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NCIN Grand Finale Summit

Student Accommodations: Ensuring your institution is providing appropriate access for all students

HUSCH BLACKWELL

Presenter

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Agenda

- ADA/Section 504 Student Accommodation
 - Definitions
 - Policy requirements/interactive process
 - Accessibility and Technology
 - Service Animals
 - Self Harming Students

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Americans with Disabilities Act and Section 504 of the Rehabilitation Act Student Accommodations





Definitions

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Applicable statutes

- Section 504 of the Rehabilitation Act
- The Americans With Disabilities Act
 - (Amended by the ADA Amendments Act)
- The Fair Housing Act
- State and Local Anti-Discrimination Laws and Ordinances

Section 504 of the Rehabilitation Act

- The first statute to require disability accommodation (1973)
- Makes it illegal for the federal government, federal contractors, and any entity receiving federal assistance to discriminate on the basis of disability
- “No otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity”

ADA—Title I

- Title I: Prohibits private employers from discriminating against qualified individuals with a disability in regard to employment
- Qualified individuals are those who can perform the essential functions of the job with or without reasonable accommodation
- Employers are required to provide reasonable accommodations to qualified individuals with a disability who can perform the essential functions of the job with or without accommodation, but not if such an accommodation would constitute an undue hardship

ADA—Title II

- Title II: Prohibits disability discrimination by public entities
- “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by such entity”
- A public entity’s programs, activities, and services, viewed in their entirety, must be readily accessible to, and usable by, persons with disabilities

ADA—Title III

- Title III: Prohibits “places of public accommodation” from discriminating “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation”
- Colleges and universities are places of public accommodation
- Must make reasonable accommodations in policies, practices, and procedures

Fair Housing Act

- Reasonable accommodations to afford persons with disabilities an equal opportunity to use and enjoy a dwelling
- “Dwelling” is “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families . . .”
- Department of Housing and Development and Department of Justice consider dormitories to be dwellings
- District court decisions are in agreement (U. Nebraska-Kearney)



State and local laws

- Most states and major cities have anti-discrimination laws that mirror, or in some cases are more stringent than, Section 504, the ADA, and the FHA
- Statutes generally prohibit discrimination on the basis of disability or perceived disability
- Generally require some manner of reasonable accommodation
- May set a lower threshold for establishing the existence of a disability or its effect on a major life activity



Policy requirements/interactive process

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What is covered?



- Programs, Benefits, Services
 - Admissions/recruitment
 - Academics
 - Financial Aid
 - Housing
 - Counseling
 - Athletics
 - Transportation
 - Employment assistance
- Communications
- Facilities

What is a disability?



1. A physical or mental impairment that substantially limits one or more major life activity
2. A record of having an impairment that is substantially limiting to a major life activity
3. Being regarded as having an impairment that is substantially limiting to a major life activity

What is an impairment?

- Physical
- Mental: includes any physiological disorder or condition, or any mental or psychological disorder
- An impairment, alone, is insufficient to qualify an individual as disabled under either 504 or the ADA



What is a substantial limitation?

- Construed broadly in light of ADA amendments
- Needs only to substantially limit one major life activity
- An impairment that is episodic or in remission should be assessed in its active state
- Cannot consider ameliorative effects of mitigating measures
- Is the individual's ability to perform the major life activity limited when compared to "most people in the general population"

What are examples of major life activities?

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Sitting
- Reaching
- Reading
- Concentrating
- Communicating
- Working
- Major bodily functions

Must any accommodation be made?

- Accommodations must be reasonable in nature
- Institutions are not required to provide accommodations that fundamentally alter a program or that conflict with the essential functions of a job
- Institutions are not required to provide accommodations that constitute personal assistance
- Institutions are not required to lower their academic standards
- Institutions are not required to provide the requested or “best” accommodation if another accommodation is reasonable
- Institutions are not required to provide accommodations that create undue financial hardship (Caution!)

Student with a disability



You notice a new student uses a wheelchair. On the student's first day, you rearrange the furniture in the classroom you are using while students are coming in so he can enter. After class, the student asks if it would be OK for him to be a few minutes late to his classes, because it takes him extra time to get there.

Wheelchair. Should you ...

