

Disability Compliance

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Successful Strategies for Accommodating Students and Staff with Disabilities

for Higher Education

VOLUME 18, ISSUE 4

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TOP LEGAL CASES

ACCESSIBILITY

Complainants say that various facilities at an institution were inaccessible to those with mobility impairments. **Page 10**

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PERSONNEL

A college employee who had HIV claims that the dean who served as his supervisor discriminated against him because of his medical condition. **Page 14**

COVER STORY

Program provides comprehensive support to students on autism spectrum

As more students with autism spectrum disorder enroll in higher education, institutions often find themselves unprepared to support those students' unique needs. As a result, many of these individuals end up dropping out.

The University of West Florida responded to the problem with a program that addresses the academic, social, transition and career planning needs of students on the spectrum. While the program is support-intensive, it doesn't require much in the way of resources, making it ideal for cash-strapped institutions. **Full story, see pages 4-5.**

Use these tips

Creating a comprehensive support program for students on the spectrum doesn't have to be time- or labor-intensive. **See page 5.**

HIGHLIGHTS

Documentation practices must evolve with times

L. Scott Lissner, The Ohio State University's Americans with Disabilities Act coordinator, explains why institutions' documentation practices must evolve to better serve today's students. **Page 2**

Know how to handle requests related to nut allergies

Students with nut allergies, and their parents, often request single residence hall rooms, and roommates or residence hall staff with training in administering epinephrine autoinjectors. But such requests don't have to be granted. **Page 3**

Prepare for dilemmas by considering ethics codes

Professional codes of ethics, like that created by the Association on Higher Education And Disability, provide a starting point when faced with ethical dilemmas during the course of your work. **Page 6**

Supporting students abroad requires coordination

As more students with disabilities choose to pursue study-abroad opportunities, it's critical that you work with students, coordinating faculty, and your international studies office to address accessibility issues. **Page 7**

Higher ed's documentation practices must evolve to better serve today's students

L. Scott Lissner serves as The Ohio State University's Americans with Disabilities Act coordinator. He's also the president of the Association on Higher Education And Disability. Recently, we spoke about AHEAD's new documentation guidance for institutions.

Q What do you think of the reactions to AHEAD's new guidance on documentation?

A I'm delighted that people are taking the new guidance seriously enough to have energized discussions on the listservs. However, it can also be a little difficult to read people's criticism, because this guidance is something I feel so strongly about.

A BRIEF CONVERSATION WITH ...

Each month, this regular feature provides you with a brief, yet in-depth, conversation with the leaders in the field of disability services.

There have always been a couple of camps among disability services providers. First, there's a group who has used documentation as a real gate-keeping standard to determine

who is eligible for accommodations.

The focus of those professionals has traditionally been on implementing the law and sticking to its black-letter requirements. They tend to ask for documentation first and ask questions later.

Then there's the contingent that favors adopting less stringent requirements and going with the spirit of the law. Those folks tend to rely more on students' experiences and use documentation as confirmation of what they hear, as opposed to asking students to submit certain pieces of documentation before they'll even see them.

There are also some people who fall somewhere

between those two camps. But many of those have been moving toward the less stringent approach that the AHEAD guidance promotes.

On my campus, many of the things detailed in the AHEAD document are things that we've already been doing.

Q Can you explain the rationale behind the new AHEAD documentation guidance?

A Many DS providers already grant students provisional accommodations, listening to their experiences first and then asking them to provide documentation to support their statements. The approach AHEAD is endorsing is, in a way, a natural extension of that.

It's saying, "If something seems to make sense, let's look to the documentation that is available for confirmation of our conclusions." You don't need to have a full battery of tests in most cases to make a sound determination.

Over time, the K-12 system has come to rely more on students' telling of their experiences and limitations, and focus more on addressing functional limitations than specific diagnoses. So because students are coming to us with less formal diagnostic materials, we must move along with that and be flexible in what we'll accept.

For more information, you may contact L. Scott Lissner at Lissner.2@osu.edu. ■

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Nut allergies generally do not require residence accommodations

By Michael R. Masinter

College students increasingly arrive with a history of severe nut allergies and parents accustomed to minimizing their nut exposure. Although food service accommodations are often essential, some students and their parents have also sought single rooms as an additional accommodation, while others have insisted that roommates or housing staff be trained in administering epinephrine autoinjectors.

Responding to these requests requires an understanding of allergies, the meaning of an accommodation, and the boundary between accommodations and personal attendants.

Students who are allergic to peanuts or to tree nuts have an autoimmune disorder that, in its most severe form, can cause life-threatening anaphylactic shock requiring an epinephrine injection. However, a double-blind placebo control study found that casual skin or airborne exposure to peanut butter did not trigger a systemic or respiratory response in children with significant peanut allergies. Researchers published those findings in a 2003 article that appeared in the *Journal of Allergy and Clinical Immunology* (http://68.171.215.27/pdfs/DrMa_PeanutAllergy_2003.pdf). Although airborne exposure in nut-processing plants can trigger an allergic reaction, medical literature suggests that in everyday settings, a student generally is at risk of a severe allergic response only if he ingests nut protein.

Because young children routinely share food, utensils and serving dishes, protecting those who are allergic from inadvertently eating nuts or products produced with or containing nuts can be difficult. That is why some kindergarten and elementary schools impose blanket bans on nut products. They hope such bans will reduce the risk of accidental nut protein ingestion.

But college students are not young children. They have control over, and bear responsibility for, what they eat, even in shared living environments. They can follow the advice of the National Institute of Allergy and Infectious Diseases, one of the National Institutes of Health, and remove nuts from their diet, read food labels, and follow simple measures of cleanliness to avoid an allergic reaction (www.niaid.nih.gov/topics/foodallergy/understanding/Pages/treatment.aspx#prevent).

