



The ADA & Higher Education

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I. Introduction

It is hard to overstate the impact a student's higher education experience can have on their life, both personally and professionally. College is where many students live independently for the first time, choose a career path, and meet a cohort of friends. It is critical that students with disabilities have equal access to everything that colleges, universities, and other institutions of higher education offer. The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) provide protections for disabled students in a wide array of areas.

This legal brief discusses legal issues arising in the post-secondary context by examining the text of the ADA and Section 504, the relevant federal regulations, enforcement actions from federal administrative agencies, and recent developments in the case law.

II. Overview of Laws Related to Disability Discrimination in Higher Education

Titles II and III of the ADA and Section 504 of the Rehabilitation Act prohibit discrimination by colleges, universities and other post-secondary institutions.² Which law applies depends on whether the college or university is a private or public institution, and whether it receives federal financial assistance.

Title III of the ADA provides that “[n]o individual shall be discriminated against 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 by any person who owns, leases (or leases to), or operates a place of public accommodation.”³ Its definition of place of public accommodation explicitly includes undergraduate and postgraduate private schools, as well as “other place[s] of education.”⁴ Thus, Title III applies to private institutions of postsecondary education with one exception.

Title III exempts “religious organizations or entities controlled by religious organizations, including places of worship.”⁵ This exemption can apply to institutions of higher learning. However, it is exceptionally rare for a college or university to fall outside the scope of any federal anti-discrimination protections because, as explained further below, Section 504 does not contain such an exemption. As a result, so long as a college or university is a recipient of federal financial assistance, which most are, they are prohibited from discriminating on the basis of disability.



Title II applies to colleges and universities that are operated directly by a state or local government as well as to colleges and universities that are considered an instrumentality of a state or local government.⁶ Title II states that “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 subjected to discrimination by any such entity.”⁷

Title II has additional requirements: a college or university must appoint an ADA Coordinator and create an internal grievance procedure if it employs more than fifty people; perform a self-evaluation of the accessibility of its programs and facilities; create a transition plan to implement necessary modifications; and provide notice of accessibility and the rights guaranteed by the ADA.⁸

Section 504 applies to any college or university, whether public or private, that receives federal financial assistance,⁹ including religious institutions.¹⁰ Section 504 states that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .”¹¹

While Title II, Title III and Section 504 all prohibit disability discrimination, each law – and corresponding regulations – have slight differences, which will be explored throughout this legal brief.

One difference is that the Department of Education promulgates regulations implementing and interpreting Section 504 specific to institutions providing postsecondary education,¹² whereas the Department of Justice promulgates regulations implementing and interpreting Titles II and III of the ADA.

Another difference is that under Section 504, plaintiffs may receive compensatory damages if they can show discriminatory intent because the college or university waived the defense of sovereign immunity upon accepting federal funds.¹³ In contrast, under Title III of the ADA, a plaintiff may not receive monetary relief. With respect to Title II entities, compensatory damages are statutorily permitted, but the law remains unsettled as to whether Congress appropriately abrogated sovereign immunity for claims regarding higher education sufficient to permit monetary relief.¹⁴

A final difference is that courts may assess causation differently in claims under the ADA and Section 504.¹⁵ The statutory language of Section 504 prohibits discrimination “solely by reason of . . . disability”¹⁶ where the ADA prohibits discrimination “by reason of such disability.”¹⁷ Despite this difference in language, it is unclear whether there is any material difference in the burden of proving causation. ***Compare Furgess v. Pennsylvania Dep’t***



of Corr., 933 F.3d 285, 291 n.25 (3d Cir. 2019) (“under the RA, the disability must be the sole cause of the discriminatory action, while the ADA only requires but-for causation”) **with Cook County, Illinois v. Wolf, 962 F.3d 208, 227 (7th Cir. 2020)** (under Rehabilitation Act, an “aggrieved person must demonstrate that ‘but for’ her disability, she would have been able to access the desired benefits”).

III. Admissions

The ADA and Section 504 both prohibit colleges and universities from discriminating against applicants with disabilities in the admissions process.

Section 504 creates certain additional requirements. Under Section 504, colleges and universities generally cannot ask an applicant whether they have a disability,¹⁸ unless they are doing so to correct past discrimination. In those situations, the college or university must make clear that the information is requested solely to correct past discrimination, is voluntary, will keep the information confidential, and that refusal to disclose such information will not have an adverse impact on the applicant.¹⁹ Section 504 also prohibits colleges and universities from placing limits on the number of people with disabilities accepted.²⁰

Under both the ADA and Section 504, colleges and universities cannot have eligibility requirements that explicitly screen out those with disabilities, whether physical or mental, or have requirements that “tend to screen out” those with disabilities, unless it can prove the admission requirement is necessary.²¹

Whether colleges and universities can and should rely on standardized testing is a hot legal issue and one that is just starting to see some traction in the courts. One recent decision from a California state court, **Kawika Smith v. Regents of the University of California, RG1904622 (Cal. Dist. August 31, 2020)**, considers how the use of standardized tests during the COVID-19 pandemic has the effect of denying applicants with disabilities meaningful access to the admissions process.²² The University of California (UC) systems has a “test-optional” policy where certain UC schools permit, but do not require, submission of SAT or ACT results. The UC schools that permit these test results use them as a “plus factor” or “second look.” Plaintiffs challenged this policy, explaining that the COVID-19 pandemic has virtually eliminated the possibility for people with disabilities to obtain accommodations or locate suitable test locations. Plaintiffs asserted that this policy denies applicants with disabilities meaningful access to the additional admission opportunity that test-submitters will enjoy. Plaintiffs sought injunctive relief under California state law, which incorporates the ADA and makes an ADA violation a basis for liability. The court found for the plaintiffs, concluding that under current pandemic conditions, they have made a substantial case that applicants with disabilities are denied meaningful access to the UC application process. The court ordered the UC



system to stop using SAT and ACT test results for admission or scholarship decisions during the pendency of the action.

