

Disability Compliance

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Successful Strategies for Accommodating Students and Staff with Disabilities

for Higher Education

VOLUME 18, ISSUE 3

OCTOBER 2012

TOP LEGAL CASES

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A student complains after being asked to pay a surcharge for the dorm she was provided as an accommodation. **Page 10**

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COVER STORY

Interactive process should be at center of your documentation practices

The Americans with Disabilities Act Amendments Act supports the growing trend of focusing less on specific diagnoses and more on the interactive process with students. So does the Association on Higher Education And Disability's new documentation guidance.

Inside, several members of *Disability Compliance for Higher Education's* advisory board explain how the interactive process fits into their documentation practices. They also share their thoughts on AHEAD's new guidance and how it is influencing their policies and procedures. **Full story, see pages 4–5.**

Use these tips

Regardless of how much or how little documentation you require, some tips from our board members can help improve your documentation practices. **See page 5.**

HIGHLIGHTS

Tackle challenges of running one-person unit head on

Andy Christensen, who serves as the sole coordinator of disability services at Carleton College, explains some of the challenges of running a one-person office, and how he tackles them. **Page 2**

UN Convention will make study abroad easier

The United Nations' Convention on the Rights of Persons with Disabilities is gaining steam, and it promises to make study-abroad opportunities more accessible for students with disabilities. **Page 3**

Prep programs can ease college transition issues

Students with disabilities can have a difficult time making the transition to college life. That's why more institutions are offering preparatory programs that aim to help make that transition easier for students. **Page 6**

Asynchronous online access helps those with LD, ADHD

Students with learning disabilities and attention problems tend to have a harder time than others in science, technology, engineering and math courses. But providing them with asynchronous online access to class content could help. **Page 7**

Running one-person unit challenging on various fronts

Andy Christensen is the coordinator of disability services at Carleton College. He is the only official assigned to his unit, and has presented in the past about how to manage the challenge of a one-person office.

Q What do you consider to be the biggest challenge of running a one-person unit?

A There are several. One big issue has been deciding how to appropriately portion my time, since there's no one else here to take away some of the tasks that end up on my plate.

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.

But perhaps a bigger issue is that as the sole practitioner of a one-person office, you have to make decisions without knowing what other practitioners would do in the same position. There's no one across the hall to bounce ideas off to confirm your conclusions.

Also, if you're a sole practitioner, you have to look outside your own office to identify someone that students can go to if they want to appeal one of your decisions. Students should never have to turn to the person who made a decision they're unhappy about for an appeal. But if you're the disability services expert on campus, it can be difficult to identify the right person for this role.

Q Have you found any good strategies for addressing the issues you just mentioned?

A Yes, but some of those strategies work better than others. For example, there have been times when I haven't been sure about something so I pose questions to the DSSHE listserv. However, you have to take responses you get from the listserv with a grain of salt. The people who have time to speak up

may not be the people whose opinions you necessarily want. And because each institution is different, different people may work under different philosophies and policies for handling disability-related issues.

I also have a few disability services providers from other institutions who I know well and respect, so if I really need someone to bounce something off, I can turn to them. It's so vital to make good professional connections. At the same time, it's important that my decisions be consistent with my college's policies, not those of another person's institution.

Of real importance to me has been ensuring that students aren't just coming back to me if they're unhappy with a decision I made. That has required taking time to train people outside my unit whose expertise isn't in disability services but who have an interest in serving students.

As for the time constraint, that's something that never goes away for sole practitioners. I'm fortunate to have student-workers who can do things like scan books for me. My college also made the decision that as far as accommodated testing, it's enough that students leave their things in a cubby hole and work alone in a room, so I don't have to be present to proctor exams.

That frees up some of my time for more important tasks like making decisions about accommodations and communicating with the people responsible for implementing them.

For more information, you may contact Andy Christensen at anchrist@carleton.edu. ■

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Convention will expand protections for those studying abroad

By Allan L. Shackelford

On July 26, 1990, President George H. W. Bush signed the Americans with Disabilities Act into law, making the United States the first nation to adopt a comprehensive civil rights law protecting persons with disabilities. On Dec. 13, 2006, the United Nations General Assembly adopted the language of the UN Convention on the Rights of Persons with Disabilities.

The CRPD is the first legally binding, international treaty with comprehensive protections for the rights of persons with disabilities. The rights and protections outlined in the CRPD mirror those afforded under the ADA and will enhance the opportunities for Americans with disabilities to work, travel and study abroad. The process of ratification began in March 2007, and 117 nations have already ratified it. Ratification is currently pending before the U.S. Senate.

Under the CRPD, signatory parties are required to adopt legislation to abolish discrimination and promote the rights of individuals with disabilities. Those rights are applicable to entities in both the public and private sectors. The CRPD requires no changes to existing disability laws in this country. Resource documents detailing the impact of the CRPD are available on the Mobility International USA website, www.miusa.org.

Article 24 of the CRPD is titled "Education." It states that parties to the convention "shall ensure an inclusive education system at all levels and [enable] persons with disabilities to participate effectively in a free society." It requires nations to focus on communication methodologies, technological platforms and educational techniques that support persons with disabilities. It also requires parties to "ensure that reasonable accommodation is provided" to meet these obligations.

Institutions in the U.S. that operate or partner in study-abroad programs already had a duty and obligation under Section 504 of the Rehabilitation Act and the ADA to provide accessibility and accommodations to students participating in their programs. Study-abroad administrators often seek to identify specific programs and program locations that can provide the level of accessibility necessary to meet the needs of a particular student.

In certain instances when this obligation was not met, students filed complaints with the Office for Civil Rights and/or disability-related lawsuits to seek redress for such failings. Other legal claims in such situations

have included breach of contract, breach of fiduciary duty, negligence, fraud, negligent misrepresentation, and intentional infliction of emotional distress.

