviewers’ inability to delve deeper into knowledge, assumptions, and values around disability identity and social model practices. From my interpretation, this Ivy League institution is using traditional approaches to disability. Simultaneously, this college is confused about the transformation of disability knowledge on campus because officials believe they are trying to see what sticks best to fix the problem (e.g., use of assistive technology, public health approach, and intersectionality).

In my professional experience, colleges are committed to meeting compliance standards and are not in the business of assessing the impact of ableism on students, staff, and faculty. ■

About the Authors

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Research shows ‘new epidemic’ of students with anxiety

By Halley Sutton, Contributing Editor

Reported rates of anxiety among college students have doubled since 2008, according to preliminary findings released by a team of researchers at the University of California, Berkeley. According to findings from the research team led by Richard Scheffler, a professor at the Goldman School of Public Policy and School of Public Health, the percentage of students aged 18 to 26 diagnosed with anxiety has increased from 10 percent in 2008 to 20 percent in 2018.

Anxiety doesn’t affect all populations of students equally

The researchers reviewed nine years of data from annual studies conducted by the National College Health Assessment and the National Longitudinal Survey of Youth. In addition, they conducted 45-minute interviews with 30 students enrolled at UC Berkeley who identified as suffering from anxiety.

The researchers believe increased rates of anxiety represent a cause for concern. “It is what I am calling a ‘new epidemic,’ and the data supports using that term, on college campuses,” Scheffler said. Scheffler also called for a heightened national awareness of the problem.

Other findings from the preliminary research include:

- Rates of anxiety disorders increased at a higher rate during the time studied for students who identified as transgender, Latinx, or black. That’s true even though the study found that nonwhite students are about half as likely to report a diagnosis or treatment of anxiety disorders than white students.

- Anxiety disorders increased as students got closer to graduating from their institution; a senior is 65 percent more likely to report being diagnosed or treated for an anxiety disorder than a first-year student.

- The researchers also theorized that financial stress could play a large part in the increase in anxiety disorders. Students with anxiety made 11 percent less money than their peers without anxiety between 2008 and 2014.

- Students who come from families with low incomes or who have trouble paying bills are 2.7 times more likely to have an anxiety disorder than students who come from families who don’t worry about paying the bills.

- Students who spend more than 20 hours per week on digital devices for fun were 53 percent more likely to have an anxiety disorder than students who spend less than five hours per week on a digital device.

- The education level of the mothers of students studied played an interesting role in anxiety disorder likelihood. Students who had a mother with at least an undergraduate degree were 45 percent more likely to suffer from an anxiety disorder than their peers whose mothers did not have a college degree.

- Students with anxiety are 3.2 times more likely to abuse alcohol and/or drugs than their peers. Students with anxiety are also more likely to have been sexually assaulted or to have attempted suicide than their peers without anxiety.

Scheffler suggested that increasing awareness among faculty members and college administrators of the problems that students are facing, and of the increased rates of anxiety disorders, might be the place to start to help students. “I want the faculty and the university leadership here at Berkeley and across the country to know that this epidemic is out there, and they need to understand it. Students need help,” he said.

Read the preliminary research at <http://bit.ly/2IRV8eB>. ■

BEYOND ACCOMMODATION

Colleges with top inclusion programs go beyond accommodations

The Mighty has released a list of 20 colleges with stellar inclusion programs for students with disabilities. The list was developed as a way to help those attending college with a disability, or advocating for a student with a disability, determine the differences in inclusion programs on campuses nationwide.

Colleges and universities that made the list went beyond offering captioning and note-taking services, priority registration, and adaptive technology. They also helped students develop work, life, and academic skills. Institutions that made the list include Auburn University; California State University, Fresno; and Southern Oregon University.

Find the list at <http://bit.ly/2UusmTs>. ■

AT A GLANCE

A review of this month's OCR letters

The Department of Education's Office for Civil Rights investigates complaints under Title II of the ADA and Section 504. These letters represent its findings.

OCR rulings are summarized by Aileen Gelpi, Esq.