In another case related to standardized tests, ***Binno v. American Bar Association*, 826 F.3d 338 (6th Cir. 2016)**, a blind law school applicant alleged he was denied admission to several law schools because the LSAT (Law School Admissions Test) was discriminatory towards him, but nonetheless required by the ABA for admission.²³ The plaintiff argued that the logic games section of the LSAT, which requires spatial reasoning and diagramming of visual concepts, is inaccessible to him as a blind test-taker, causing him distress and anguish for the rest of the exam. The district court dismissed the case, and the Sixth Circuit affirmed the decision. The courts found that the LSAC (Law School Admissions Council), and not the ABA, controlled the LSAT. Therefore, the schools themselves, and not the ABA, could require the LSAT and decide the weight of it in admissions. In 2017, Binno filed a lawsuit against LSAC, ***Binno v. Law School Admissions Council*, 17-cv-11553 (E.D. Mich.)** and in 2019, LSAC agreed to remove the logic games section to ensure all prospective law students can take a fair exam.²⁴

Other challenges to the admissions process have been brought by applicants who have been denied admissions based on the perception that they would pose a direct threat due to their disability. DOJ has handled cases where individuals with HIV are discriminated against in the college application process. In ***United States v. Compass Career Management***, the DOJ intervened after Compass Career Management, a vocational school with a licensed practical nursing program, refused to admit an applicant with HIV.²⁵ As part of the resolution, the school agreed to revise its policies concerning HIV, stop questioning applicants about their HIV status, and train college administrators and instructors on ADA requirements. The school also agreed to pay \$30,000 in compensatory damages to the student and a \$5,000 civil penalty to the United States. This settlement agreement is an important reminder of the strict standard and high burden colleges and universities must meet to show that an applicant would pose a direct threat. The risk must be immediate and real, provable by scientific facts and current knowledge, and not based on stereotypes, outmoded thought, or overly broad generalizations.

There are a number of cases where plaintiffs assert that their disability was the reason for the denial. In those cases, the court's analysis often focuses on whether evidence exists to support the applicant's assertion that their disability was the reason for the determination. For example, in ***Sjostrand v. Ohio State University*, 750 F.3d 596 (6th Cir. 2014)**, an applicant to the Ohio State University's Ph.D. program had the highest grade point average of applicants, high GRE scores, but was not admitted into the program.²⁶ She testified that the interviewers spent half of the interview discussing her disability – Crohn's disease – instead of her qualifications for the program. She was later told that she was not a good "fit" for the program, and only later given a number of reasons



for the denial. The court concluded that the plaintiff brought forth sufficient evidence of pretext to create a genuine issue of fact as to whether discrimination was the true reason she was not admitted. While the University provided reasons, no one mentioned any of the reasons during the interview process.

Neither the ADA nor Section 504 requires a college or university to lower its standards for an applicant with a disability. Courts generally defer to colleges or universities with respect to its admissions standards.²⁷ In ***Power v. University of North Dakota School of Law*, 954 F.3d 1047 (8th Cir. 2020)**, an applicant alleged he was denied admission to law school because he has bipolar disorder.²⁸ The court gave deference to the school’s policy to consider a variety of objective and subjective criteria including: grade point average (GPA), LSAT, previous law school attendance, and previous employment. The court held this holistic approach to admissions did not discriminate against the applicant, who had previously dropped out of law school three times, had a low GPA, and had submitted old recommendation letters. The court also emphasized that there was no evidence that the law school focused on or even factored the applicant’s disability into its decision, as it rejected the application before learning of the applicant’s disability.

IV. Academic Adjustments

In the post-secondary world, most accommodations related to the classroom setting or academic requirements are considered “academic adjustments.”²⁹ Failing to provide disabled students with academic adjustments can amount to discrimination under the ADA and Section 504. Academic adjustments are designed to ensure equal opportunities for students with disabilities, and include providing auxiliary aids and services and modifying non-essential academic requirements and policies.

A. Process: Requesting Academic Adjustments and the Interactive Process

Many court cases and OCR investigations focus on whether the post-secondary institution used the proper process when analyzing a student’s request.

Unlike Title I of the ADA, the section that addresses employment discrimination, the regulations outlining the obligations of post-secondary institutions do not expressly require schools to engage in an “interactive process.” Nonetheless, this concept – that schools have an interactive duty to respond to a student’s articulated request and work with the student to identify a reasonable accommodation – is regularly a focus on investigations by the Department of Education Office for Civil Rights (OCR), as well as some courts. **See, e.g., *Newell v. Cent. Mich. Univ. Bd. of Trustees*, 2020 WL 4584050**



at *9 (E.D. Mich. Aug. 10, 2020) (“Once an accommodation is requested, the school has a duty to engage in the interactive process.”).

As one of many examples, in the **OCR Resolution Agreement with Irvine Valley College**, OCR required the college to engage in an “interactive process.”³⁰ Among other requirements, the agreement required the college to meet with the student to discuss their functional limitations, requested accommodation and medical support; make a determination about the requested accommodation based on the individual’s needs and not any categorial limitations; and provide the student with written notification of the determination within one week.

OCR regularly requires postsecondary institutions to establish or revise their processes for reviewing and responding to requests for academic adjustments as part of a resolution of an OCR complaint. As one example, a recent **OCR Resolution Agreement with Oakland University** states that the University’s request procedure is to have specific features, such as a requirement that students be notified of decisions concerning academic adjustments “in a timely manner” and a detailed specification of who is to be involved in making decisions about accommodations.³¹

To initiate the process of obtaining an academic adjustment, generally, the student with a disability makes the request for an academic adjustment. The student’s request does not need to be formal or in writing; it can be as informal as a verbal request made to a professor during a class or a school administrator during a test. Nevertheless, the student must make some kind of request for accommodation; it will generally not be inferred from the circumstances. **See *Jin Choi v. Univ. of Texas Health Sci. Cntr. at San Antonio*, 633 F. App’x 214, 215-16 (5th Cir. 2015)** (“there is simply nothing in Choi’s allegations that would have notified the Dental School of Choi’s limitations requiring accommodation”).

It is important for post-secondary institutions to train staff to identify requests for a reasonable accommodation or academic adjustment as the ADA is clear that students need not use “magic words” when asking for an accommodation. A good example of this concept is illustrated in ***Rogers v. Western University of Health Sciences*, 2019 WL 4887847 (9th Cir. Oct. 3, 2019)**.³² In *Rogers*, a medical school student with learning disabilities requested various accommodations. At issue in this case, she asserted that she asked the Associate Dean for a change to her examination schedule so that she would not have to take multiple, long exams on the same day. While the Dean heard her request, he responded with “let’s see how the next exam goes.” In response to the student’s ADA case, the University argued that the student failed to specifically identify this as a disability-related accommodation request. It also argued that the student failed to make the request to the University’s disability services office. While the district court



found for the University, the Ninth Circuit reversed this decision. In so doing, the Ninth Circuit explained that the student’s request had to be disability-related as the fact that she already had extended time for testing, due to a disability, was the reason she made the request for a modified schedule in the first place. It further rejected the University’s argument that she did not make the request through the proper channel because the Dean had been in regular contact with the student about her accommodation needs, and therefore held himself out as an appropriate person to handle the request.