As the cited reports suggest, a roommate's stray

nuts and utensils ordinarily should not pose a health threat unless the student with an allergy chooses to eat them or eat with the roommate. And that is true whether the allergic student happens to be in a residence hall, classroom or off-campus party. Learning not to eat the nuts — or sample the drugs — that a roommate might bring into campus housing should be the responsibility of individual students.

About the author

Michael R. Masinter is a professor of law at Nova Southeastern University and chair of the legal panel of the ACLU of Florida. He teaches, writes about and litigates disability rights, civil rights and employment law. ■

Those with nut allergies living in shared housing should have separate toothbrushes, drinking glasses, plates and flatware to limit their potential exposure to nut proteins. But most students, regardless of allergies, already do because those are common precautions.

As the Supreme Court has explained on numerous occasions, accommodations and modifications can ameliorate functional limitations caused by health impairments.

Although a nut allergy can be a disability, a single room generally does not ameliorate any functional limits caused by a nut allergy. For that reason, a single room generally is not considered an accommodation for a nut allergy. Because it is not an accommodation as we use that term in disability rights law, it is unnecessary to inquire into whether it is either reasonable or an undue burden. More broadly, it always helps to begin by asking whether any requested accommodation actually ameliorates functional limits before asking whether it is reasonable.

Instead of requesting a single room for a student with a nut allergy, some parents insist that institutions train roommates or residence hall staff in administering epinephrine in case a student with a severe allergy goes into anaphylactic shock from accidental nut ingestion.

But the Rehabilitation Act does not require schools to provide personal attendants, or to train roommates to act as emergency medical technicians or first responders for students with disabilities. Epinephrine autoinjectors are, as the term implies, meant to be used by individuals at risk of anaphylactic shock.

Relatives and friends often volunteer to learn how to assist in their use, but a postsecondary institution bears no responsibility for ensuring that someone will be present in a residence hall to administer injections in an emergency. ■

Support program helps students on autism spectrum succeed

More students on the autism spectrum are enrolling in college every year. Yet many of those end up dropping out. That was the problem at the University of West Florida a few years ago. But today, the institution's Academic Support Program for Students on the Autism Spectrum — dubbed ASPAS — is changing that.

The program is the brainchild of Vannee Cao-Nguyen, the assistant director of the Student Disability Resource Center.

"When I started working here in 2007, there were six students registered with our office who were on the spectrum. But a year or so later, all of them had dropped out," she said.

She spoke with the former students and found similarities in their college experiences and their reasons for dropping out.

She identified four key areas that needed to be addressed: 1) academic performance; 2) social and community involvement; 3) transition and life skills; and 4) career preparation and planning. In the fall of 2010, ASPAS was born to support students on the spectrum in those four areas.

Cao-Nguyen started with just four students in 2010, but this fall 18 students are participating in the program. Of the original four, three are nearing graduation. So if you're looking for a way to boost retention among students on the spectrum, consider emulating the ASPAS model.

When students on the spectrum register with the Student Disability Resource Center, Cao-Nguyen lets them know about the program. If they express interest in participating, she confers with them and others participating for the semester about what day and time of the week is best for them to meet.

She holds weekly group meetings on the agreed-upon time slot. They're a chance for students to get to know peers on the spectrum, practice social skills, and discuss any upcoming activities and events. Students can choose to attend or skip the meetings, and they can decide to attend just those upcoming

activities or events that appeal to them.

"So part of my job is to say, 'Hey guys, this seems pretty cool. We should go as a group,' and then let them make the decision to attend on their own," Cao-Nguyen said.

All students registered with her office can also

receive academic coaching. Cao-Nguyen lets the students know about the service. She also serves as the academic coach for ASPAS students who request coaching.

"We assess for areas of concern, set up some goals to address those concerns, then break those goals down and meet once a week to develop the needed skills and discuss progress," she explained.

But Cao-Nguyen alone can't offer all the different kinds of support ASPAS students need. Fortunately, she doesn't have to.

"I often hear people say that a program like this sounds like a lot of work, or that they don't have the resources to offer this level of support to students on

the spectrum," Cao-Nguyen said. "But the truth is that it doesn't have to be a lot of work, because I don't do it all. Rather, I rely on partners throughout the institution to do different pieces."

The program works on the philosophical framework that autism spectrum disorder is a difference, not a disorder. It's part of Inclusion Services and Programs, a department that houses not only the Student Disability Resource Center, but also programs for student-veterans and diversity training services. And just as it's the responsibility of everyone throughout the institution to make diverse student populations feel welcomed and supported, Cao-Nguyen points out that it's everyone's responsibility to do their part to support students on the spectrum.

The program uses resources that are already available to other students on campus. But Cao-Nguyen asks the individuals responsible for offering those resources to extend them to ASPAS students, and sometimes tweak them to better serve the needs of

ASPAS addresses 4 key areas

The University of West Florida's Academic Support Program for Students on the Autism Spectrum addresses the following four areas of need:

1. Academic performance. Students can access academic coaching. And Vannee Cao-Nguyen, who heads the program, also ensures they are getting the accommodations they need.

2. Social and community involvement. Cao-Nguyen lets students know about upcoming extracurricular activities and encourages students to attend as a group. Participants become a tightly knit group, but as their confidence in their social skills grows, they tend to branch out and join groups and do activities on their own.

3. Transition and life skills. Cao-Nguyen works with Student Affairs and Residence Life to extend existing programs and services that support smooth transitions and life skills development to ASPAS participants.