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HOUSING**OCR finds no fault
in college's housing accommodations**

Case name: *Letter to: Medaille College*, No. 02-18-2107 (OCR 07/05/17).

Ruling: The Office for Civil Rights concluded that Medaille College's housing policy did not discriminate against students with disabilities.

What it means: Pursuant to the regulation implementing Section 504 of the Rehabilitation Act, no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination regarding housing in a postsecondary education program.

Summary: OCR investigated a student's complaint that Medaille College discriminated against students with disabilities by charging higher rates for single rooms provided as accommodations for a disability. Specifically, the complainant cited the college's "Room and Board" contract, which stated that "single rooms may be available on a limited basis for an additional fee. Priority for single rooms is given to students with a documented medical need. Those students who are charged for a single room and are placed in a double will receive a credit/refund from the College for the single room fee."

The complainant asserted that the text of the policy suggested that the college charged an additional fee for single rooms provided as an accommodation for a disability. He also claimed a college

housing officer told him she had dealt with situations where a student who received a single room as an accommodation for a disability was required to pay a higher fee for a single room.

The college's housing director told OCR that students who are granted a single room as an accommodation for a disability live on their own in a double-occupancy room and are charged the college's standard housing rate. OCR determined that during academic years 2015–16 and 2016–17, all students who requested single rooms as an accommodation for a disability and provided supporting documentation were assigned to live alone in double-occupancy rooms but charged the standard double-room rate.

The college's housing director advised that the policy quoted by the complainant had been revised to eliminate any mention of single rooms for the general student population, as it no longer offers that option, except where it is provided as an accommodation for a disability.

Consequently, OCR concluded there was insufficient evidence to substantiate the complainant's allegation. ■

ACCOMMODATIONS**University addresses concerns
with revised housing policies**

Case name: *Letter to: Rider University*, No. 02-17-2105 (OCR 09/20/17).

Ruling: Rider University entered into a resolution agreement to resolve a complaint alleging discrimination against students with disabilities.

What it means: Colleges and universities must provide students with disabilities with comparable, convenient, and accessible housing at the same cost it is provided to nondisabled students.

Summary: OCR investigated a student's complaint alleging discrimination on the basis of disability against Rider University. The complainant alleged that the university discriminated by charging a higher rate to students with disabilities who requested as accommodations rooms with air conditioning, private kitchens, single rooms, double rooms to be used as single rooms, and dorms located closer to campus. The complainant also claimed the university required students to obtain air conditioning units at their own expense, even when the need for air-conditioned housing was due to a disability.

OCR's investigation revealed that the university had approximately 2,515 total beds for two campuses. On one campus, the university offered

housing in 13 residence halls, while on the second campus, it offered housing in three residence halls. OCR found that the majority of housing consisted of double rooms without air conditioning or private kitchens, and these rooms were the least expensive housing available on campus.

The university's housing accommodation policy stated that students may request accommodations for a disability or medical condition by submitting a request form and providing appropriate documentation of the disability. Students who were approved for a housing accommodation had the option to work with the associate dean of residential programs to find suitable housing at the lowest available room rate and without imposing a charge for the housing accommodation.

The university provided records showing that for the 2015–16 academic year, 76 students were approved for air conditioning as an accommodation, one student was approved for access to a private kitchen, and 22 students were approved for a single room as an accommodation. It did not receive any requests for housing closer to campus. For academic year 2016–17, 71 students were approved for air conditioning as an accommodation, 14 students were approved for a single room, two students were approved for a double room used as a single, and no requests were submitted for rooms closer to campus.

The university acknowledged that its policy for both academic years provided that students seeking air conditioning as an accommodation for a disability were required to supply their own units if they were not able to obtain housing in an air-conditioned building. OCR determined that for the 2015–16 and 2016–17 academic years, a total of 72 students with disabilities had to purchase their own air conditioning units. The agency determined that the policy represented a compliance issue the university had to address.