B. Academic Adjustments

Academic adjustments generally fall into one of three categories: (1) provision of auxiliary aids and services; (2) modifications to nonessential academic requirements; and (3) reasonable changes to policies, procedures, and practices.

1. Auxiliary Aids & Services

Under the ADA and Section 504, colleges and universities must “ensure that no student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.”³³

Section 504 regulations explain that educational auxiliary aids might include “taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions.”³⁴ ADA regulations also include an extensive list of possible auxiliary aids and services.³⁵

The *Argenyi v. Creighton University*, 703 F.3d 441 (8th Cir. 2013), from the Eighth Circuit is an important case to review to understand the framework for assessing cases about auxiliary aids and services.³⁶ In *Argenyi*, a deaf medical student requested accommodations including Communication Access Real-Time Transcription (CART) and cued speech interpreters. The University denied most of his requested accommodations, and the accommodations the University did provide failed to meet the student’s needs. In the end, the student paid for CART and interpreters himself. When he was required to take clinical courses, though, the University prohibited him from using interpreters, even those he paid for himself. The Eighth Circuit held that, to determine if a request for an accommodation is necessary, the proper standard was “meaningful access” and that, though the ADA and Section 504 require that aids and services “produce . . . identical result[s] or level[s] of achievement” for those with disabilities, they must provide “equal opportunity to . . . gain the same benefit.”³⁷



Here, the University had not “effectively excluded” the student by denying him his requested accommodations.³⁸ He could still attend classes and he had managed to pass those classes, despite the lack of accommodations. Thus, under this incorrect interpretation of the ADA’s and Section 504’s requirements, the student’s requested accommodations may not have been necessary because he was not effectively excluded. However, by denying the student’s requested accommodations, the University might have failed to provide him with meaningful access to all of the educational opportunities it offered. When reviewed under this correct standard, the Eighth Circuit found the University may have discriminated against the student. And indeed, when this case was remanded and tried before a jury, the jury concluded that the University had failed to provide the student with meaningful access.³⁹

Auxiliary aids and services are not only necessary to make the traditional classroom accessible. They also might be necessary beyond the classroom to provide students with disabilities meaningful access to other benefits and educational opportunities the college or university offers, including online materials such as lectures, courses, and library resources.

Over the last several years, there has been significant activity to ensure that post-secondary institutions make materials accessible to individuals who are blind or have low vision by making them compatible with screen reading technology. In one recent case, ***Payan v. Las Angeles Community College, 2019 WL 2185138 (C.D. Cal. May 21, 2019)***, two students and the National Federation of the Blind sued the Los Angeles Community College District (LACCD), which operates nine community colleges throughout the County of Los Angeles.⁴⁰ The plaintiffs alleged that LACCD had failed to make a range of digital materials accessible to blind students. Such materials included online learning platforms, websites, and library resources that were incompatible with screen reading technology. The court ultimately concluded that LACCD had discriminated against blind students by failing to provide them with “meaningful access” to the LACCD website, databases, and software programs used in certain courses. The court entered a permanent injunction requiring several important changes to LACCD’s policies and practices, including making all LACCD websites come into conformance with the Web Content Accessibility Guidelines (WCAG) 2.1 within one year, assessing all third-party technologies for accessibility prior to their adoption, and ensuring that all library resources be made accessible to blind students.⁴¹

Federal agencies have also been active players in ensuring the accessibility both of course materials and college and university websites.⁴² In 2016, DOJ intervened in ***Dudley v. Miami University***, a lawsuit brought against Miami University alleging that the university adopted and used technologies that were inaccessible to blind students. The court in this case approved a consent decree laying out detailed requirements for the university in ensuring that blind students are provided with “an equal opportunity to

participate in and benefit from Miami's services, programs, and activities, as Miami increasingly relies on web-based, digital, and emerging technologies."⁴³ Among other requirements, the consent decree established that the University must comply with baseline accessibility standards, such as WCAG 2.0 for web-based content; set forth clear procedures for ensuring that course materials, such as textbooks, are converted to alternate, accessible formats within a timely manner; and specified procedures for assessing the accessibility of new technologies before procuring them from third-party vendors.

It is important to remember that colleges and universities often offer programs and services to community members, as well as students, as those programs need to be accessible as well. In 2015, the National Association of the Deaf brought lawsuits against **Harvard University** and the **Massachusetts Institute of Technology**, alleging that the Universities failed to accommodate people with disabilities, both students and others, by failing to provide captioning for online materials the Universities provide free to the public.⁴⁴ These materials include massive open online courses, recordings of speeches given by public figures, and an array of other educational resources. Harvard and MIT both moved to dismiss the lawsuits, contending that Title III of the ADA does not apply to the accessibility of online content. DOJ filed statements of interest in both lawsuits, stating its position that Title III of the ADA applies to online content offered to the public and that colleges and universities must treat a request for closed captioning on websites as they would any other request for an auxiliary aid or service: giving it due consideration and deciding whether it is reasonable.⁴⁵ In 2016, the court denied the schools' motions to dismiss.⁴⁶

In 2019, the court issued a mixed opinion in response to Harvard's motion for judgment on the pleadings, ***National Association of the Deaf v. Harvard University*, 377 F.Supp.3d 49 (D. Mass. 2019)**.⁴⁷ First the court easily dismissed Harvard's argument that its online learning platform was not a place of public accommodation because it had no physical presence; the court said Title III does not require physical space and there is also a nexus between the website and the school, as videos could pertain to courses. Harvard also asserted that it was not liable for content that it hosted but did not create; here, the court said it depends on unknown factors, such as whether Harvard arranges for the content to appear or has control over such content. Finally, the court held that the Communications Decency Act (CDA) limited website operators from being treated as the publisher of material posted on the website by third-party users, which limits Harvard's liability for content hosted on third-party sites that do not belong to Harvard and that are linked in existing form. The court left the door open to whether the CDA would also protect Harvard from content hosted on Harvard's platform that it did not create, produce or substantially alter. In *NAD v. MIT*, MIT filed a similar motion and the court reached the same result by referencing the Harvard decision. ***See Nat'l Ass'n of the Deaf v.***



***Massachusetts Inst. of Tech.*, 2019 WL 1409301, at *1 (D. Mass. Mar. 28, 2019)** (incorporating court’s decision in *NAD v. Harvard*).