4. Career preparation and planning. Existing programs and services available to all students are extended to those on the spectrum. Sometimes they're tweaked to meet students' unique needs. ■

Use these tips to create support program for students on the spectrum

The University of West Florida's Student Disability Resource Center is a small office with limited resources. Yet its Academic Support Program for Students on the Autism Spectrum offers comprehensive support for such students. If you'd like to start such a support program at your institution but don't see how it's possible, the following tips from Vannee Cao-Nguyen, the assistant director of the SDRC, can help you make that a reality:

- **Find existing resources that could be used to support students on the spectrum.** Look at services already offered by your unit, such as academic coaching. Plus, look outside your unit to resources available through other units that could help students transitioning to college life develop the social and other skills they need. Then cobble them together to create a comprehensive web of support.

- **Cultivate relationships with key staffers from other campus units.** Offer yourself as a resource to other units to create a two-way street of collaboration. For example, consider offering to attend department meetings to speak about disability issues. That will ensure that staffers from other units are willing to work with you when you need them to.

- **Get others thinking about how they can support students on the spectrum.** Explain that supporting them is the responsibility of every unit, not just yours. Talk in terms of diversity. If other units are willing to extend support to populations such as student-veterans and international students, extending support to individuals on the spectrum is no different.

- **Involve students in shaping the program.** Let them choose the meeting times that work best for them. And request their feedback to find out what works for them and what they'd like to see in the future. Getting students to participate is as easy as ensuring the program appeals to their individual needs. For example, at the end of one semester, students told Cao-Nguyen that they wanted to learn more about dating, and they wanted to learn from someone their own age. So she invited someone whom students could relate to to talk about dating. ■

students with autism spectrum disorder.

"Institutions often do this for international and veteran students, so why not for students on the spectrum as well?" she said.

That requires having good relationships with staff from different units on campus, such as academic affairs, career services and student life. Fortunately, Cao-Nguyen already had those relationships in place when she decided to launch the program, so it was easy getting buy-in and collaboration from those units.

At the start of each semester, she talks to the individuals who serve as her liaisons from those areas about how their units can contribute to the program during the coming months. They consider events and activities already being hosted that may be especially useful to students on the spectrum, and they brainstorm how to get ASPAS participants to attend.

"Those partnerships mean that I don't have to be an expert in career services or transition issues or anything else outside of my own area of expertise," she said. "I can just rely on the people who are there to provide those kinds of support to ASPAS students."

For example, when Career Services hosted an etiquette dinner for all interested students, it implemented assigned seating and reserved a table just for students in the ASPAS program.

Since students on the spectrum are socially awkward, the dinner was a good chance for them to practice their social skills. At the same time, seating them together meant that students weren't as apprehensive about attending since ASPAS participants already knew each other. And Cao-Nguyen attended and sat at the table to further increase students' comfort level.

Because students on the spectrum often don't take the initiative to attend activities and events that require social interaction, Cao-Nguyen makes it a part of her job not only to let them know about upcoming events, but also to encourage their attendance as a group.

As students begin getting more comfortable interacting with others and participating in social activities, they start to take more initiatives and do things on their own, she said.

For more information, you may contact Vannee Cao-Nguyen at vcao@uwf.edu. ■

Prepare to tackle dilemmas with renewed attention to ethics

By Louise Bedrossian

As disability services providers, we share a common goal — delivering competent, expert service and providing equal access for students with disabilities.

That's easier said than done, as most of us experience heavier demands than we'd like. Yet it is imperative that we pause to examine some of the ethical codes that guide our work.

The term "ethics" is derived from the Greek work "ethos," meaning character, and the Latin word "mores," or customs. Ethics are the core values and beliefs that guide the behaviors of specific groups and outline what is beneficial for both society and individuals.

Ethics are not laws, which are often based on ethical standards. But many unethical actions do not violate the law. On the other hand, adherence to the law may sometimes create violations of ethical standards. Ethics are built on values and inform principles. Ethical codes must consider both.

As DS professionals, we may face ethical dilemmas during the course of our work. Effectively addressing those dilemmas requires a good understanding of our guiding values, principles and relevant ethical codes.

The Association on Higher Education And Disability provides us with a set of values and principles to guide our behavior and decision-making. Coming from myriad professional backgrounds and holding a variety of certifications and licenses, DS providers must also adhere to other professional groups' codes of ethics.

AHEAD promotes "facilitating the highest levels of educational excellence and potential quality of life for postsecondary students with disabilities." The American Counseling Association promotes

"ethical counseling practice in service to the public." The stated goal of the National Association of Social Workers is to "enhance human well-being and help meet the basic human needs of all people." Rehabilitation counselors are "committed to facilitating the personal, social and economic independence of individuals with disabilities."

There are commonalities among professional codes. Most include reference to these overarching values and principles: autonomy; service; responsibility to clients, the profession and to social justice; doing no harm; human dignity and worth; confidentiality; being proactive; professional competence; integrity; professional development; cultural competence; and consideration of diversity.

Unfortunately, ethical codes do not always provide answers for difficult situations. That's why it's important for us to have a clear understanding of our own values and beliefs before problem situations arise.

Pay attention to your own intuition and emotions. Building a network of other professionals with whom we can dialog concerning ethical issues is also useful. Choose a diverse consultation group whose members share basic values but may offer differing perspectives. ■

Learn more!