While such claims will still be available to students, the CRPD will help to ensure that institutions, companies and other entities involved in study-abroad programs in other countries will be more proactive and responsive in addressing disability-related issues because of their own potential liabilities under the laws of their respective countries.

The CRPD may impact the rights of students going abroad, as well as the legal duties and obligations related to various articulation agreements and other contractual relationships between your institution, insurance carriers, partners in study-abroad programs, and other providers of study-abroad services. Therefore, it is important to consider the following when considering study-abroad programs and related legal instruments:

- Review, discuss and assess the impact the CRPD may have on institutional risks and potential legal issues, as well as on specific programs located in particular countries. Include your legal counsel, relevant service providers and insurance carriers in the conversation.
- Determine whether the country in which a particular program is located is a signatory party to the CRPD. In conjunction with your legal counsel, review the existing disability-related laws of the host country and how they may impact the rights and protections of students requiring disability services.
- Ensure that contractual agreements with institutions and other entities providing study-abroad opportunities for your institution's students include language acknowledging the existence of the CRPD and the legal rights and protections afforded to students with disabilities in the particular country in which a specific program is located.
- Include information about a particular country's disability-related laws and regulations in orientation programs for students with disabilities who are preparing to attend programs in that country. In most instances, it might also be helpful to proactively provide such information to their parents.
- Identify legal counsel located in close proximity to study-abroad locations who might be contacted by your institution or a student to represent the student's interests if a disability-related issue arises. ■

About the author

Allan L. Shackelford is an attorney and a higher education consultant who has presented to national audiences on various higher education topics. Email him at allanshackelford@yahoo.com. ■

Interactive approach at center of good documentation practices

In recent years, and more recently with the passage of the Americans with Disabilities Act Amendments Act, some disability services providers have been moving away from the practice of requiring students to submit diagnostic documentation before providing accommodations. The Association on Higher Education And Disability's new documentation guidance, released this summer, supports a move in that direction. Below, members of *Disability Compliance for Higher Education's* advisory board share their documentation practices and their thoughts on AHEAD's documentation guidance.

Q What are your disability services unit's documentation practices?

Tom Thompson: When I was at Harper College, we were already moving in the direction of asking for less documentation from students, particularly when it was obvious that students requesting accommodations needed them.

We were getting documentation from the secondary system that was hardly ever comprehensive, and that's just what we had to work with. In those instances when additional documentation wasn't available, self-reports and past accommodation history was often enough to evaluate requests. Accommodations are often dependent on the receipt of certain pieces of documentation, except when students are deaf or blind or have some other visible impairment. But our philosophy was that documentation should not hold up accommodation decisions.

Maria G. Pena: We ask students to submit as much documentation as they have to get as comprehensive as possible an idea of their functional limitations and accommodation needs.

The problem I have with requiring less documentation is that students often ask for accommodations above and beyond what their conditions necessitate. In those cases, it's really imperative that we have as much documentation as possible so that we can make the correct determinations.

For example, students may be used to getting certain

accommodations in the K–12 setting, and both they and their parents want them to continue receiving those same accommodations. But in the K–12 world, the focus is on student success, whereas in higher education, it's equal access. So sometimes, those accommodations that students received in high school really aren't reasonable in the college setting. It may take diagnostic information to make that decision.

Pamela Moschini: At Muhlenberg, we've been using a comprehensive approach to documentation for a long time. That's included not just requiring official psychoeducational and medical evaluations, but also conducting in-depth interviews with students. We take into account the entire available body of evidence when considering accommodation requests.

We not only take students' comments about their own conditions into account, but we also sometimes ask for statements from family members who may provide valuable insights not available anywhere else.

We've always decided things on a very individualized basis. For instance, if a student has documentation that is a bit older than we'd like but there is supporting evidence of a past accommodation, we'll accept the older documentation.

Stefani Rosenstein: When it comes to the age of documentation, we follow a three-year rule. But we also have an interactive approach for working with students and take everything they say into consideration.

Tom Heffron: We have a documentation guide

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Use these tips to improve your documentation practices

When it comes to disability documentation, institutions' practices can vary wildly. However, the practices below, suggested by members of *Disability Compliance for Higher Education's* advisory board, can be useful regardless of how little or how much documentation you require students to submit:

> **Start with student interviews and go from there.** If you feel that you need certain pieces of documentation to make a good accommodation decision, don't be afraid to ask for them. However, ask only after you've spoken with students at length and gotten their own description of their impairments and accommodation needs. The key is to put students themselves at the center of your accommodation process, not pieces of paper.

> **Avoid making the accommodation process burdensome for students.** If the amount or type of documentation you require students to submit to qualify for accommodations is burdensome for them, you are essentially depriving them of their rights under disability laws. The Americans with Disabilities Act Amendments Act puts less focus on diagnoses and more on simply addressing individuals' functional impairments, so your documentation policies should reflect that.

> **Be ready to defend your decision when denying an accommodation request.** That may mean asking for more than a student's self-report of his condition and accommodation history when you feel that a request is unwarranted. When you're saying "no," you should be able to show there's adequate justification for the decision.

> **Seek guidance when in doubt.** Disability laws' interpretation can be highly subjective, so if you're unsure as to whether something is in violation with the ADA or the Rehabilitation Act, call your regional Office for Civil Rights. For contact information, see www.hhs.gov/ocr/office/about/rgn-hqaddresses.html. ■

created in 2003 and updated in 2011 that all of the institutions in the Wisconsin Technical College System go by. It advocates for a comprehensive approach to documentation that takes into account interaction with students but also the type of formal documentation that has traditionally been required of students.

Many of our students will be eventually taking licensing and other standardized exams, and testing agencies tend to require extensive diagnostic documentation, so we're not asking them for anything they won't need to have anyway if they plan to seek accommodations in standardized tests. I think it's valid to ask for anything that can help us in making accommodation decisions, and then relying on our professional judgment when specific types of documentation are unavailable.