In 2020, the plaintiffs reached a comprehensive consent decrees in both the Harvard and MIT cases.⁴⁸ Although the two consent decrees differ in several respects, both require the Universities to provide captioning for video content and transcripts for audio content posted to the institutions’ respective websites. These requirements apply to all new content posted on University websites, and the consent decrees each provide for a process for individuals to request captioning for previously posted content within a specified timeframe. In addition, the consent decrees require the schools to provide “industry-standard” live captioning for certain University-wide live-streamed events and to adequately consider requests for live captioning for all other live-streamed events offered by the Universities.

2. Modifying Nonessential Academic Requirements

Colleges and universities are required to modify certain academic requirements. “Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.”⁴⁹ Modifications are not required for requirements that are “essential to the instruction being pursued . . . or to any directly related licensing requirement.”⁵⁰

When determining whether a particular academic requirement is essential, courts often defer to the determinations of a college or university. ***See, e.g., Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1047 (9th Cir. 1999)** (citing ***Regents of the Univ. of Michigan v. Ewing*, 474 U.S. 214 (1985)**), for the proposition that educational institutions are due deference with respect to academic standards).

However, courts apply this deference only after the post-secondary institution shows that they have engaged in a meaningful individualized assessment of the requirements and the student’s request. A landmark case regarding this issue is ***Guckenberger v. Boston University*, 957 F. Supp. 306 (D. Mass 1997)**, where students with learning disabilities challenged the University’s “blanket prohibition against course substitutions for mathematics and foreign language.”⁵¹ The students pointed to this “draconian accommodations policy,” among other things, as evidence of a hostile learning environment and intentional infliction of emotional distress.⁵² The court concluded that Boston University had failed to “undertake a diligent assessment of the available options” and ordered the University to propose a “deliberative procedure for considering whether modification of its degree requirement in foreign language would fundamentally alter the nature of its liberal art program.”⁵³ The court ordered that the procedure include a faculty

committee and its determination would be subject to the approval of the president. The court approved the use of an existing committee that had eleven faculty members in a range of academic fields and ordered it to take notes at its meetings. Ultimately, following this deliberative process, the court upheld the University's conclusion that removing a foreign language requirement would be a fundamental alteration to the program.

Courts seek to ensure that the process included a close consideration of the academic requirement or policy and that it was individualized to the student, not just a rote judgment or a decision based on stereotypes. For example, in ***Wynne v. Tufts University School of Medicine*, 932 F.2d 19, 28 (1st Cir. 1991)**, one of the most influential cases regarding this issue, the court explained the interactive process as follows:

Were the simple conclusory averment of the head of an institution to suffice, there would be no way of ascertaining whether the institution had made a professional effort to evaluate possible ways of accommodating a handicapped student or had simply embraced what was most convenient for faculty and administration. We say this . . . to underscore the need for a procedure that can permit the necessary minimum judicial review.

A more recent example is ***Newell v. Central Michigan University Board of Trustees*, 2020 WL 4584050 (E.D. Mich. Aug. 10, 2020)**.⁵⁴ Here, a physical therapy (PT) graduate student requested several accommodations related to her disabilities, which affected her auditory processing abilities and her ability to perform a range of physical tasks. Among other proposed accommodations, the student requested a modified attendance policy, a change to the program's policy requiring that PT students have physical treatments performed on them in class, early access to slides from class lectures, and the use of noise-cancelling headphones. Seventeen PT program professors and staff reviewed and discussed these requests and proposed several alternative accommodations to those that were denied. In particular, the program fully denied the student's request for a modified attendance policy but proposed more targeted restrictions on participation in treatment labs, rather than a full exemption, offered lecture recordings from previous years instead of granting early access to slides, and offered the use of earplugs instead of noise cancelling headphones. Because the University had adequately considered the student's requests and provided reasonable alternatives to her proposed accommodations, the court held it had not failed to accommodate her disability.

Compare that to ***Rogers v. Western University of Health Sciences*, 787 Fed. Appx. 932 (9th Cir. 2019)**, the case discussed previously in which a medical school student with learning disabilities requested a change to her examination schedule and the Dean responded with "let's see how the next exam goes."⁵⁵ There, the court rejected the University's assertion that it was entitled to deference, explaining that an educational institution's academic decisions are entitled to deference only if the undisputed facts show



that it conducted “a fact-specific, individualized analysis of the disabled individual’s circumstances and the accommodations that might allow [her] to meet the program’s standards” and “concluded that the accommodations were not feasible or would not be effective.” Here, the court found, the University had not made that showing. **See also *Palmer College of Chiropractic v. Davenport Civil Rights Commission, 850 N.W.2d 326 (Iowa 2014)*** (concluding that rote invocation fell “far short . . . of the conscientious, interactive, student-specific inquiry required by the case law.”)⁵⁶

While, in general, case law offers few details about what level of process colleges and universities must provide, courts have emphasized that the process must involve an individualized consideration of both the policy and the student’s disability,⁵⁷ and that there can be a question about the legitimacy of the process when one faculty member or administrator has sole discretion for a decision.⁵⁸

3. Modifications of Policy

Colleges and universities are also required to make reasonable modifications to policies, practices, and procedures to ensure that a student with a disability has equal opportunities. Examples of reasonable modifications include making exceptions to rules prohibiting tape recorders in class, allowing service animals in campus buildings, or change other policies that have “the effect of limiting the participation of [students with disabilities] in the recipient [of federal funds]’s education program or activity.”⁵⁹

As one example, many colleges and universities impose strict attendance policies that may have the effect of limiting participation for students with disabilities. In certain situations, attendance policies need to be modified as an academic adjustment. One example comes from the **DOJ Settlement with Southern Illinois University (SIU)** reached in 2016.⁶⁰ In this situation, a law student with chronic fatigue syndrome alleged that SIU failed to modify its attendance policy to accommodate his disability. In its investigation, the United States determined that SIU had an inconsistently applied attendance policy, and that it would have been a reasonable modification to modify its attendance policy for the student. Recent OCR resolution agreements have also addressed the issue of attendance policies, requiring institutions to assess whether such policies are, in fact, “essential academic requirement[s].”⁶¹