As a result, the university entered into a resolution agreement that included reimbursements for the students who purchased their air conditioning units and a change in the policy to eliminate surcharges for housing accommodations. ■

ACADEMIC ADJUSTMENTS

OCR finds student at fault for lack of academic adjustment

Case name: *Letter to: Manhattan College*, No. 02-17-2087 (OCR 01/19/17).

Ruling: The Office for Civil Rights concluded there was insufficient evidence to substantiate a student's

allegation that Manhattan College discriminated against him on the basis of disability.

What it means: In reviewing allegations regarding the provision of academic adjustments or auxiliary aids, one of the factors OCR considers is whether the student provided adequate notice of the need for adjustments or auxiliary aids.

Summary: A Manhattan College student submitted a complaint to OCR alleging that he suffered discrimination because of disability when the college denied him the accommodation of extended time to complete homework assignments. He believed the academic adjustment was a necessary accommodation for one of his courses.

The complainant acknowledged that the course professor provided him with academic adjustments in accordance with his initial accommodation plan but asserted that the college did not respond to his requests for extended time to complete homework assignments as an additional academic adjustment. However, the complainant did not provide any documentation or other information demonstrating that he had submitted that request.

The college's policy for requesting academic adjustments and auxiliary aids provides that students with disabilities have to self-identify and register to seek approval for such requests. The director for the college's Specialized Resource Center reviews students' requests with accompanying substantiating documentation and makes determinations regarding the appropriate academic adjustments and auxiliary aids and services to be provided, on a case-by-case basis. The SRC director said she meets with students making initial requests and informs them of the process for obtaining supplemental, different, or additional academic adjustments or auxiliary aids and services. The approved accommodations and aids are specific to the classes and/or semesters for which they are requested. Students are responsible for monitoring the delivery of their academic adjustments and for contacting the SRC if services are not up to par.

OCR determined that the complainant requested and was approved for extended time and a separate location for tests and quizzes, and the use of a laptop for classroom note-taking. There was no evidence that the student had requested additional time to complete homework assignments as one of his academic adjustments.

OCR concluded that the preponderance of the evidence did not substantiate the complainant's allegation that he had requested additional time for assignments as an accommodation. Therefore, there was insufficient evidence to support his complaint

that the college discriminated against him on the basis of disability. ■

HOUSING

Resolution agreement ends OCR investigation

Case name: *Letter to: Carnegie Mellon University*, Nos. 03172056/03172097 (OCR 07/19/17).

Ruling: The Office for Civil Rights accepted Carnegie Mellon University's request to enter into a resolution agreement that resolved disability-discrimination allegations filed by two complainants.

What it means: Colleges and universities must provide comparable, convenient, and accessible housing to students with disabilities at the same cost it is provided to nondisabled students.

Summary: OCR opened an investigation into two complaints alleging Carnegie Mellon University's housing policies discriminated against students with disabilities. Specifically, the complainants alleged the university charged more for housing provided as an accommodation for disabilities, including single dormitory rooms and rooms containing other required amenities. The complainants also alleged that the university discriminated by charging installation costs to students who required air conditioning units as accommodations.

OCR's review of the university's housing policies and procedures found that they addressed

the provision of housing to students with disabilities. However, they did not include whether or how the university charged a student for a housing accommodation due to a disability. Additionally, the fee structure of varying rates per building and room types was silent as to waiver of cost for accommodations.

Based on its preliminary investigation, OCR found that the university charged students the standard rate for the type of room they occupied, regardless of disability. The information provided for the 2015–16 and 2016–17 school years showed that students were charged the standard room rate. However, although there was no increase in rate, surcharge, or supplemental fee for students with disabilities, there was no reduction or waiver of the rate if the room type was required as an accommodation.

Additionally, the investigation revealed that the university had conflicting policies and practices regarding the charges for installation of air conditioning units as accommodations. The policy posted on the university's website at the time of the investigation stated that it would charge students to install their units, and the university acknowledged that it had charged installation costs to two students who required air conditioning as an accommodation. The university refunded the fee.