- a. Tell him he can take as much time as he needs.
- b. Make sure all of his instructors and clinical supervisors know he needs extra time.
- c. Ask him if he's requesting an accommodation and refer him to the disabilities services coordinator.
- d. Counsel him on whether the nursing profession is the best choice.



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Interactive process

- Students and employees are required to self-identify a disability and the need for accommodations
- Institutions should have policies and procedures for centralized handling of such requests
- Interactive process to determine whether and to what extent accommodation will be made
- Includes evaluation of the particular nature of the claimed disability and the particular nature of the requested accommodation
- No magic words; no magic outcomes

Process

- Designate Disability/Accessibility Services
 - Provide services and accommodations to students with disabilities
 - Work closely with faculty and staff in an advisory capacity
 - Assist in the development of reasonable accommodations for students
 - Provide equal access for “otherwise qualified” individuals with disabilities

Here's what to train your faculty to do:



- If a student requests that you make an accommodation
 - Refer them to Disability/Accessibility Services
 - Don't unilaterally make an accommodation
- If a student has been given an accommodation
 - Abide by the accommodation
 - If you have questions, contact Disability/Accessibility Services

Discrimination and harassment based on disability are prohibited!

- If you see, hear, or learn about disability discrimination or harassment, report it to the Nondiscrimination Coordinator
- Don't tolerate name-calling and joking against those with disabilities





Accessibility and Technology

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Application to academic technology



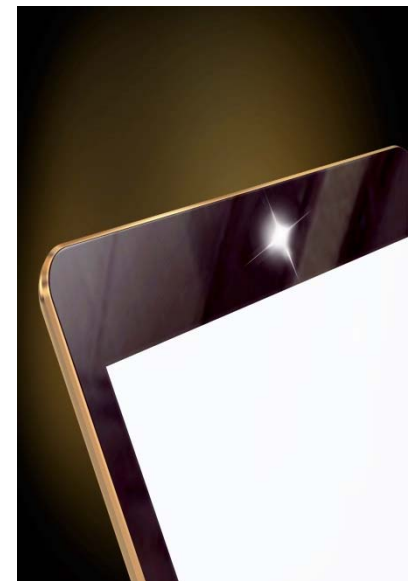
- Remember, non-discrimination and accommodation requirements apply to virtually all aspects of an institution's programs and activities
- That includes technology-based programs and activities and the use of technology in a traditional setting
- Institutions cannot overlook the non-discrimination and accommodation requirements as they adopt new classroom technologies

The June 2010 DCL

Requiring the use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities . . . is discrimination prohibited by the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. . . . It is unacceptable for universities to use emerging technology without insisting that this technology is accessible to all students.

The Kindle DX case

- A number of institutions implemented the use of the e-book reader, the Kindle DX, as a replacement for traditional textbooks
- The Kindle DX did not have full text-to-speech technology (limited to content, but not menu and navigational controls)
- Without access to menu and navigational control, the visually-impaired students had trouble (or simply could not) identify the book they had selected or use other functions of the device
- Institutions agreed not to purchase or use e-readers unless the devices are fully accessible to visually-impaired students



Some general rules

- Institutions can continue to use traditional methods and accommodations
- Institutions are encouraged to adopt new technology
- Where new technology is used, it must be equally available to disabled students *or* an alternative must be provided that is accessible and provides the benefits of technology in an equally effective and integrated manner
- Benefits to disabled students must be provided in a timely manner
- Ease of access must be substantially identical