C. Retaliation

Both the ADA and Section 504 prohibit post-secondary institutions from retaliating against students with disabilities. The ADA states: “[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in

any manner in an investigation, proceeding or hearing under this Act.”⁶² Section 504 has similar language.⁶³

In 2021, the DOJ entered into a **Settlement Agreement with Old Dominion University** in response to a student’s complaint related to retaliation.⁶⁴ The DOJ’s investigation found after a student requested acknowledgement of her right to a reasonable modification of policy, which caused a dispute, the University terminated the student’s working relationship with her professor-advisor, removed the student from the professor’s lab, separated her from ongoing research and withdrew her participation at a professional conference. As a result, the complainant was forced to change her graduate course of study and find a new advisor. Per the settlement agreement, the University agreed to create, post and maintain a retaliation policy, as well as add a statement to all faculty accommodation letters explaining that University policy prohibits retaliation for requesting or using accommodations and that the University will impose consequences, up to and including termination, on those who engage in such retaliation. The settlement also requires ADA training and a \$40,000 monetary payment to the complainant.

V. Architectural Access

The ADA and Section 504 require architectural accessibility for post-secondary institutions. Exactly what is required, however, depends on the age of the building at issue, as well as whether the institution is covered by Title II, Title III and/or Section 504.

Under Title II, Title III and Section 504, all new construction and alterations are subject to specific technical standards, currently the 2010 ADA Standards.⁶⁵ The rules are different for facilities constructed prior to January 26, 1992, the effective date of the ADA’s new construction requirements. For these existing facilities, colleges and universities covered by Title III must engage in readily achievable barrier removal.⁶⁶ Colleges and universities covered by Title II and Section 504 must ensure “program access” for individuals with disabilities.⁶⁷

The difference between the requirements for new construction and program access is illustrated in ***Twede v. University of Washington*, 309 F.Supp.3d 886, 903 (W.D. Wash. 2018)**.⁶⁸ In *Twede*, the plaintiffs brought an ADA lawsuit regarding various inaccessible facilities at the University, and inaccessible parking lots. Some of the parking lots at issue were constructed or altered after January 26, 1992, making them subject to the ADA’s new construction requirements, while others were not, making them subject to the program access requirement. With respect to the parking lots subject to the ADA’s new construction requirements, the court denied the University’s motion to dismiss for any parking lots the plaintiffs adequately pled to be inaccessible. The outcome looked different for the parking lots subject to the program access requirement. There, the court granted the University’s motion to dismiss on two grounds. First, the court questioned whether

parking could be “fairly characterized as a government program under 28 C.F.R. § 35.150” as the parking lots were “merely incidental” to the University’s services, programs, and activities.⁶⁹ Second, the court held that even if the parking lots were services, programs or activities, plaintiffs did not allege that the University’s parking services were inaccessible as a whole or in their entirety, as would be required for a program access violation. Shortly after this decision, the parties entered into a consent decree outlining a commitment by the University to meet the ADA standards for 77 of its parking facilities over a 15-year period with a number of interim deadlines.⁷⁰ The settlement includes a process whereby the University can demonstrate compliance with program access if other lots provide equal or greater access and convenience for disabled users to the programs, services, or activities by an inaccessible parking facility.

There are certain situations where the program access requirement can be a powerful tool to ensure accessibility to college programs and services. In ***Guerra v. West Los Angeles College*, 812 Fed.Appx. 612 (9th Cir. July 17, 2020)**, after the College ended its shuttle service, students with mobility disabilities filed a lawsuit asserting that they were left without meaningful access to the college campus.⁷¹ Instead of the shuttle, the College had suggested that the students use personal scooters to access the campus. However, one student did not have a scooter and it could take up to a year to get one from the Department of Rehabilitation. A second student had a scooter, but did not have a car equipped to transport his scooter. Using paratransit, as suggested by the College, was also not sufficiently reliable or flexible to accommodate the student’s schedule. The College suggested that a third student use the campus bus, but the student argued that the bus was infrequent and unreliable. After a bench trial, the district court found for the College, concluding that the students were not denied meaningful access to the College’s programs or services. However, the Ninth Circuit reversed this decision for two of the plaintiffs reasoning that they could not navigate the campus using motorized scooters or on foot as access contingent on future events is not currently meaningful. The Ninth Circuit found persuasive the fact that the plaintiffs had to drop classes and forego extracurricular activities held in buildings difficult to reach on foot. On remand, the Ninth Circuit directed the district court to determine what “reasonable modifications” the College can make to provide them with requisite access. The Ninth Circuit vacated the decision for the third plaintiff, remanding to the district court to determine whether the evidence showed that the infrequency and unreliability of the bus would prevent meaningful access.

In addition to the courts, federal agencies have played a large role in improving architectural accessibility on college campuses. In May 2021, DOJ entered into settlement agreements with two community colleges – the **Central Texas College of Killeen (CTC)**⁷² in Texas and **Tidewater Community College (TCC)** in Virginia – to improve physical accessibility.⁷³ In both situations, the DOJ conducted a comprehensive review of a large array of facilities, both new construction and existing facilities, as well as interviewed students with disabilities to learn about the barriers they encounter. As

part of the settlement, the Colleges will retain an approved independent licensed architect and make modifications necessary to comply with applicable accessibility requirements for a range of facilities across the campuses including parking, building entrances, restrooms, service counters, drinking foundations, and routes to and within buildings.

Notably, these two DOJ agreements contain an entire section on sidewalks, recognizing that students with disabilities also require accessible sidewalks to travel within a college or university setting. Per the settlements, the Colleges will identify all streets, roads, and street-level pedestrian walkways constructed or altered since January 26, 1992 and create a timetable for providing curb ramps and other sloped areas with accessibility requirements for DOJ approval. Within 24 months, the Colleges will provide accessible curb ramps at all intersections of the streets and roads constructed or altered since January 26, 1992, that have curbs or other barriers from a street level pedestrian walkway. The settlement also requires all newly constructed curb ramps to comply with the 2010 ADA Standards. **See also DOJ Settlement with University of Alabama at Birmingham** (requiring University to complete an architectural review of its facilities identified by the DOJ and provide DOJ with a written report of its findings; and remediate deficiencies to comply with the 2010 ADA Standards).⁷⁴

The Department of Education's Office for Civil Rights has also prioritized accessibility for students in postsecondary education. The following Resolution Agreements highlight some of the complaints reviewed and resolved by OCR. **See Resolution Agreement with Central Michigan University** (requiring modifications to accessible parking spaces at three different parking facilities)⁷⁵; **Resolution Agreement with Dixie State University** (requiring evaluation and remedial plan for access barriers at Legend Solar Stadium, ensuring a range of non-architectural accessibility features such as choice of admission prices; lines of sight; mode of purchasing; companion seating)⁷⁶; and **Resolution Agreement with University of Texas – San Antonio** (requiring the following elements to be made accessible: paths of travel; shower facilities; ramps; classroom tables).⁷⁷

VI. Housing

When reviewing legal issues related to people with disabilities and campus housing, it is important to consider the federal Fair Housing Amendments Act (FHAA) in addition to the ADA and Section 504.⁷⁸ There have been interesting legal developments in the areas of meal plans for students with food allergies and assistance animals in university housing.