Consistent with OCR's early resolution procedures, the agency accepted the university's request to enter into a resolution agreement. ■

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AT A GLANCE

A review of this month's lawsuits and rulings

Lawsuit court records are summarized by
Richard H. Willits, Esq.

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ACCOMMODATIONS

Judge rules in favor of college

Case name: *Naca v. Macalester College*, No. 16-CV-3263 (D. Minn. 09/20/18).

Ruling: The U.S. District Court, District of Minnesota granted a summary judgment in favor of Macalester College.

What it means: A disabled person is not entitled to the precise accommodations requested.

Summary: The plaintiff became a Macalester College assistant professor in 2008.

During the months between her 2012 diagnosis of a chronic serious lung infection and her 2015 termination, the plaintiff had requested at various times the accommodations of: (1) student office assistance, (2) medical leave for an entire semester, (3) student research assistance, and (4) intermittent leave.

After she was fired, the plaintiff filed a suit that asserted several claims. One was a failure to accommodate in violation of the Rehabilitation Act. The plaintiff acknowledged that she had been granted both leave and student assistance over the years, but argued that it was usually less than she had asked for.

Macalester filed a motion for summary judgment.

The district court judge said the plaintiff's claim seemed to rest on the mistaken premise that a

disabled person had the right to the precise accommodations that were requested.

He granted a summary judgment in favor of the college, stating: (1) the plaintiff never contended that she was unable to do her job with the accommodations that had been granted and (2) there was no evidence that the failure to provide her desired accommodations had a detrimental effect on her health. ■

DISMISSAL

Judge rules in favor of university

Case name: *Giu v. University of Cincinnati, et al.*, No. 1:18-cv-634 (S.D. Ohio 09/19/18).

Ruling: The U.S. District Court, Southern District of Ohio granted a summary judgment in favor of the University of Cincinnati.

What it means: A university isn't required to grant an accommodation to a student until he provides a diagnosis of a disability and specifically requests an accommodation.

Summary: In March 2018, the plaintiff — a University of Cincinnati student — was notified of an April hearing concerning charges that he was guilty of academic dishonesty.

The plaintiff did not attend that hearing.

After learning that the hearing panel found him guilty, the plaintiff contested the charges in a formal appeal.

The provost denied the appeal, and dismissed the plaintiff in May.

A few days later, the plaintiff unsuccessfully asked an associate dean for another hearing, allegedly stating for the first time that chest pain from his chronic heart condition had caused him to miss the April hearing.

The plaintiff filed a suit that asserted several claims. One was a failure to accommodate in violation of the Americans with Disabilities Act.

He also sought a temporary restraining order to vacate the dismissal while his suit was pending, claiming: (1) his heart problems caused him to miss the hearing, (2) the university knew about his condition, and (3) he was denied the reasonable accommodation of a new hearing.

But the district court judge refused to issue the injunction after concluding that it was unlikely that the plaintiff would prevail in the suit. He explained that (1) the university's knowledge of the plaintiff's heart condition didn't amount to notice that he needed any accommodation and (2) it didn't receive an accommodation request until after the final decision. ■

TERMINATION

Court rules in favor of hospital

Case name: *Williams v. The Pennsylvania Hospital of the University of Pennsylvania*, No. 17-2413 (E.D. Pa. 09/18/18).

Ruling: The U.S. District Court, Eastern District of Pennsylvania granted a summary judgment in favor of a university teaching hospital.

What it means: The essence of a retaliation claim is that a person suffered an adverse employment action because of opposition to something prohibited by law.

Summary: The plaintiff was hired by the University of Pennsylvania in 2009 as a patient care technician at its teaching hospital.

In February 2015, she was approved for intermittent absences pursuant to the Family and Medical Leave Act for the stated reason of “Serious Health Condition — Self.”

At some unspecified time, she was allowed to work as a “unit clerk,” which was a job usually available to accommodate any disabled PCT on modified duty.

In 2016, the hospital approved her for “Other Medical Leave” for two weeks.

The hospital fired her in March for the stated reason of poor performance.

The plaintiff filed a suit that asserted several claims. One was that she had actually been fired in retaliation for engaging in “protected activity.”