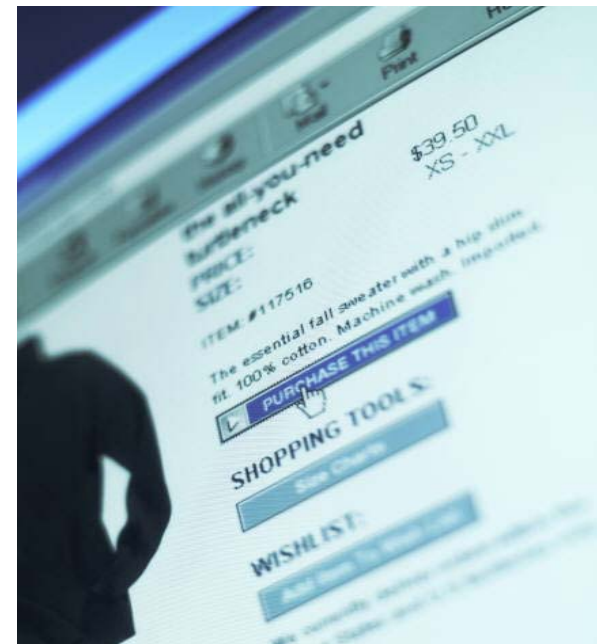
Other areas of risk



- Learning management systems (Blackboard, eCampus, Sharepoint, etc.)
- The use of social media sites
- The use of PowerPoint and video presentations in class
- Access to websites
- Online collaboration software
- Distance education technologies

Website accessibility

- Considerations for individuals with visual-impairments, hearing-impairments, mobility impairments or processing disorders
- Section 508 of the Rehabilitation Act and implementing regulations govern accessibility requirements for public entities
- Requirements for private entities (Title III of the ADA) are less certain
- New DOJ regulations are forthcoming



Considerations for Web Accessibility

- Clear visuals
- Supplement audio and video
- Navigation with keyboard
- Accessible forms and files
- "Skip navigation"

Technology Example



You have been using a new scheduling app that you find useful. You decide to require all of your advisees to use it to schedule appointments with you, and send them an email telling them they must download it, sign up for an account and accept the terms to facilitate their advising appointments with you. You will keep records of the appointments through the app.

Scheduling app. Any concerns?

Brainstorm...



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Recommended action

- Consider the content that is on the website for your department/office
- Consider the content you upload
- If you are unsure, ask!
- Learn from the experience of your students with disabilities

Distance education

- In addition to technology issues, consider accommodations process itself
- *Appalachian State University* OCR Case
 - Policy required all students (including distance education students) to come to campus to formulate an accommodations plan
 - University was required to create an interactive accommodations process for distance education that did not require in-person meeting



Service animals

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Service animals and the ADA

- Requires reasonable accommodations for students and employees
- The use of service animals is a recognized accommodation
- ADA regulations for Titles II and III define “service animal” as:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability



What can service animals do?

- Assist those with low vision
- Alert individuals who are deaf or hard of hearing
- Pull a wheelchair
- Retrieve medicine and other items
- Alert to medical conditions (seizures; passing out)

Service animals are not

- Any animal besides dogs (Note: the Miniature Horse Caveat)
- Animals that serve only to deter crime
- Emotional support, comfort, or companionship animals
- DOJ released answers to FAQs in July 2015

What questions can you ask about service animals under Title II and Title III?

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?

Cannot ask about the extent of the person's disability, require documentation of training, or insist that the dog demonstrate its ability.

Section 504

- Requires reasonable accommodations for those participating in an institution's programs and activities
- Section 504 and implementing regulations do not specifically address service/assistance animals
- Office of Civil Rights (OCR), which enforces Section 504, has adopted the ADA definition

The FHA

- Is not limited to service animals
- Requires covered entities to accommodate a larger universe of “assistance animals”
- “Assistance animals” include
 - Trained service animals; *and*
 - Untrained emotional support or therapy animals



When may a person keep an assistance animal?

1. The person has a disability
2. The animal is necessary to afford the person with a disability an equal opportunity to use and enjoy a dwelling; and
3. There is an identifiable relationship or nexus between the disability and the assistance the animal provides

But wait . . .

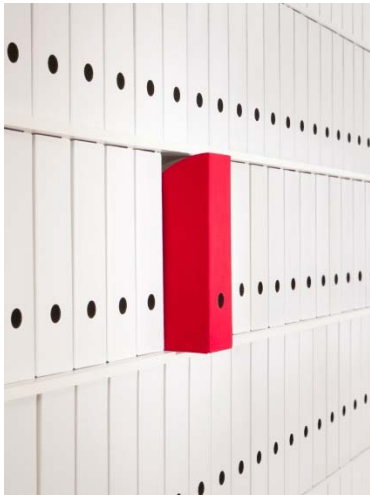
- Accommodations must be reasonable
- Assistance animals do not have to be permitted if:
 - They are a direct threat to the health or safety of others
 - They would cause substantial harm or damage to property
 - They would impose an undue financial or administrative burden
 - They would fundamentally alter the nature of the provider's operations



What can you ask about assistance animals under the FHA?