A. Meal Plans

Whether people with food allergies are covered by the ADA and, if so, what modifications are reasonable, has been an evolving issue in ADA jurisprudence.⁷⁹ The DOJ has taken



the position that students with food allergies may have disabilities under the ADA and that meal plans offered by the college or university to students, like any other benefit, may be subject to reasonable modifications for students with such allergies.

In 2019, the DOJ entered into a **Settlement Agreement with Rider University**, after determining that Rider University failed to provide reasonable modifications to its policies, practices and procedures for students with food allergy-related disabilities, and train its staff on appropriate policies.⁸⁰ As part of the agreement, the University agreed to make several changes to its dining services, including posting notices in its dining halls and food eatery facilities of the use of potential allergens—specifically, egg, milk, wheat, shellfish, fish, soy, peanut, and tree nut products—in its cafes and kitchens.⁸¹ The University also agreed to allow students to work with a designated staff member to request a different meal plan as an accommodation for their allergies. With twenty-four hour notice, a student with a food allergy can email a meal choice to food services, allowing the student to receive meals when the menu for the next day offered options the student was allergic to. The students with allergies can then have their pre-ordered meals delivered, providing a way to avoid entering a dining hall filled with allergens; this is in addition to having a separate area to store and prepare foods and a dedicated space in a dining hall. The agreement also requires the designation of an “Allergen Awareness Food Preparation Area” with designated food storage and preparation resources to ensure students could self-accommodate when preferred. **See also Settlement Agreement Between United States and Lesley University, Frequently Asked Questions about Settlement with Lesley University.**⁸²

B. Service Animals

Questions about service animals, assistance animals, and emotional support animals can be complicated within the post-secondary context given the variety of settings and applicable laws at issue.

Under Titles II and III of the ADA, colleges and universities are generally required to permit service animals to enter any place where a student goes during a day-to-day routine, including a classroom, recreation center, or dormitory.⁸³

The ADA defines service animal as “any *dog* . . . *individually trained to do work or perform tasks* for the benefit of an individual with a disability.”⁸⁴ Examples of work or tasks performed include assistance with navigation, retrieving items, pulling a wheelchair, assisting with balance and stability, carrying items, alerting the owner to sounds or the presence of allergens, alerting the owner to an oncoming seizure, reminding the owner to take medication, and preventing or interrupting impulsive behavior.⁸⁵



The situation resulting in a **Settlement Agreement with Mercy College** demonstrates the importance of clear service animal policies and effective training about the wide variety of work and tasks a service animal can perform for a person with a disability.⁸⁶ There, a veteran with both physical and mental disabilities attempted to bring his service animal with him to school. Upon arrival to one class, two security guards restricted him from attending class with his service animal and told the veteran that service animals are only permitted on campus for blind people. As a result, the veteran missed a substantial portion of class and experienced embarrassment and stress as a result. To resolve this situation, the College agreed to adopt a Service Animal Policy and post it on the College's website. It also agreed to conduct training to all security personnel who may interact with students, prospective students and campus visitors about Title III of the ADA and service animals. **See also *Alejandro v. Palm Beach State Coll.*, 843 F. Supp. 2d 1263 (S.D. Fla. 2011)** (granting preliminary injunction to allow student with psychiatric service animal on campus).

According to the ADA's service animal regulations, Title II and III entities are limited in the types of inquiries that can be made about service animals and the types of documentation required; Title II and III entities may ask only if the service animal is required because of a disability and what work or task has the dog been trained to perform.⁸⁷ In 2018, following complaints about the University's service animal policy, OCR reached a **Resolution Agreement with Pennsylvania State University**.⁸⁸ The University's policy had previously instructed individuals that they are required to undergo the reasonable accommodation process, including disclosure of a disability, to request to bring a service animal to campus. OCR concluded that the University may not require people to engage in the interactive process to bring a service animal on campus and the University cannot require an individual to register a service animal.

There are certain situations where a college or university can exclude a service animal; however, these situations are quite limited. A service animal can be excluded if it poses a direct threat, a fundamental alteration, when "[t]he animal is out of control and the animal's handler does not take effective action to control it" or "[t]he animal is not housebroken."⁸⁹ The court analyzed a direct threat analysis in ***Entine v. Lissner*, 2017 WL 5507619 (S.D. Ohio Nov. 17, 2017)**, a situation where two students' reasonable accommodations were in apparent conflict with one another.⁹⁰ In *Entine*, the court held that a student with a service animal would likely succeed on the merits of her claim that disallowing her to live in a sorority setting with her service dog would be discriminatory under the ADA. Another student contested the service dog's presence in the house, attributing the flare-ups of her allergies and Crohn's Disease to the dog. The court found that Ohio State University had not engaged in an objective direct-threat analysis as it pertained to the second student's condition in the presence of the service animal, which was fatal to the University's attempt to justify the prohibition of the service animal. Furthermore, absent a clearer causal connection between the service animal and the

exacerbation of the second student’s symptoms, the court reasoned it could only trust the compelling evidence of the student with the service dog that she would be irreparably harmed should she not be allowed to live in the sorority.