Q How do you feel about the new AHEAD documentation guidance?

Moschini: I think a key problem with the AHEAD guidance is that it is not very clear, at least on first read, and as a result it has confused a lot of people. The guidance supports using different sources of information as documentation, and that's something that I believe most people are already doing.

Our own practices won't change as a result of the AHEAD guidance. What I will probably do is rework the language we use to make it clear that student interaction and self-report is an integral part of the process.

Heffron: I've been pretty vocal about the AHEAD guidance because I think it has confused practitioners more than anything else. It seems to endorse

accepting fuzzy documentation, whereas I believe that taking a comprehensive approach to documentation allows us to make the best possible decisions.

Thompson: Having been on the AHEAD board when the new documentation guidelines were created, I can provide some insight into that process. It was not the intent of the guidelines' authors to say that disability services providers should stop asking for documentation and rely solely on self-reported information. Rather, they wanted to express that the accommodation process should not be held up by a lack of documentation, and should focus more on the interactive process between DS providers and students.

You can request documentation, but that should be a secondary or tertiary step that follows an extensive interview with students.

AHEAD also wanted to convey that requiring recent documentation — at least when it comes to conditions that are not changing — can pose an undue burden for students.

The bottom line is that a lot of the more common accommodations we provide can be provided with a whole lot less review by simply listening to students' accounts of their impairments and history of what has or hasn't worked for them in the past.

Pena: One thing to remember is that the AHEAD guidance is just that — guidance. It is not federal interpretation of the laws governing disability services. So we need to be very careful to continue to work within the bounds of the laws. When in doubt, the Office for Civil Rights is always there as a resource. ■

Prep programs help students with disabilities make the transition to college

By Elizabeth C. Hamblet

College transition experts emphasize how important it is for students with disabilities to learn about the college environment before they enroll so that they know what to expect. Some institutions help students gain this knowledge through summer- or semester-long preparatory programs.

If students with disabilities are arriving at your institution with unrealistic expectations or lack of preparation for college life, starting such a program may be a good idea.

Cumberland County College offers freshmen a three-credit learning strategies course. The class teaches students how to self-advocate, and it helps them understand the difference between accommodations in the high school and college setting, said Meredith Vicente, the assistant director of disability services. It also teaches students learning strategies to help them succeed academically, added Vicente, who also teaches the class.

A pilot program during the academic year was funded by a Title III grant. CCC also offered the class in the summer, but with an increased emphasis on math. That course offered students practice with MyMath Lab, and covered reading, note-taking, test-taking and time-management strategies.

Students who took the class also got to work on their self-advocacy skills and learn what their psycho-educational reports meant. And they learned about available disability services and accommodations, plus how to communicate their needs to professors.

Those enrolled had to be willing to meet with Vicente frequently, follow disability services procedures, and have Vicente as their advisor for their first year of college. They also had to agree to get tutoring during their freshman year if they placed in developmental courses.

Three years ago, Mercyhurst College started Foundations, a summer program for students with Asperger syndrome. Dianne Rogers, who heads that program, said it was started because students on the spectrum had different needs than those in the existing Learning Differences program, which she also leads.

The Foundations program is part of the Asperger Initiative at Mercyhurst, which aims to equip students on the spectrum with campus competencies they often lack. As part of AIM, students can attend

mini lessons presented by professors. They also participate in activities such as bike rides and beach trips, which promote socialization skills.

Mercyhurst evaluates students' academic readiness for college by having them enroll in a college class. To

evaluate their social readiness, officials determine students' "AIM GPA," which assesses independence, responsibility and behavior.

The University of Connecticut's UCPREP program is focused on college transition and is open to interested students from any institution. The program lets students experience college life before actually enrolling in college, according to Elisabeth Werling, the program coordinator;

and Jacqueline Santiago, the regional campus coordinator of Services for Students with Disabilities.

Students live on campus during the summer and participate in academic and personal skill training led by staff of the institution's Center for Students with Disabilities. They also attend lectures taught by university faculty and enjoy social activities on campus.

Students accepted to UConn can also access the Husky GPS program, which students complete entirely online.

During the first week, participants become familiar with available services, talk to a disability services provider, and work on their self-advocacy skills. In the second week, students are asked to focus on the skills they need to participate in college life and to get acquainted with available campus resources, such as the writing and math centers. They also become familiar with activities such as club sports and student organizations. During the third week, they learn about dealing with roommate challenges, adopting healthy living habits, and preparing for the start of school, with a focus on time management and reading their class syllabi.

Clearly, those types of programs take quite a bit of planning and development. And as all of these examples show, you have to make sure you have various activities and expectations for students with different needs. But creating a preparatory program can be a great way to ensure that students with disabilities are ready to tackle college life when they arrive on your campus. ■

About the author

Elizabeth C. Hamblet is a learning specialist in Columbia University's disability services office. She also writes and presents regularly on the topic of transition to college for students with learning and attention disorders. *Email her at echamblet@gmail.com.* ■

Asynchronous online access to class content aids students with learning, attention problems

Students with learning disabilities and attention problems tend to have a harder time with science, technology, engineering and math — or STEM — courses. But providing students in these types of courses with asynchronous online access to class recordings as an accommodation could help them succeed.

That's according to Chester Goad, the director of disability services at Tennessee Technological University, and several of his colleagues. They presented their results in the *Journal of Postsecondary Education and Disability*.

First, the researchers collected data through interviews with 11 student participants who had either LD or ADHD as part of their study. The participants were taking STEM courses that made use of asynchronous access to digital recordings.

The researchers then conducted a cross-case analysis to compare the feedback that students provided in six different areas, including clarity, organization and convenience. Overwhelmingly, students reported that asynchronous online access enhanced their learning.