If you're not familiar with the codes of ethics set forth by the professional organizations you belong to, perhaps it's time to give those a thorough reading. Check out these links:

- **Association on Higher Education And Disability:** www.ahead.org/resources.
- **National Board for Certified Counselors:** www.nbcc.org/Ethics.
- **National Association of Social Workers:** www.socialworkers.org/pubs/code/code.asp.
- **Commission on Rehabilitation Counselor Certification:** www.crc certification.com/pages/crc_ccrc_code_of_ethics/10.php. ■

About the author

Louise Bedrossian is director of the Disability Resource Center at Clayton State University in Georgia. For more information, you may reach Bedrossian at louisebedrossian@clayton.edu. ■

Use this checklist to ensure ethical decision-making

Disability services providers should be prepared to address ethical decision-making tasks by examining their values, understanding ethical codes, building professional networks, and having a plan of action. Use the following model for sound decision-making:

- Identify the problem or conflict.
- Apply the appropriate professional code(s) of ethics.
- Identify individuals, groups and organizations affected.
- Identify all options for action and analyze the risks and benefits of each.
- Evaluate the options, considering ethical guidelines, laws and regulations, and personal values.
- Consult with colleagues and experts.
- Determine and implement the decision.
- Monitor and evaluate the outcome. ■

Preparing students with disabilities to study abroad requires a collaborative approach

By Goldie Adele

The issue of providing reasonable accommodations for study abroad is nothing new in our field. But it has received some recent attention, especially with the rapid growth of study-abroad programs at most colleges.

In today's global environment, college leaders often feel an obligation to encourage students to participate in study-abroad programs. And students with disabilities have become increasingly interested in participating in such programs.

The Americans with Disabilities Act, its amendments, and state civil rights laws have afforded students with disabilities access and participation to a wide variety of activities on- and off-campus. Unfortunately, such access is not guaranteed in every foreign country.

We can help by creating a process to educate students about the lay of the land before they make their final decisions about whether and where to go. We should always encourage students to fully participate in these programs, but be honest about possible obstacles they may encounter when they go abroad.

Level of access is based on the sophistication of any particular country, the existence and enforcement of disability laws, and the culture of the society toward individuals with disabilities.

To adequately assist students making decisions about study abroad and preparing to go overseas, we first have to build a relationship with our study-abroad office. We should know the destinations and programs it offers, when programs are offered, and individual program details. Some programs are run by professors. When that is the case, we should build a relationship with those professors.

They can help us understand the lay of the land for the programs they run, and any accessibility issues students may encounter on location.

Those professors are also good resources for better understanding the culture of the people in the country of their programs. And they can explain extracurricular activities students will be offered and past experiences of disabled and nondisabled students. They may also know about resources available on location for students with disabilities.

That information can help you create a list of accessible programs, pros and cons of each program, and available resources.

Second, we should start consulting with students early. If they indicate an interest in exploring study-abroad opportunities, we should have a step-by-step advising process for them. Hopefully, they indicate their interest early on, so there is ample time for exploration and planning.

This consultation process presents an opportunity to find out what students' goals are and what they hope to gain from studying abroad. Are they interested in a program due to its academic nature or more because of its location?

Knowing that can help us to determine what alternative options students may have if their initial plans are not feasible due to accessibility barriers.

Next, we should have students meet with advisors from the study-abroad office or the professors leading the study-abroad trips to gain more details about students' desired programs. Tell students that they may have to disclose their diagnoses to get the best advice.

The objective of those meetings is to give our students the best information possible so that they can make informed decisions. Students should be included in follow-up communications between our offices and the study-abroad office or professors leading trips.

I'm a big advocate of this triangular approach, which involves the students, our offices, and the study-abroad office or professors in charge of trips. Things get resolved faster, and fewer mistakes and violations are likely to occur. We must work together to ensure that students have a positive experience.

If students decide to go to locations that are not recommended or are likely to present accessibility issues, we must remember that they have a right to do so.

Our role remains the same — to work with students with disabilities and the study-abroad office or professors in charge to provide students as much information and resources as possible prior to their departure. ■

About the author

Goldie Adele is the director of the Disability Resource Center at Southern Connecticut State University. Prior to that, he spent eight years working in disability services at a law school. He also earned a law degree. He can be reached at Adeleg1@southernct.edu. ■

Overcome budget, staffing challenges by building effective teams

If you lack the funding or staff needed to expand your disability awareness or accessibility efforts on your campus, try building a team that draws from existing staff across different departments.

Consider the team-building approach that worked for Jennifer Gronsky, Thomas Jefferson University's student programs and leadership director in the Student Life Office. She reached out to Dayna Dunsmoor Levy, the career development center director; and Jennifer Fogerty, an academic development specialist. They invited others to form an interdisciplinary team to expand their student leadership development program.

At the annual conference of NASPA: Student Affairs Administrators in Higher Education, Gronsky, Levy and Fogerty explained how to build a successful team. To get started, follow these steps:

1. Select the team

- ❑ Decide which office will house and lead the team. More than likely, that will be your unit.
- ❑ Determine your budget. Consider optional expenses, such as promotional materials and team awards dinners.
- ❑ Choose team members carefully. Filling spots with just anyone will lead to high turnover, poor fit and lack of contribution. And too many members will mean nothing gets done. Start with people you already have positive working relationships with and who understand what you're trying to accomplish. Marketing/PR can help provide promotional materials. Faculty can also play a key role.

2. Recruit team members

- ❑ Seek approval from potential team members' supervisors. Ensure that supervisors support the time commitment, responsibilities and challenges

those on the team will have to contend with.

- ❑ Promote team-member benefits. Professional development opportunities give them a chance to build specialized skills and knowledge they wouldn't otherwise get.

- ❑ Emphasize opportunities for reciprocal collaborating between departments. You can serve on each other's teams and advisory boards and give presentations to students in a faculty member's class or to staff members in another office.

- ❑ Highlight opportunities for student interaction. Team members will get the chance to work with students in different ways than they normally do, and may receive appreciation from students and staff.