In addition to service dogs, colleges and universities may need to modify their policies and procedures to accommodate students who have a miniature horse for disability-related reasons.⁹¹ When determining whether to permit a student’s miniature horse, post-secondary institutions must consider whether the facility can accommodate the horse’s size and weight, whether the handler has sufficient control, whether the horse is housebroken, and whether the horse “compromises legitimate safety requirements that are necessary for safe operation.”⁹²

Under the ADA, it is commonly understood that colleges and universities are not required to permit animals that do not qualify as service animals or miniature horses, such as emotional support animals. However, recall that in addition to the ADA, the FHAA applies to colleges and universities when they act as housing providers. **See *United States v. University of Nebraska at Kearney*, 940 F. Supp. 2d 974, 975 (D. Neb. 2013)** (concluding that student housing is covered by the FHAA, even though it is temporary housing, after a university denied a student’s request to live in student housing because she required an accommodation to the university’s no-pets policy for her therapy dog).⁹³

As a result, colleges and universities may have to accommodate animals that are not service animals, but that do provide support or assistance to people with disabilities, such as emotional support animals.⁹⁴ Unlike service animals under the ADA, assistance animals under the FHAA can be any animal, trained or untrained, so an assistance animal might be a cat, bird, guinea pig, parrot, miniature horse, or capuchin monkey. According to HUD guidance, a housing provider must allow a person with a disability to keep a support animal if it is a reasonable accommodation. Changing a no-pets policy is reasonable unless the specific animal is either an undue financial or administrative burden or poses a fundamental alteration of the housing provider’s services—both of which are very high standards—or if the animal presents a direct threat to the safety of others or would cause substantial property damage. This inquiry requires an individualized inquiry, considering the actual conduct of the specific animal, and the denial of the accommodation cannot be based on stereotypes about the animal. Finally, though the housing provider can require confirmation of the person’s disability, it cannot require a fee, deposit, insurance, hold harmless agreement, extra inspections, “pet rules,” veterinary certificates, or special conditions.

However, at least one OCR decision creates some ambiguity as to whether colleges and universities need to review requests for emotional support animals under a more general accommodation process. In the **OCR Letter to Pennsylvania State University**, OCR notes that while emotional support animals are not considered service animals under the



ADA, they may be considered a necessary accommodation under Section 504 or modification under the ADA that the University should engage in an interactive process to assess an individual's need. Per the letter: "OCR would expect the University to engage in a reasonable process with a student, which would include reviewing ESA requests on a case-by-case basis, and reviewing accommodation requests as it would for other types of accommodations."⁹⁵ In the Resolution Agreement, the University agreed to revise its "form, 'Request for Emotional Support Animal in University Housing,' to indicate that requests for Emotional Support Animals, in any area of the University's facilities not just in housing, will be considered a request for an accommodation and will be evaluated on an individualized, case by case basis."⁹⁶

Ultimately, in contexts when a college or university acts as a housing provider, multiple sets of laws might apply to a request for an accommodation due to a service or assistance animal. In these situations, HUD recommends looking at the accommodation under the ADA first. If the ADA applies—in other words, if the request concerns a service animal, which is either a dog or miniature horse trained to perform work or a task—then further analysis is unnecessary and the FHAA also applies (as does, presumably, Section 504). If the ADA does not apply, then a college or university should consider the request under the FHAA and HUD's guidance on assistance animals and Section 504.

VI. Disability & Dismissals

A. Dismissals Based on Mental Health

Mental health on college campuses is an issue of critical importance. Due to concerns about liability, many schools have implemented codes of conduct that prohibit violence or dangerous behavior or that require leaves of absence when a student exhibits violent behavior, or threats of violent behavior, including harm to self, and they have put in place housing policies that prohibit acts of violence, including self-injurious behaviors. These sorts of policies can fall more harshly on students with mental health disabilities. For instance, colleges and universities often take disciplinary action, as directed to do so under these policies, when the student is still receiving treatment after engaging in self-injurious behavior. Also, sometimes students are subjected to adverse actions simply for expressing mental health needs or seeking mental health treatment. These sorts of policies may have negative effects. They can discourage students from getting help out of fear of negative consequences, serve to isolate students from friends and support when it is needed most, and send a message that students have done something wrong.

The only legitimate reasons under the ADA for suspending or expelling a student for reasons related to a disability are that the student is unqualified for the program or service and no reasonable accommodation would allow the student to become qualified; that the student's accommodation needs fundamentally alter the program or service; that the

accommodation necessary for the student to become qualified poses an undue burden to the college or university; or that the student poses a direct threat to the health or safety of others that cannot be eliminated or reduced by providing a reasonable accommodation.

The ADA provides a framework for analyzing whether a student poses a “direct threat” to the safety of others. The college or university must conduct an individualized assessment that considers (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm.⁹⁷ Additionally, the college or university must show that there is no reasonable accommodation that will reduce the perceived threat so that the person does not pose a significant risk of substantial harm to others.⁹⁸ It is worth emphasizing that the regulations regard “direct threat” under Titles II and III do not include threat-to-self.

The Bazelon Center for Mental Health Law’s model policy for addressing mental health is based on six concepts: (1) acknowledge but do not stigmatize mental health problems; (2) make suicide prevention a priority; (3) encourage students to seek help or treatment that they may need; (4) ensure that personal information is kept confidential; (5) allow students to continue their education as normally as possible; and (6) refrain from discriminating against students with mental illnesses, including taking punitive actions toward those in crisis.⁹⁹ It also suggests that when working with a student with mental illness avoid using disciplinary rules to address mental health issues by addressing these issues through medical policies and procedures; do not implement blanket policies requiring withdrawal following mental illness disclosure or treatment; maintain and protect confidentiality; and conduct an individualized assessment in each situation.

Doing the above will help a college or university avoid situations like the one that arose resulting in a **DOJ Settlement with Northern Michigan University**.¹⁰⁰ After a student told another student about her major depressive disorder and that a doctor was concerned about her risk for suicide, the University threatened to dismiss the student, and required her to submit to a psychological assessment and sign a behavioral agreement per the University’s self-destructive behavior policy. In October of 2018, the University entered into a settlement where it confirmed that mental health conditions like depression and anxiety can be disabilities within the meaning of the ADA. It also agreed to enact new policies about the ADA, non-discrimination, and ensure that requests for reasonable modifications are assessed on an individualized basis.