If your faculty members are open to the concept of universal design, explaining how asynchronous class content can help students succeed may encourage them to explore its provision for all students. That's important for ensuring that students who have not registered with your DS office but who have learning disabilities or attention problems can still get the benefit of this strategy.

Instructors can provide access to recordings of annotated digital whiteboard or Tablet PC notes, PowerPoint slides and lecture audio. Students can then access these recordings from any computer following the class session. And they can rewind and listen to them repeatedly, or stop the recordings while they take down notes.

Just as importantly, students can access visual content while simultaneously accessing the associated audio component. So, for instance, if an instructor is solving an equation using a Tablet PC, the students can view a recording of him solving the equation while also listening to the recording of him explaining how to solve it.

Students in the survey reported that their note-taking abilities became less of an issue because if they missed something, they could just go back to the recordings and take notes on the content they initially missed during class, added Laura Graves, one of the researchers in the study, who is an assistant professor at the university.

Help students reap benefits of class content recordings

Students with learning disabilities and attention disorders often require the need of note-takers and class recordings in the classroom. However, providing all students with asynchronous Web access to class content can reduce those students' need for accommodations and help all students learn better.

Chester Goad, the director of disability services at Tennessee Technological University; and his colleague Laura Graves, an assistant professor at the institution, explained that getting instructors to provide students with asynchronous Web access to audio and visual class content requires first and foremost their appreciation of universal design. They suggested talking to them about how asynchronous online access to the information they present in class can help not just students with LD and ADHD, but also students who may take notes slowly or who may have other undiagnosed conditions.

Explain how such universal design strategies can result in fewer failing students and higher content comprehension.

The pair also suggested training faculty members on how to provide students with recordings. Teach professors how to use different technologies for providing students with recordings of class lectures and accompanying presentation slides or notes. Existing trainings for new employees are a good place to start.

During training sessions for faculty, put them in their students' place by having them participate in activities that require them to look at visual content while also following what's being said and taking notes that capture everything going on, Graves suggested. Then have them take notes with their nondominant hand to show them how easy it is to fall behind on note-taking.

Lastly, work with students to ensure that those who register for your office know of any class sections in which instructors provide asynchronous access to classroom content. That way, they have the choice of signing up for those sections in which they are more likely to succeed, Goad said. ■

"There were students who said things like, 'I'm a little ADHD, so allowing me to go back and listen to things over and over again really helped me,'" Goad said.

For more information, you may contact Chester Goad at CGoad@tntech.edu or Laura Graves at lgraves@tntech.edu. ■

Overcome challenges of budget cuts with proven strategies

You know the feeling of dread that accompanies the challenge of cutting your disability services unit's budget — again. But do you know how to make that seemingly impossible task lead to the best possible outcome, given the circumstances?

Some college and university administrators who have been struggling right along with you through these difficult times have discovered some strategies to help manage cuts while protecting the interests of those who matter most — their students. The following are some of those strategies.

1 Plan ahead. Making incremental cuts as part of an advance planning strategy can make funding reductions less painful, said Larry W. Lunsford. He's learned this over the years as Florida International University's associate vice president for student affairs and university ombudsman.

The ongoing state cuts have been so drastic that FIU and other state institutions have stopped calling themselves "state-funded," switching instead to the more telling "state-assisted" terminology. "It's been tough," Lunsford said.

Making cuts during the past five years helped prepare for future cuts. "We've been making those cuts anticipating things would not get better — and they haven't," Lunsford said. "I think it softened the blow."

2 Build a cushion. Douglas R. Pearson, the vice president and dean of students at Mercer University in Georgia, uses a similar approach.

"I told my directors every year to set aside 10 percent as a contingency," he said. "That's been a very important tactic to deal with cuts. That may seem impossible to do when your budget is already being cut, but find little ways here and there to build a small contingency fund. It will come in handy when more budget cuts are announced later."

3 Eliminate waste. You might avoid more painful cuts by uncovering areas of waste. "Find out where your money is going right now," Pearson advised. "A lot of times people don't understand they're paying for things they're no longer using — just because they've always been in the budget. I'm always amazed when directors are unaware of what they're paying for."

You might be paying for phone lines that haven't been used for years or Internet connections that are no longer needed because of wireless systems. Check phones in offices. You might also be amazed by how much you're overpaying for contracted services and products. So renegotiate contracts with vendors and check your inventory before placing orders, instead of keeping a standing order for items you might already have in stock.

MANAGING YOUR OFFICE

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

4 Connect to institutional goals. Because you compete with the rest of the institution for funds, find ways to tie your requests into institutional strategic plans, student surveys or retention studies. "If you can bolster retention efforts or show that your staffing or programs can positively impact any of those plans or goals, you increase your chances of getting more funds," Pearson said.

5 Pool resources. Collaborating with faculty and other departments and agencies to find and request new funds can also help, Pearson and Lunsford said. Near the end of each fiscal year, the FIU budget director asks student affairs

departments with remaining funds to share with departments in need.

For example, a department didn't have enough in its budget to send a staffer to a conference, so another department pitched in. It benefits everyone because departments usually like to show they spent all their money to justify their budget for the next year, Lunsford said. But some funds can't be transferred or commingled, so first find out what's allowed, he added.

6 Bring it in-house. You can't cut some necessities completely, but you can trim costs. For example, if your offices need painting but professional painters are too expensive, buy your own paint and ask staff members and students to help. It worked for Pearson.

And when staff members need training, travel expenses to a major conference can overwhelm a tight budget. Pearson found that becoming a host site solved the problem. "It saved costs and gave us institutional visibility," he said.