3. Plan team activities, materials

- ❑ Schedule an orientation. Consider a full-day orientation retreat, including a dinner, in early summer. Clarify the purpose of the team and discuss intended outcomes.
- ❑ Provide a team binder. Include schedules, logistical information, responsibilities and resources. For those joining late, add agendas and minutes of meetings they missed.
- ❑ Hold planning sessions in late summer and throughout the year. Base planning on the summer retreat discussions.
- ❑ Be prepared for challenges once the team's work begins. Supervisors might call members away from a team responsibility to what they consider more pressing work. Some team members will do less work than others or think they can pick and choose what roles they'll accept. You might need to ask team members to resign.

For more information, you may contact Jennifer Gronsky at Jennifer.gronsky@jefferson.edu. ■

MANAGING YOUR OFFICE

This regular feature provides you with the guidance you need to help you sharpen your office management skills.

Be proactive to retain team members

After assembling an interdisciplinary team, don't forget to address retaining team members. Help boost retention by:

- Giving new members a role right away. This will help them feel like valuable, contributing members, and they'll take ownership.
- Having seasoned members provide training. Explain expectations and challenges. Encourage members to ask for help if they've taken on too much. Seasoned team members should also meet informally with new members to get to know each other.
- Making attendance mandatory. It's important for team members to attend, to participate and to get invested. It builds a sense of pride. ■

Former student's educational debt discharged because of Asperger syndrome

Students with psychiatric disabilities who are otherwise qualified have every right to attempt a college degree, just as their nondisabled peers do. However, some of them may fear that they will amass a load of student debt that they will later be unable to pay off. Make sure that doesn't keep them from a college degree.

ETC.

A roundup of news of interest to disability services providers. To contribute an item to ETC., email Editor Cynthia Gomez at cgomez@wiley.com.

While federally backed student loans are almost impossible to get discharged in bankruptcy proceedings, relief is available to former students who find that they truly are unable to work because of their disabilities. One recent case proved that.

A bankruptcy court ruled to discharge a former law student's educational debt due to her Asperger syndrome. The debt totaled nearly \$340,000. She had received her high school general equivalency diploma in the 1980s. She began attending law school in 1992. However, she never finished. Instead, she completed a master's degree from Towson University. Then, in 2007 she got a doctoral degree from an unaccredited online institution.

Two years later, she filed for bankruptcy. She was then 63 years of age and owed a total of \$339,361. The U.S. Bankruptcy Court for the District of Maryland recently ruled that the woman had proven that repaying the debt would result in an undue hardship for her.

In his ruling, Judge Robert Gordon recognized that the debtor's Asperger diagnosis was severe enough to prevent her from getting a job that would allow her to maintain a minimal standard of living.

In support of that conclusion, he noted that the

woman became overwhelmed when asked basic questions during her testimony.

"To expect Ms. Todd to ever break the grip of autism and meaningfully channel her energies toward tasks that are not in some way either dictated, or circumscribed, by the demands of her disorder would be to dream the impossible dream," he said in his opinion. ■

UNIVERSAL DESIGN

Quick tips for creating accessibility for all

Make physical accessibility in classrooms a priority

Q An instructor noticed that a student-veteran with two prosthetic limbs has problems getting around his classroom. The instructor suggested the student talk to disability services about the furniture layout in the classroom, but the student doesn't want to be regarded as having a disability. What can I do?

A Sometimes tables and chairs are placed too close together in classrooms. The result is that people with physical impairments, those who are overweight, and pregnant women can't easily navigate those spaces.

You don't have to wait for this student to register with your office to ask facilities officials to ensure that furniture in all classrooms doesn't hinder mobility for those who use wheelchairs or have other physical impairments. Request that they start with this classroom to help the student-veteran. ■

BEYOND ACCOMMODATION

Show residence life staff how to react to students' mental health issues

Michigan State University has a mental health response protocol that shows residence life staff exactly what to do when students seem to be experiencing mental health problems. Ensuring that your residence life staffers know how to respond when students are experiencing such problems can keep students from reaching their breaking point.

Once Michigan State residence life staffers observe or hear about behavior that may signal mental health issues, they talk to the students reported about what's going on in their lives. From there, the staffers contact other administrators who help determine the students' level of distress and the best course of action for getting them the needed mental health assistance. ■

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.

Accessibility

- Complainants allege that various buildings and facilities were inaccessible to those with mobility impairments..... 10

Accommodation

- A student with dyslexia claims discrimination after being dismissed from a program for poor performance 11

Discrimination

- A student alleges discrimination after being withdrawn from a program and being denied readmission 12

undertaken after June 4, 1977.

The standard for existing facilities does not require that a university make each building or facility accessible if alternative methods are effective in providing overall access to the program activity.

But new construction or renovated facilities must be designed and constructed in such a manner that they are readily accessible to and usable by individuals with disabilities. Also, for new alterations that affect, or could affect, facility usability, Section 504 requires that, to the maximum extent possible, the facility be altered so that each altered portion is readily accessible to and usable by individuals with disabilities.

The complainants alleged that the following facilities were inaccessible: (1) undergraduate and graduate dorm rooms; (2) the alumni building; (3) one dining hall; (4) bathrooms in several buildings; and (5) a kitchen in one graduate dormitory. They also claimed that certain crosswalks and curbside ramps posed a danger to students in wheelchairs.

University officials responded promptly to OCR's initial notification letters regarding the complaints and began making appropriate modifications to campus facilities even before receiving a full data request from OCR.

They also expressed interest in reaching an agreement to assess broader campus accessibility, make necessary changes, and resolve the concerns brought to its attention by the students' complaints.

The institution already took steps to provide accessible dorm rooms in the student residence halls and in the Information Technology Department to ensure that students entitled to graduate-level computer privileges had 24-hour Internet access in their dorm halls and access to a public computer on the first floor near the accessible rooms.