The hospital filed a motion for summary judgment, arguing that the plaintiff had failed to establish that she had engaged in any “protected activity.”

She responded that the activities were the unit clerk job and her intermittent FMLA leave.

However, the district court judge explained that the essence of a retaliation claim was that a person had opposed some action that was prohibited by some law. He also explained that obtaining disability accommodations and medical leave merely amounted to taking advantage of guaranteed rights.

Since there was no evidence of opposition to prohibited actions — such as making any sort of complaint about her rights — he granted a summary judgment in favor of the defendant. ■

PROBABLE CAUSE

Judge refuses to dismiss entire suit

Case name: *Sacchetti, et al. v. Gallaudet University, et al.*, No. 15-455 (D. D.C. 10/29/18).

Ruling: The U.S. District Court, District of Columbia refused to grant a summary judgment in favor of Gallaudet University.

What it means: In a suit claiming a false arrest, the defendant must show there was probable cause to believe a crime had occurred.

Summary: In March 2014, a Gallaudet University police officer went to a dormitory room in response to a report that a male had hurt some students. A male answered the door, but he didn’t respond to the officer’s repeated requests to step into the hall.

The officer arrested that person and turned him over to municipal authorities.

A subsequent investigation revealed that the arrested male was a deaf student who lawfully resided in that dorm room.

His parents then filed a suit that claimed the student had committed suicide after being falsely arrested.

The university filed a motion for summary judgment.

The district court judge refused to grant a summary judgment. He explained that a responsible jury couldn’t conclude that the officer reasonably thought there was probable cause for an arrest just because a person didn’t respond to his questions. ■

STUDENT AFFAIRS

Judge rules against university

Case name: *Hammond v. University of Southern Mississippi*, No. 2:18-CV-150 (S.D. Miss. 11/14/18).

Ruling: The U.S. District Court, Southern District of Mississippi refused to dismiss a suit against the University of Southern Mississippi.

What it means: A plaintiff claiming he was “regarded as” disabled in violation of the Americans with Disabilities Act doesn’t need to show that the perceived impairment substantially limited a major life activity. He need only establish that the defendant withheld public services or benefits because of the erroneous belief. Sovereign immunity doesn’t protect a state university from suits claiming Rehabilitation Act violations.

Summary: The plaintiff was a University of Southern Mississippi football player.

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He filed a suit that claimed a violation of the ADA, alleging: (1) he had only one kidney, (2) the trainer eventually learned about his condition, (3) he wasn't allowed to play after that because of the erroneous belief that doing so with one kidney posed a liability issue for the school and a health risk, and (4) the athletics department hampered his chances of transferring by telling other schools that he didn't pass a physical.

The university filed a motion to dismiss, arguing that the plaintiff didn't have a "disability" as defined by the ADA.

The district court judge said the statute allowed suits for those who were "regarded as" being disabled, and the plaintiff was only required to show that the university knew about the impairment and withheld public services or benefits because of it.

The judge then ruled the plaintiff had successfully stated such a claim.

However, the university argued it was immune from ADA claims because of sovereign immunity granted by the 11th Amendment of the U.S. Constitution.

The judge declined to rule on that issue because: (1) USM had conceded it wasn't immune from Rehabilitation Act suits, (2) both statutes were judged under the same legal standards, and (3) the same remedies were available under both acts.

The judge refused to dismiss the suit. ■

FMLA

Judge rules against university

Case name: *Cordova v. State of New Mexico*, No. 16-CV-1144 (D. N.M. 11/02/18).

Ruling: The U.S. District Court, District of New Mexico denied a motion for summary judgment filed by the University of New Mexico Hospital.

What it means: Eligibility for leave pursuant to the Family and Medical Leave Act cannot be dictated by the employer. Regardless of an employer's approval procedures, denying FMLA leave to an employee who meets the federal eligibility standards constitutes actionable interference.