7 Start fundraising. "Think of ways to generate external funds," suggested Brian L. Haynes. He's the vice president for student affairs at Clayton State University. The money you bring in through fundraising can take the blow out of the money you're losing to budget cuts. Look to members of your institution's development office, who may be willing to help. ■

Counsels seek OCR guidance on ‘direct threat’ definition

Recently Lisa Wahler, the associate general counsel at Rutgers, the State University of New Jersey, and three other institutions’ general counsels asked the

Office for Civil Rights for guidance regarding the new “direct threat” definition.

Wahler and her peers gave voice to the general consternation in the higher education community regarding the impact of eliminating “threat to self” from Title II’s direct threat definition.

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.

“I’m hopeful that guidance will come out,” Wahler said. “The people with whom we spoke at the Department of Education seemed receptive to our concerns.”

The primary concern is that by leaving students with self-harming behaviors outside the legal definition of direct threat, higher education officials will not be able to help them — or pressure them — to seek help. Those students are usually in good academic standing, and the conditions that cause their self-harming behaviors are now protected under federal disability laws and regulations, so postsecondary institutions can do little to nothing to help them get better.

Because the campus counsels who spoke with OCR officials expect to get guidance from the agency, “we believe that developing new policies for dealing with these students is premature,” Wahler said. “And I don’t believe that any institution will fail to do what’s in the best interest of the students, even in the face of this new definition.”

“What the OCR seems to be saying is that we can intervene with these students, but that any intervention must comply with due process standards,” Wahler said.

“At Rutgers, we don’t talk about sanctioning students for self-harming behaviors,” she said. However, if their behavior violates the conduct code, then they do sanction. “But we want to find a way to provide

the support these students need,” she added.

Wahler noted that self-harming behaviors wax and wane. “That’s why we monitor the students and intervene when we see that they are in crisis,” she said. “We may place them on an involuntary suspension or withdrawal, but the measure is not considered a sanction. [Suspension or withdrawal] comes only after a doctor has confirmed that staying in school and following a plan for recovery are exclusive of each other,” Wahler said. ■

UNIVERSAL DESIGN

Quick tips for creating accessibility for all

Heavy accent can be problematic for all students

Q A student with attention deficit hyperactivity disorder has complained that a professor’s heavy Russian accent makes it difficult for her to stay focused on what he’s saying. What can I do to help?

A Heavy foreign accents require extra concentration on speakers’ words. So while ADHD would definitely make it particularly difficult for this student to stay focused on the instructor’s words, it’s likely that other students are also having the same problem, regardless of whether they have any type of disability.

A note-taker may be of benefit to the student. However, if the student wouldn’t otherwise need a note-taker’s assistance, consider a more universal strategy. Talk to the instructor about how to help ensure students are absorbing critical information. Encourage him to share presentation slides and copies of his own notes with all students, and set aside time at the end of each class period so students can ask him to repeat information they may have missed. ■

BEYOND ACCOMMODATION

Help students with disabilities prepare for life after college

Virginia Commonwealth University’s Academic and Career Exploration: Individual Techniques! program was created out of a desire to ensure that students with disabilities graduate knowing exactly how they will function in the workplace.

The program — dubbed ACE-IT! — allows students to discuss any problems they foresee encountering in the workplace, plus possible solutions, with university staff.

They also learn how coping strategies that they may already be using in the classroom — such as time management skills — can be transferred to the workplace. ■

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.

Accommodation

- A student complains after being asked to pay a surcharge for the dorm she was provided as an accommodation..... 10

Discrimination

- A student alleges that she was wrongly denied access to auxiliary aids and services..... 11

Policies & Procedures

- A student says her institution discriminated by denying her request for a course substitution or waiver..... 12
- A student claims that one of his instructors failed to implement the accommodations he was approved to receive 12

ACCOMMODATION

OCR finds fault with extra charges for rooms for students with disabilities

Case name: *Letter re: State University of New York at Potsdam*, No. 02-11-2062 (OCR 08/09/11).

Ruling: The Office for Civil Rights concluded that the State University of New York College at Potsdam was not in compliance with federal disability laws and regulations because it was charging a surcharge to students with disabilities who required special residence hall accommodations. The university entered into a resolution agreement with OCR to resolve the noncompliance issues.

What it means: Colleges and universities may not exact surcharges from students with disabilities who require special residence hall accommodations, such as living alone in a standard double room or in a medical single room.

Summary: OCR investigated an allegation that SUNY Potsdam discriminated against a student on the basis of her disability when it required that she pay a surcharge for the dormitory room it provided as an accommodation for her disability.

The complainant alleged that the university charged her an extra \$725 per semester for the double room that was approved to accommodate

her disability (reflex sympathetic dystrophy).

OCR found that the university had a variety of housing options from which students could choose. Those options included a "medical single," a standard double, a suite, a "super single" located either in a double room or a suite, an apartment or a townhouse.

Students with medical conditions could apply for a medical single by submitting a request in writing with supporting documentation to the Campus Life Office.

The necessary documentation included a note from a licensed health care provider describing the nature of the condition and the reason for requiring a single room.

A medical single was a single room approximately 50–60 percent the size of a standard double. This type of room was not available to nondisabled students, unless there were unoccupied medical singles in a semester. In that case, nondisabled students could occupy those rooms at the same rate paid by students with disabilities.

The complainant requested a medical single. After finding that she was assigned to a residence hall far from her classes — which would be a hardship because her disability impaired her mobility — she requested and was assigned a standard double without a roommate in a residence hall closer to her classrooms.

She was charged the same amount the university would charge a nondisabled student to live alone in a standard double room, rather than the charge for a medical single.

OCR concluded that charging the student the same rate as nondisabled students and charging an additional \$50 per semester for students with disabilities who chose to live in medical singles violated their rights under federal disability laws and regulations.

The university agreed to resolve the complaint by entering into a resolution agreement. It included a reimbursement to the complainant for the additional money she paid for the standard double and a revision of the room-rate policy for medical singles.

The new policy would reflect that students with disabilities who required those rooms as an accommodation would not have to pay a surcharge. ■

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.