Finally, officials at the university already repaired the curbside ramps and removed parking spaces from crosswalk areas on campus to improve visibility for individuals in wheelchairs and motorized scooters.

OCR also entered into a resolution agreement that calls for the university to bring its facilities to appropriate accessibility standards. ■

ACCESSIBILITY

University rushes to fix facilities to comply with students' needs

Case name: *Letter to: Bob Jones University*, Nos. 11-11-2014, 11-11-2021, 11-11-2030 (OCR 09/21/11).

Ruling: The Office for Civil Rights entered into a resolution agreement with Bob Jones University to resolve accessibility concerns expressed in three complaints filed by students.

What it means: Under Section 504 of the Rehabilitation Act, no qualified individual with a disability shall, because of lack of accessibility at a postsecondary institution, be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination in its educational programs or activities.

Summary: OCR investigated three complaints against Bob Jones University alleging that some students were subjected to discrimination on the basis of disability. The complainants claimed that various buildings and facilities were inaccessible to persons with mobility impairments.

Section 504 of the Rehabilitation Act provides two standards for determining whether a university's programs and activities or facilities are accessible to individuals with disabilities.

One standard applies to existing facilities while the other applies to new construction or renovations

Have info about
a disability-
related case or
OCR letter



You can contact Legal Editor Aileen Gelpi, Esq., via phone at (561) 624-1345 or via email at aigelpi@wiley.com.

ACCOMMODATION

Retaliation claim falls flat in face of lawful reason for student's dismissal

Case name: *Letter to: University of Illinois at Chicago*, No. 05-112107 (OCR 08/02/11).

Ruling: The Office for Civil Rights concluded that although the University of Illinois at Chicago discriminated against a student by denying her necessary auxiliary aids, it did not retaliate against her after she complained to the institution's Office for Access and Equity.

What it means: To establish a retaliation claim, a postsecondary student must provide evidence that (1) he engaged in protected activity; (2) the institution knew of this activity; (3) the institution took adverse action directed at the student at the same time or after the protected activity; and (4) a connection between the protected activity and the adverse action could be inferred.

Summary: OCR investigated a student's allegation that she was subjected to discrimination on the basis of disability (dyslexia) when she was enrolled in the Urban Health Post-Baccalaureate Admission Program of the University of Illinois' College of Dentistry.

The UHP created the Post-Baccalaureate Program to provide a select number of unsuccessful urban applicants to the dental college an opportunity to improve their test scores and strengthen their academic background in the sciences. Applicants who successfully completed the program were admitted to the dental college for the following year.

The year-long program consisted of three tiers:

1. Tier I was a two-month summer program where participants took a commercial test preparation course for the Dental Admission Test. The average DAT score for program participants was 16.

2. Tier II lasted 32 weeks, beginning in the fall semester following Tier I. It prepared students with courses in anatomy, biochemistry, public health, general microbiology and cell biology. These courses were offered by the university's undergraduate faculty. Participants were required to maintain a 3.00/4.00 cumulative GPA throughout this tier.

3. Tier III was an intensive, six-week course called the Summer Prematriculation Program. It covered anatomy, biochemistry, histology and physiology. These courses were taught by staff from the College of Medicine. Students' performance in this program weighed heavily in the admissions determination for the dental college.

The complainant had trouble with the program

during the second tier, when she failed the first exam. Soon after, she requested academic adjustments for her dyslexia. But at the end of the first semester in Tier II, the complainant was dismissed from the program because she earned an F in anatomy and a D in biochemistry.

She filed a discrimination complaint with the Office for Access and Equity, asserting that necessary academic adjustments were not provided.

As a result, she was allowed to re-enroll with reasonable auxiliary aids and extra lab time. Her failing grades were removed and she was allowed to retake Tier I. However, the complainant received the lowest grade among the 11 participants for the following two tiers and was not offered admission to the dental college.

She claimed that she was denied admission in retaliation for filing complaints with the OAE.

But OCR concluded that although she was subjected to an adverse action (denial of admission) and a causal connection could be inferred from the timing of the adverse action, the university had a lawful reason for its action. As a result, OCR concluded that the complainant was not subjected to discrimination.

However, it found that the university had denied her appropriate academic adjustments and auxiliary aids when she first enrolled. The university resolved this noncompliance issue by entering into a resolution agreement through which it offered the complainant another opportunity to enroll in Tier I of the program. ■

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DISCRIMINATION

OCR finds fault with treatment of student with mental illness

Case name: *Letter to: Case Western Reserve University*, No. 15-11-2024 (09/30/11).

Ruling: OCR entered into a resolution agreement with Case Western Reserve University to resolve a student's allegation that he was involuntarily withdrawn and denied readmission because of his disability.

What it means: Under Section 504, the "direct threat" standard applies to situations where a university proposes to take adverse action against a student whose disability poses a significant risk to the health or safety of others.

Summary: OCR investigated a student's allegation that Case Western Reserve University discriminated against him on the basis of disability when it withdrew him from his program and later denied him readmission unless he agreed to certain conditions.

University officials explained that the student was involuntarily withdrawn because, based on his conduct and statements he made, they were concerned that he posed a risk of harm to himself or others.

The documentation provided to OCR officials indicated that university administrators believed the student suffered from a mental illness. As a result, he was withdrawn and provided assistance to return to his home in India.

He was denied readmission because his physician failed to note in the readmission documentation that

the student had been symptom-free for six months before applying.

OCR officials concluded that the university's "Emergency Medical or Behavioral Withdrawal and Readmission Policy and Procedures" were not in full compliance with federal disability laws and regulations.

The agency noted that only students with mental illness were required to complete a "Return to Campus Life" form — which included inquiries about the diagnosis, treatment, medications and the likelihood that the student posed a "substantial danger or risk to his or her own health ... [or] the health or well-being of another person."