- Verify the existence of the disability
- Require documentation from a medical professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the disability

Example



A nursing student, Callie, discloses that she has severe stress and anxiety. She currently lives on campus and her roommate is also in the nursing program. She asks her advisor if she can bring her dog to live with her on-campus to help calm her nerves after her classes.

Assistance Animal. Should you ...

- a. Tell Callie that University policy prohibits animals living on-campus.
- b. Ask Callie if her roommate agrees to having the dog live with them.
- c. Ask Callie for documentation of her disability and ask what is the relationship between the disability and the service the dog provides.
- d. Refer Callie to the Disability Services Coordinator and send a follow up email.



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What about animals and employees?

- Title I of the ADA does not define “service animal” and does not require employers to automatically permit a service animal
- Request for service animal is treated as any other request for reasonable accommodation
- Documentation can be requested
- Because “service animal” is not limited to dogs (and miniature horses) under Title I, employees might request other types of species as a reasonable accommodation

Self-harming students

History

- Before 2011
 - OCR guidance: “Direct threat” to other *or* self
 - Reasonable steps to diminish threat not ADA/504 violation
- 2011
 - New Department of Justice regulation (ADA)
 - “Direct threat” only includes threat to others



Self-harming students

- Proper response where student is threat of serious harm to self, but not to others
 - E.g., eating disorders, cutting
 - 2011 change in guidance removed “threat of harm to self” as an express allowable basis for involuntary withdrawal
- Does involuntary withdrawal amount to disability discrimination?
 - Department of Education has not provided guidance
 - For now, best practice is to weigh all facts/circumstances
 - Focus on standards that apply to all students, regardless of disability
 - E.g., “Threat of harm,” measurable disruption of classes
 - Involve inter-disciplinary team
 - Allow appeal

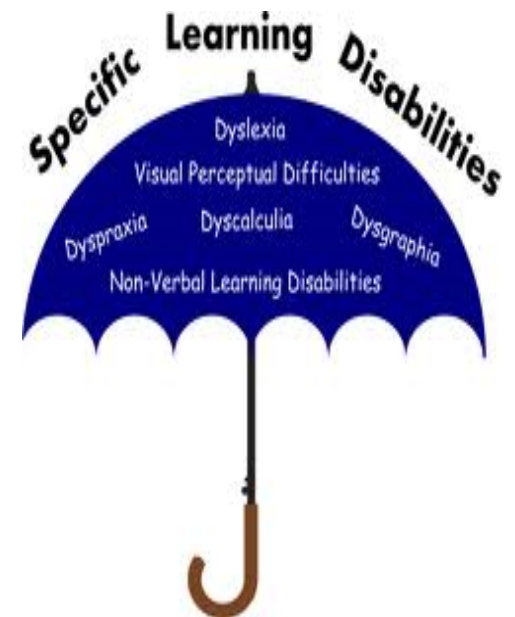
Accommodation beyond the classroom

Recent Department of Education focus on non-academic accommodations

- E.g., athletics, student dining, events
- E.g., July 2014: Court held that deaf spectators at public university football events could proceed with claim of disability discrimination on the basis that the auxiliary aid offered – captioning on hand-held devices – did not provide effective accommodation

Accommodation beyond the classroom

Jamal has been receiving accommodations through the Disability Services Offices for ADHA. He is beginning his first clinical class. The faculty advisor discloses to the clinical setting Jamal's disability to assist him. Jamal finds out that his advisor disclosed his disability and is furious because he believes he will not be able to get a job at the hospital if they are aware of his condition.



Were the student's rights violated?

- A. The Faculty advisor was authorized to disclose the information because Jamal self-identified to the institution.
- B. The Faculty advisor violated FERPA and ADA/Section 504.
- C. The Clinical site has a written affiliation agreement protecting FERPA rights, so there was no violation.



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Ultimate goals

- Regulatory compliance
- Clear policies/procedures
- Interactive process
- Timely, effective accommodation
- Preservation of legitimate, fundamental academic requirements/competencies
- Privacy protections
- Diversity and opportunity



Questions





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