DISCRIMINATION

College must answer for unjustified denial of student's accommodation request

Case name: *Letter re: Tulsa Community College-Metro Campus*, No. 07092064 (OCR 07/22/11).

Ruling: The Office for Civil Rights concluded that Tulsa Community College's Metro Campus did not comply with federal disability laws and regulations when it refused a request for extended time on assignments to a qualified student with a disability who submitted all required documentation. The college entered into a resolution agreement to resolve the complaint.

What it means: The determination to deny a requested accommodation to a qualified student with a disability must be based on (a) the student's failure to provide adequate documentation; (b) the fact that the requested accommodation was not related to the disability; or (c) an individualized determination by the institution that the requested adjustment would eliminate or lower essential requirements or fundamentally alter the academic program.

Summary: OCR investigated a complainant's allegations that Tulsa Community College's Metro Campus discriminated against a student on the basis of disability by denying her access to auxiliary aids/services and academic adjustments.

The student also claimed the institution did not have grievance procedures that incorporated due process standards and provided for the prompt and equitable resolution of students' disability discrimination complaints.

After an investigation, the agency concluded there was sufficient evidence to find that both allegations had merit. OCR found that under the college's procedures, students requesting accommodations had to provide documentation from a qualified clinician to support their request.

Each campus had a disability services liaison for students to coordinate services where they attended class. The DS services office could be used for studying, tutoring, and additional academic support services. Students were allowed to register on their own or they could be referred by their parents, college staff members or community agencies.

The complainant self-identified with hyperacusis, fibromyalgia, osteoarthritis, depression, and degenerative bone joint disease. She requested a note-taker, a tape recorder, private/extended testing, and extended time for assignments.

OCR found that the complainant received most of

the requested accommodations, except for extended time for assignments.

The DS manager stated that extra time to complete assignments was not an approved accommodation allowed by the college. The manager also said that the request was denied because the college believed that the role of postsecondary institutions was to prepare students for real-life vocations where time extensions would not likely be allowed. As a result, she instructed the student to request the accommodation directly from the professor.

OCR concluded that although the complainant received most of the requested and necessary aids and accommodations, the denial of extended time for assignments violated her rights under federal disability laws and regulations.

The agency found fault with the fact that the denial was not due to a lack of documentation or that the accommodation was not related to her disability. Additionally, OCR faulted the college for failing to make an individualized determination that the academic adjustment would eliminate or lower essential requirements or result in a fundamental alteration of the academic program.

The college entered into a resolution agreement addressing the student's specific complaint and providing for a review and adoption of new policies and grievance procedures for disability-related complaints. ■

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POLICIES & PROCEDURES

**Student gets 2nd chance
to request course waiver/substitution**

Case name: *Letter to: University of Baltimore, No. 03112055 (08/10/11).*

Ruling: The University of Baltimore entered into a resolution agreement to resolve a disability discrimination complaint filed by a student who was denied a waiver or substitution of a math course.

What it means: Determinations regarding essential course or program requirements must be based on a reasoned deliberation by an individual or individuals with relevant training, knowledge and experience in the subject area/course of study.

Summary: OCR investigated a student's allegation that the University of Baltimore discriminated against her on the basis of disability when it denied her request for a substitution or waiver of a math course.

The university agreed to enter into an agreement to resolve the complaint. Among the actions the university agreed to take were:

1. Modifying its policy and process for determining whether qualified students with disabilities are entitled to course waivers or substitutions. The policy will specifically include course waivers, in addition to course substitutions, to cover those instances where substitutions are not available.

2. Outlining in the policy the bases for which course substitutions or waivers may be granted. The following elements must be part of the policy:

- An interactive process with each individual.
- Consideration of any reasonable modification or adjustment that would enable the applicant to meet essential program requirements.
- Assurance that any determination regarding essential course/program requirements will be based on a reasoned deliberation by an individual with relevant training, knowledge and experience in the subject area or course of study.
- Elimination of all provisions requiring that prior to, and as a condition for, obtaining a course substitution or waiver, the student must have attempted the course at least twice and received a grade of D or F; must have accessed all reasonable and appropriate accommodations based on the specific disability; and must have used all appropriate services that would support success in the course, e.g., tutoring, learning consultation and other resources.

With regard to the complainant's allegation, the university agreed to invite her to reapply for a course waiver or substitution for her program's math requirements.

OCR noted that it would monitor the implementation of the resolution agreement. ■

POLICIES & PROCEDURES

**Prof places university in jeopardy
by not providing accommodations**

Case name: *Letter to: University of Houston, Downtown, No. 06112030 (OCR 07/01/11).*

Ruling: The Office for Civil Rights concluded that the University of Houston-Downtown discriminated against a student on the basis of disability when a professor refused to implement the academic adjustment recommended by the disability services office.

What it means: When OCR analyzes an allegation that an institution failed to provide a student with necessary academic adjustments, it examines whether: (1) the complainant provided adequate notice to campus officials that academic adjustments were required; (2) the requested academic adjustments were necessary; (3) the appropriate academic adjustments were provided; and (4) the academic adjustments provided were of adequate quality and effectiveness.

Summary: A student complained that the University of Houston, Downtown did not provide him with paperwork to submit to his professors regarding his accommodations until one month after he filed medical documentation supporting his request. The student also alleged that because one of his professors refused to provide him with approved accommodations, he had to drop that class in the middle of the semester.

OCR found contradictory information regarding the date on which the student sought accommodations and provided the documentation. However, there was no doubt that one of his professors refused to sign the accommodation letter because she found it "too general, open ended and unreasonable."

The professor told OCR that the complainant requested extended time for all homework, rather than "if necessary," as stated on the form. She added that she would have provided extended time if the complainant provided documentation to the DS office. She also noted that it was not mandatory for professors to provide the accommodations recommended by the DS office.