The university agreed to enter into an agreement with OCR.

As part of that agreement, the agency required that the university: (1) notify the student that he was permitted to re-enroll in the program with no restrictions or requirements other than those that applied to all students; (2) revise the "Emergency Medical or Behavioral Withdrawal and Readmission Policy and Procedures" to ensure full compliance with Section 504; (3) report to OCR on the implementation of the revised policies and procedures; (4) publish the revised policies and procedures; and (5) train officials and staff on the revised policies and procedures related to the admission and readmission of students. ■

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			(signed) Susan E. Lewis, VP & Publisher-Periodicals		

AT A GLANCE

A review of this month's lawsuits and rulings

Personnel

- A campus police officer who suffered a stroke sues after not being allowed to return to his job 13
- A college employee with HIV claims that a supervising dean discriminated against him..... 14
- A patrol officer with emotional and mental health problems sues after being terminated 15

PERSONNEL

Plaintiff's failure to submit to exam doomed disability claim

Case name: *Pamon v. Bd. of Trustees of the University of Illinois*, No. 11-3016 (7th Cir. 05/23/12).

Ruling: The Seventh U.S. Circuit Court of Appeals affirmed the trial court's judgment dismissing Wade Pamon's disability discrimination claims against the University of Illinois.

What it means: An employer may require additional physical and medical tests before allowing an employee who has suffered a serious illness — such as a stroke — to return to work at full capacity.

Summary: In 2001, 13 years after becoming a campus police officer for the University of Illinois at Chicago, Pamon suffered a stroke. At that time, he began receiving disability benefits from the State Universities Retirement System.

By 2004, he could lift weights and use a treadmill. In 2005, when Pamon could run, he wrote to the university stating that he wanted to return to his former police job.

The campus police department explained that Pamon needed to obtain medical clearance.

Pamon's neurologist issued a written report stating that he showed "complete healing" and could return to work. Based on that report, a university nurse erroneously issued Pamon a return-to-work order, even though he had not undergone a required functional-capacity exam.

The university later scheduled three FCE appointments for Pamon, but each time he refused to attend because he allegedly believed that the exam was required only for on-the-job injuries. After he

refused to take the FCE, the police department neither called him back to work nor offered him any alternative employment.

In 2007, Pamon accepted a new job with the Illinois Department of Human Services and resigned from the university. He also stopped accepting the disability benefits.

In 2008, he began working for the Illinois Department of Financial and Professional Regulation.

In 2009, Pamon filed a suit against the university, claiming that it had violated the Americans with Disabilities Act by (1) failing to reasonably accommodate his disability; (2) failing to engage in an interactive process; and (3) impermissibly requiring an FCE.

The trial judge granted summary judgment for the university.

On appeal, Pamon contended that it was the university's responsibility to propose a reasonable accommodation once it knew that he wanted to return to work. But the ADA imposes the initial duty of informing an employer of a disability on the employee, the court stated.

It observed that Pamon had continually insisted that he had no physical limitations and could perform all the duties required of his former position. It also ruled that the neurologist's letter did not put anyone on notice that Pamon had a disability.

In an unpublished opinion, the panel also said that an ADA plaintiff must indicate to the employer that he desires an accommodation, but Pamon asked the board only to allow him to return to being a campus police officer, not for an accommodation.

Pamon alternatively argued that it was improper for the university to require an FCE because he had already obtained clearance from his neurologist and the university nurse.

But the court ruled that Pamon's condition required that he obtain an FCE before reinstatement. It explained that his stroke-related injury was serious; his disability leave lasted several years; and his desired position as a campus officer entailed strenuous physical demands.

The panel ruled requiring an FCE was reasonable, because it would have helped the university to make an individualized assessment of Pamon's ability to do the job. ■

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PERSONNEL

Supervisor may have to reimburse university for employee's dismissal

Case name: *Howard University v. Watkins*, No. 07-472 (D.D.C. 04/27/12).

Ruling: The U.S. District Court, District of Columbia denied the defendant's motion to dismiss Howard University's suit for reimbursement of a settlement it had to reach with an employee whose contract was not renewed.

What it means: An institution that has to litigate or settle an unlawful termination claim may have a cause of action against the supervisor who made the dismissal recommendation based on discriminatory reasons and failed to disclose the real reasons to officials.

Summary: In 1998, Belinda Watkins was named acting dean for student life and activities at Howard University. Two of the employees she supervised were Paulette Porter, an administrative assistant, and Daniel Goodwin, acting assistant dean.

In September 1998, Goodwin told Watkins that he was infected with HIV. Shortly thereafter, Porter allegedly embarked upon a harassment campaign against him. Although Porter's conduct was purportedly reported to Watkins, she took no action to stop it.

In addition, Watkins allegedly made statements about Goodwin to students that led some to believe he suffered from Acquired Immune Deficiency Syndrome.

Side effects from his HIV medication prevented Goodwin from arriving at the office at the regularly scheduled starting time. Watkins refused his request to allow him to arrive late to work and stay after the office closed.

In 2002, Watkins proposed that the university not renew Goodwin's contract. When asked by institutional representatives whether there were any issues with respect to Goodwin that might trigger issues of

civil rights, Watkins purportedly stated that the only reason she was recommending termination was because he had "behavior problems." She stated those issues included excessive socializing, disrespectful behavior, misrepresenting his position, and spreading rumors that Watkins had a drinking problem. Allegedly, Watkins did not tell anyone that Goodwin was infected with HIV.

After Howard did not renew Goodwin's contract, Goodwin filed suit against the university and Watkins, alleging various theories of recovery. The institution settled the entire case by paying Goodwin \$253,000.