Summary: In March 2016, the plaintiff gave his University of New Mexico Hospital supervisor an FMLA "Certificate of Health Care Provider" that stated he: (1) had been diagnosed with post-traumatic stress disorder and (2) might suffer one or two panic attacks during each workday.

Submit an article

What initiatives have you developed to support students with disabilities on your campus? How do you engage the community in making the campus fully accessible and understanding disability as diversity? What challenges have you faced providing accommodations, and how did you solve them? What leadership strategies work best for you?

For submission guidelines, please contact Editor Joan Hope at jhope@wiley.com. ■

A few days later, the plaintiff's supervisor denied his request for permission to go home because of an "FMLA thing."

When the plaintiff went home in spite of the denial, the hospital decided he had voluntarily resigned.

The plaintiff filed suit against several defendants, claiming FMLA interference.

The defendants filed a motion for summary judgment, arguing that the plaintiff's request was properly declined because the FMLA certificate had not yet been processed.

But the district court judge said eligibility for FMLA leave couldn't be dictated by the employer.

The judge denied the motion, ruling that the hospital's approval process was irrelevant. He explained that denying FMLA leave to an employee who met the federal eligibility standards amounted to wrongful interference. ■

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An overview of the key topics faced by disability services providers with citations to noteworthy cases, statutes, regulations, and additional sources.

Athletics and Disability

Overview

Review recent court rulings related to student-athletes with disabilities who made claims under the Americans with Disabilities Act or Rehabilitation Act.

Key Rulings

❑ A University of Southern Mississippi football player filed a suit that claimed a violation of the ADA. Among his claims was that he wasn't allowed to play because of the erroneous belief that doing so with one kidney posed a liability issue for the school and a health risk. The university filed a motion to dismiss arguing that the plaintiff didn't have a "disability" as defined by the ADA. The judge refused to dismiss the suit, saying the statute allowed suits for those who were "regarded as" being disabled, and the plaintiff was only required to show that the university knew about the impairment and withheld public services or benefits because of it. *Hammond v. University of Southern Mississippi*, No. 2:18-CV-150 (S.D. Miss. 11/14/18).

❑ When a Birdville High School basketball player wasn't allowed to return to the team after successful surgery, her mother filed a suit on her behalf that asserted several claims. One was a violation of the ADA. The judge dismissed the ADA claim, explaining the student was required to show her injury substantially affected a "major life activity," and ruled that participating in sports was not a major life activity, even though it had the potential to lead to a lucrative career. *Walter v. Birdville Independent School District*, No. 4:18-CV-301-A (N.D. Tex. 08/20/18).

❑ A Tulane University student with a learning disability was dismissed from the football team. The student filed a suit, making several claims, including that the behavior of the coaching staff was intended to inflict severe emotional distress. Among other things, he claimed a coach did not believe he was disabled, required him to prove his disability, and taunted him. The judge dismissed the claim, ruling that the student had not described conduct that was so severe as to justify a claim for intentional infliction of emotional distress. *Purcell, et al. v. Tulane University of Louisiana, et al.*, No. 16-1834 (E.D. La. 05/26/17).

What You Should Know

- An institution can be liable for withholding public services or benefits if a student is regarded as having a disability.

- Participating in sports is not a "major life activity," so an impairment that only diminishes a student-athlete's ability to play does not amount to a qualifying disability under the ADA.

- Conduct must be extreme to justify a claim of severe emotional distress.

- Under the Rehabilitation Act, a plaintiff must prove her disability was the sole cause of an adverse action. ■

❑ A student with dyslexia was dismissed from the women's lacrosse team at Messiah College for having a bad attitude. The student filed a suit against the college and others, claiming violations of the Rehabilitation Act. The district judge ruled the student was disabled within the meaning of the act because of dyslexia but not her foot injuries, because she had only comparatively moderate limitations on her ability to walk. The judge granted a summary judgment in favor of the defendants, ruling that no jury could reasonably conclude that the student's dyslexia was the sole reason for her removal from the team. *Borreggine v. Messiah College, et al.*, No. 1:13-cv-01423 (M.D. Pa. 08/19/15). ■