OCR concluded that the professor denied the student an appropriate adjustment and noted that the UHD had not publicized the procedures students should follow when professors refused to implement accommodations recommended by the DS office. Therefore, OCR found sufficient evidence to support a conclusion of noncompliance by the UHD with Section 504 and Title II.

The university entered into a resolution agreement that addressed the issues identified during the investigation. ■

AT A GLANCE

A review of this month's lawsuits and rulings

Discrimination

- A student says that his dismissal from a medical program was discriminatory 13

Dismissal

- A student who was expelled and denied reinstatement takes his institution to court..... 14

Personnel

- An employee with severe back pain claims she was wrongly terminated 15

DISCRIMINATION

Plaintiff's own admission discredits his discrimination claim

Case name: *Duncan v. University of Texas Health Science Center at Houston*, No. 11-20025 (5th Cir. 04/10/12).

Ruling: In an unpublished opinion, the Fifth U.S. Circuit Court of Appeals affirmed the trial court's award of summary judgment to the defendant in Darin Duncan's disability discrimination claim.

What it means: A plaintiff's admission that he could qualify as a student with a disability by taking appropriate medications undermines his discrimination case and leaves the door open for the judge to grant summary judgment for the defendant.

Summary: In 2004, Duncan enrolled at the University of Texas Health Science Center. In 2006, he neglected to complete the practical experience and training required for advancement to the third year.

Despite that failure, Duncan registered and began his third year at the institution. After being instructed to withdraw, he attempted to cure the deficiency in his coursework by asking a physician who had never observed his clinical activities to sign off on the required forms.

That physician reported the irregularity to UTHealth, which then dismissed Duncan.

In 2007, Duncan was allowed to re-enter UTHealth. But within a short time, he was again

disciplined for attempting to prematurely sit for a final exam.

In 2008, after Duncan received a marginal grade in a cardiology course, UTHealth officials decided to dismiss him permanently.

Duncan sued UTHealth, asserting a violation of the Rehabilitation Act. He claimed that major depression substantially limited his ability to learn and work there.

After the trial judge granted summary judgment in favor of UTHealth, Duncan appealed.

The appellate court said that the Rehabilitation Act prevented schools that received federal funds from excluding students based upon disabilities, and the U.S. Supreme Court created a demanding standard to qualify as disabled. It also explained that congressional amendments to the act that eased that standard did not apply to Duncan, because they were enacted after his dismissal.

The panel stated that classification as a disability under the act was not necessarily based on a student's diagnosis of the impairment, but rather on the effect of that impairment on his life.

The court observed that a psychiatrist opined that Duncan's symptoms began near the close of the first year of medical school and lasted into the second. It also noted that the doctor identified Duncan's symptoms as a depressed mood, diminished interest in daily activities, weight loss, insomnia, and decreased attention and concentration.

According to the psychiatrist, those symptoms affected Duncan's memory and his ability to work at medical school clinics and learn in his medical school classes.

However, Duncan admitted in his written submissions in the case that with treatment he would have qualified for medical school, the court said. Taking Duncan at his word, the court ruled that his own admission disproved his claim of a qualifying disability. It explained that the concept of "disability" must be viewed in the light of available treatment and corrective measures.

The court ruled that the trial judge acted correctly in granting summary judgment in favor of UTHealth because Duncan admitted that there were available treatments. ■

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DISMISSAL

Despite student's failure to notify of disability, court green-lights his discrimination claim

Case name: *North v. Widener University*, No. 11-6006 (E.D. Pa. 04/04/12).

Ruling: The U.S. District Court, Eastern District of Pennsylvania denied the defendant's motion to dismiss Jeffrey North's disability claims arising from his expulsion from a doctorate in psychology program.

What it means: Although official notification may be essential to sustain a failure-to-accommodate claim, there is nothing in the Rehabilitation Act requiring that a student with a disability provide official notification of his condition to state a claim for disability discrimination. The issues in such claims are whether the faculty knew, or had reason to know, about the student's disability and discriminated against him solely on that basis.

Summary: In 2005, North resided with Robert Gillespie, a close family friend who was also an adjunct professor in the Widener University Doctor of Psychology program.

In 2006, North was accepted into that program. Gillespie allegedly had known that North had attention deficit hyperactivity disorder for years but told him not to disclose it to the faculty because it would be regarded as a sign of weakness and unsuitability for the program.

North was often placed on academic probation while attending Widener.

In June 2010, North passed six of the seven sections of his third-year qualifying exam. When he retook the deficient section, he failed half of it by one point.

On Nov. 2, Kenneth Goldberg, North's faculty advisor, sent North an email from an unfamiliar email address, requiring him to immediately file a petition to continue in the program. But North's email system put it in his "junk mail." As a result, he did not read the message until Nov. 8.

On that day, North wrote a letter asking to remain in the program and stating that he had attention deficit hyperactivity disorder. In his letter, he also pointed out that five other students who had failed the retake exam were allowed to continue in the program.

However, North was expelled, and the university denied his appeals for reinstatement.

North subsequently sued the university. One of his claims was that it had violated the Rehabilitation Act of 1973. His lawsuit also alleged that three

Widener professors had known about his ADHD.

The university filed a motion to dismiss North's claims against it.

District Judge Petrese Tucker acknowledged that the Rehabilitation Act applied only to those who were "otherwise qualified" for enrollment (i.e., able to meet all of the requirements in spite of a disability). However, she also noted that there would have been no grounds for expulsion if North's score on the retake exam had been just one point higher. She also observed that five of his similarly situated, nondisabled peers were allowed to continue.

She ruled that North had sufficiently pled that he was "otherwise qualified" for the program.

Judge Tucker also ruled that the scenario pled by North — if true — adequately showed that the university had denied him the benefits of the program solely because of his disability.