In 2006, when Watkins resigned, the university sued her for reimbursement. It claimed that it would have renewed Goodwin's contract if it had been aware that Goodwin suffered from the HIV infection, or that Watkins had denied his accommodation request.

Some of the university's claims stated that Watkins had a duty to disclose that Goodwin was infected with HIV; Watkins and Porter had mistreated Goodwin because of his HIV and because of their belief that he was homosexual; Goodwin had been refused an accommodation for HIV; and the only reason she gave for recommending nonrenewal was behavior problems.

Watkins filed a motion to dismiss. She argued that the institution did not reasonably rely on her alleged misrepresentations because its lawyers had a duty to ask enough questions to satisfy themselves that her reasons for Goodwin's nonrenewal were both legally sufficient and non-retaliatory.

However, District Judge Richard Roberts ruled that the university had adequately stated a case, and denied the motion to dismiss. The case will continue. ■

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PERSONNEL

Judge rules temporary, unpaid leave was reasonable accommodation

Case name: *Diaz v. City of Philadelphia*, No. 11-671 (E.D. Pa. 05/10/12).

Ruling: The U.S. District Court, Eastern District of Pennsylvania dismissed the plaintiff's claims under the Americans with Disabilities Act, holding that a temporary unpaid leave was a reasonable accommodation for her condition.

What it means: For a patrol officer, mental health issues cannot be accommodated merely by emphasizing different responsibilities because such measures minimize the fundamental seriousness of the position's duties.

Summary: In 2003, Elisa Diaz began working as a patrol officer with the Philadelphia Police Department. In 2004, a supervisor allegedly conducted a lengthy campaign of sexual harassment against her.

She began getting medical treatment for anxiety, depression, insomnia, panic attacks and irritable bowel syndrome.

After she complained to a superior, Diaz was transferred to another district in the department. However, she claimed that others in the department retaliated against her for filing a complaint.

Her emotional and mental problems continued. In addition, her prescribed medications affected her concentration. After her request for accommodation, Diaz was brought inside to monitor prisoners in the Closed Circuit Television unit.

In 2009, Diaz unsuccessfully sought to have the

department declare that she was disabled as a result of the sexual harassment she had experienced, so that she could get injured-on-duty status, which would have entailed certain benefits.

In June 2009, when Diaz began seeing a new psychiatrist, her condition improved. He believed that she could return to full duty by early 2011. At her request, Diaz was placed on an unpaid medical leave of absence until December 2009.

At that time she was required to seek an extension of her unpaid medical leave but failed to do so. She claimed that she was unaware of that requirement.

In February 2010, the department terminated Diaz for failing to return after a leave of absence.

Diaz filed suit against the city. One of her claims was that the department did not provide a reasonable accommodation. The city filed a motion for summary judgment.

Diaz argued that allowing her to return to the CCTV unit would have been a reasonable accommodation that would have given her time to resolve her physical and mental problems so that she could return to duty as a patrol officer.

The judge ruled that even an inside job required substantial maturity and presence of mind, and said that monitoring prisoners was difficult and dangerous. He granted the city's motion for summary judgment. ■

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DISABILITY COMPLIANCE FOR HIGHER EDUCATION

QUICK STUDY

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

Accommodation**Overview**

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act require that reasonable accommodations be made for qualified students with disabilities. However, students bear the responsibility of disclosing their disabilities to their institutions and presenting required documentation. See how the Office for Civil Rights and the courts have ruled in recent cases involving accommodations for students with disabilities.

What You Should Know

- **Institutions may request documentation of a disability, but once it is received, they must make individualized determinations of the accommodations required by students with disabilities to participate in their chosen programs.**
- **Colleges are not required to waive academic requirements that would fundamentally alter the nature of their programs.**
- **Under certain state laws, subdivisions of the state are immune from suits for any damage to persons or property allegedly caused by any act or omission of the subdivision or its employees in connection with a governmental or proprietary function.**
- **Students who use accommodated testing should not be denied any benefits granted to their nondisabled peers taking the same exams in classrooms with their professors.**

Key Rulings

- A student claimed that an algebra professor failed to respond to his request for an academic adjustment after being informed that he had a disability. The institution entered into a resolution agreement to resolve the student's allegation and provide the student with academic adjustments as required by his disability. *Letter to: Milwaukee Area Technical College*, No. 05-11-2089 (OCR 08/12/11).
- A student with attention deficit hyperactivity disorder and epilepsy received accommodations for difficulties with comprehension, organization and time management. After being granted medical leave for conduct and academic issues, he sued, asserting that his college violated the ADA by refusing additional accommodation requests, such as more time on field work assignments. Because those requests would have fundamentally altered the nature of the program, a district court judge sided with the institution and dismissed his claims. *Reichert v. Elizabethtown College, et al.*, No. 10-2248 (E.D. Pa. 04/10/12).
- A student who requested the use of a Kurzweil Reader was told to see the director of adult education after class to learn how to use it. The director waited until students assembled for a meeting before discussing the aid. He then asked the student to sign a blanket medical release. She refused. Shortly after the director and the program coordinator questioned her as to whether she could complete the program because of her disability, she was dismissed. She sued. The court concluded that the defendants were immune from liability under Ohio state law. *Johnson v. The Washington County Career Center, et al.*, No. 2:10-CV-076 (S.D. Ohio 03/12/12).
- A student claimed he was wrongly denied the use of a graphing calculator for a final exam while his nondisabled classmates who took the same exam in the classroom with the professor were allowed to use graphing calculators. The institution agreed to resolve the allegation by allowing the student to retake the final exam using a graphing calculator in the disability services office and replace the grade he was given in 2009 with the new grade. *Letter to: Georgia Institute of Technology*, No. 04-10-2162 (OCR 04/13/11). ■