However, the university argued that North was not entitled to relief under the Rehabilitation Act because he never officially notified administrators of his disability.

The judge acknowledged that official notification was essential to a claim for failure to provide reasonable accommodations but said that nothing in the act required a disabled student to provide official notification of his condition to state a claim for disability discrimination.

She explained that the issues were whether the faculty knew — or had reason to know — about the ADHD and discriminated against him solely on that basis.

Gillespie's alleged warning against disclosure — because it would be regarded as a sign of weakness — suggested that the university had a culture of discrimination, the judge stated.

Taken with the allegation that three faculty members had actual knowledge of the ADHD, the judge ruled that North's complaint was sufficient for the case to proceed. ■

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PERSONNEL

Judge defers to jury in deciding whether plaintiff was disabled

Case name: *Mills v. Temple University*, No. 10-4324 (E.D. Pa. 04/03/12).

Ruling: The U.S. District Court, Eastern District of Pennsylvania denied the defendant's motion for summary judgment on Shelly Mills' discrimination claims under the Americans with Disabilities Act.

What it means: Pursuant to the amended Americans with Disabilities Act, if there's evidence that a plaintiff had to change her routine and required sick or Family Medical Leave due to a physical condition, judges should allow a jury to decide whether she was disabled as defined by the statute.

Summary: In 2007, Shelly Mills was a secretary at Temple University. Her job duties included filing for approximately one hour a day.

In 2008, after being struck in the back by a co-worker, Mills began experiencing severe back pain and had difficulty lifting and filing patient charts.

Interns and staff took over filing for Mills near the end of 2008. Outside of work, Mills continued to engage in daily activities but struggled with them.

Mills began treating with Dr. Sanjay Gupta — a pain-management specialist — around April 2009.

When intermittent FMLA leave was approved in May, she took it periodically.

In June, her supervisor informed Mills that she would need a letter from her doctor if she was unable to do filing. In July, Mills produced a letter from Dr. Gupta that stated restrictions of no bending, lifting or filing.

Upon receipt of that doctor's letter, the university immediately decided to send Mills home and offer her continuous FMLA leave. However, Mills objected to taking unpaid leave and never completed the application.

After her termination, Mills lost her health insurance. She stopped seeking medical care in December 2009.

In 2010, Mills sued Temple, alleging discrimination and retaliation in violation of the ADA. The university filed a motion for summary judgment.

Temple argued that Mills did not have a disability as defined under the ADA because she: (1) had continued to perform day-to-day activities; (2) had not been treated by a doctor since December 2009; and (3) worked without interruption until July 2009.

District Judge William Yohn pointed out that Mills had suffered doing the day-to-day activities. He also said that her work was not uninterrupted, noting that Mills took sick leave in 2008 and intermittent FMLA leave in 2009.

The judge did not fault Mills for stopping medical treatment when her insurance ran out.

He noted that Mills was restricted from lifting more than three pounds and made changes to her lifestyle consistent with such a restriction.

Pursuant to the less-restrictive standards of the 2008 amendments to the ADA, he ruled that a jury should decide whether Mills was disabled at the time she was placed on leave. ■

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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.

Disruptive Conduct**Overview**

When students with psychiatric disabilities engage in inappropriate or even violent behavior, the courts and the Office for Civil Rights will usually defer to officials' judgment concerning the consequences for their actions. The Rehabilitation Act and the Americans with Disabilities Act do not give students with disabilities a different standard for appropriate behavior. In other words, if college officials determine that the campus code of conduct has been violated, they can take appropriate action as long as it is not based on students' disabilities.

What You Should Know

- **Even when a college's actions come on the heels of a complainant's protected conduct, OCR will examine whether the college can articulate a legitimate, nondiscriminatory reason for its actions.**
- **Colleges are not required to waive the fundamental requirements of their programs to accommodate students' conditions.**
- **Institutions must ensure that their direct threat policies and procedures are applied when officials propose to take adverse action against a student whose conduct results from a disability.**
- **Disabilities don't generally play a role in the disciplinary process, unless the inability to comply with the conduct code results from a failure to provide reasonable accommodations or when an institution fails to consider mitigating factors in its disciplinary process.**

Key Rulings

- A student alleged he was wrongly removed from a classroom by force and instructed to leave the campus. He also said that the institution retaliated when he complained of his treatment by withdrawing him from the class, temporarily suspending him, and harassing him by phone. OCR concluded that although the student engaged in protected conduct by filing a complaint, there was no evidence supporting his allegations that the college retaliated by imposing disciplinary sanctions. Evidence established that he had been disruptive and that the college's actions were consistent with its administrative procedures for addressing misconduct. *Letter to: Saint Louis Community College*, No. 07112019 (OCR 04/27/11).
- A student was caught cheating in his first semester. In his second year, professors complained he created classroom disruptions. Then a student reported he made derogatory statements about classmates and professors. After an investigation, he was required to attend a hearing, but his neurologist asked that he be granted an immediate medical leave of absence. The institution obliged. The student never returned, but sued, saying the college had violated the ADA. A district court disagreed. *Reichert v. Elizabethtown College, et al.*, No. 10-2248 (E.D. Pa. 04/10/12).
- A student with a psychiatric condition claimed that because his institution regarded him as having a mental and/or emotional disability, it suspended him, required him to forfeit his campus ID, asked him to present a written medical release from a physician or counselor stating he was cleared to return to campus, and failed to provide him with due process before suspending him. Before OCR completed its investigation, the college signed a resolution agreement. *Letter to: Bacone College*, No. 07112045 (OCR 07/26/11).
- A student with bipolar disorder alleged he was wrongly suspended after a disciplinary hearing board ruled his behavior caused a classroom disturbance and he made the instructor and students feel threatened. OCR determined that there was no discrimination. *Letter to: University of Michigan-Dearborn*, No. 15-10-2105 (OCR 01/27/11). ■