Another example that illustrates the need for an individualized consideration of a student’s situation resulted from **W.P. v. Princeton University**.¹⁰¹ After a student intentionally ingested a large quantity of anti-depressants, he checked himself into a hospital to seek treatment. Only three days after this experience, Princeton barred the student from his dorm and returning to classes. He filed a lawsuit, and that prompted the DOJ to conduct a compliance review where it reviewed Princeton’s policies and practices related to



reasonable accommodations, withdrawals and leave policies. In 2016, DOJ reached a **Settlement with Princeton University**, where Princeton agreed to revise its policies to explicitly describe possible accommodations, including changes to University policies, rules and regulations; specify that requests can be for anything from academics to housing to dining; and to note exactly how students can submit the requests and how Princeton will review them.¹⁰² As part of the agreement, Princeton agreed to revise various websites to better direct students, revise its leave policies, and provide annual training with a focus on mental health disability discrimination. In 2019, the student reached a settlement regarding his private lawsuit.

Similarly, in 2019, **Stanford University** reached a settlement agreement with the Stanford Mental Health and Wellness Coalition and a number of students who had challenged Stanford's system-wide policies and practices as ones that discriminated against students who were at risk of self-harm due to a mental health disability.¹⁰³ As examples, numerous students asserted that that they were barred from the campus community and had onerous requirements placed on them when participating in residential mental health treatment programs. Per the settlement, Stanford made significant modifications to its leave of absence policies, providing for increased transparency, ensuring the University considers all pertinent complexities as part of an individualized assessment, deferring to students' treating providers, and considering reasonable accommodations throughout the leave, appeal and readmission process.

Students with mental health disabilities still need to demonstrate that they are qualified, with or without reasonable accommodations. In ***Mbawe v. Ferris State University*, 751 Fed. Appx. 832 (6th Cir. Nov. 5, 2018)**, the court found that the University did not violate the law, even though it dismissed the student for issues related to his mental health.¹⁰⁴ A student began showing signs of paranoid delusions, and maybe schizophrenia, and was involuntarily committed to a psychiatric hospital by the University. After being offered accommodations from the University, including participation in psychiatric help and in a physician's recovery program with monitoring, the student declined them, and was dismissed from the University. The court held for the University, stating that it was up to the student to propose a reasonable accommodation and show that he can meet the program's necessary requirements with that accommodation.

Legal issues may arise when a university dismisses a student with a psychiatric disability because the university believes the student constitutes a direct threat to others. In ***R.W. v. Columbia Basin College*, 18-CV-5089-RMP (E.D. Wash. Oct. 4, 2019)**, a nursing student disclosed, first to his primary physician, then to a mental health counselor, that he was having homicidal thoughts about specific professors, which he believed to be triggered by loss of sleep, criticism from his teachers, and bad grades.¹⁰⁵ He voluntarily admitted himself for inpatient counseling, which is where he was when campus security and the Dean of Student Conduct were notified about his thoughts. The Dean sent the



student an interim trespass letter stating that his thoughts violated the school's Student Code of Conduct as they had the effect of creating a hostile or intimidating environment. The student proceeded throughout an internal appeal process where he provided medical support but he was ultimately barred from campus until certain conditions, both academic and mental health-related, were met. In response to his ADA case, the court found there to be a genuine issue of fact as to whether the student posed a direct threat. The court's reasoning indicates that analysis of whether a student with a mental health disability represents a direct threat must be individualized, and include consideration of reasonable accommodations likely to reduce level of risk to others and the Supreme Court's test, which demands analysis of "the nature, duration and severity of the risk."¹⁰⁶ The court explained that while the student's threats were specific and his doctor could not ensure that he would not continue to have such thoughts, the student presented evidence that he had made no threats and did not present a threat. The court cited the fact that the first communication about the student stated he "may not be an immediate threat" and by the time the school learned about his ideations, the student voluntarily checked himself into mental health treatment. It also indicated that the student's mental health records are "replete" with evidence that he posed no objective threat, that he had "good insight and judgment," that he had no more ideations at the post-hospitalization meeting, and that even the decision-maker testified that he did not believe that the student posed a serious risk of harm.¹⁰⁷

B. Dismissals Based on Other Disabilities

There are a number of court cases analyzing whether a post-secondary institution unlawfully dismissed a student because of a disability. These situations often turn on whether the students can demonstrate that their disability was the reason for their dismissal, which often requires showing that the college's stated reason for dismissal was not the true motivation.

When colleges and universities dismiss students for violating clear rules of academic conduct, such as academic integrity policies, it can be difficult for a student to establish that the dismissal was discriminatory. For example, in ***Chenari v. George Washington University*, 847 F.3d 740 (D.C. Cir. 2017)**, a medical school student sitting for the Step 1 examination was given instructions, twice, that he must stop taking the exam exactly when the proctor indicated that the time was over.¹⁰⁸ However, after the proctor called time, the student continued to transfer answers from the exam booklet to the answer sheet, refusing to stop even when the proctor asked him to. The student was dismissed from medical school for violating its honor code and brought a lawsuit under Section 504 of the ADA, asserting that he was discriminated against due to his ADHD. In determining whether the student could prevail under Section 504, the court found he would have needed to show the University was aware of the disability, and that the University had denied his request for reasonable accommodations. The court found that while there was



a genuine issue of fact as to whether the University was aware of his ADHD, the student never requested reasonable accommodations. Therefore, the court concluded that the dismissal was proper.

Like in all disability discrimination cases, when courts assess whether disability was the underlying reason for a particular decision, comments made by decision-makers can be indicative of discrimination. In ***Schimkewitsch v. New York Institute Of Technology*, 2020 WL 3000483 (E.D.N.Y. June 4, 2020)**, a student was dismissed from a physician assistant program.¹⁰⁹ The court concluded that his complaint sufficiently alleged that he was expelled because he was “regarded as” having a disability. Specifically, the court focused on the facts that a professor advised the student to seek psychiatric counseling, that the student was required to receive psychiatric clearance before returning to school, and that the student was eventually expelled, as sufficient facts to plausibly allege the University perceived the student as disabled.

In some professional fields, such as medical school, institutions require students to pass tests administered by third-parties to continue with their studies. Some court cases result from the interplay between an individual’s medical school career and need to pass certain licensing examinations. For instance, in ***Shaikh v. Texas A&M University College of Medicine*, 739 Fed.Appx.215 (5th Cir. 2018)**, the court considered whether a medical school discriminated against a medical student who was constructively dismissed, and later not readmitted, after he could not pass the medical licensing examination.¹¹⁰ In this case, a medical student passed all required curriculum necessary to progress to his third year of medical school, and excelled in his third-year clinical rotations. However, he then began experiencing a number of disability-related symptoms and was unable to pass the Step 1 of the United States Medical Licensing Examination (Step 1 exam). The school urged him to take a year off to study, but faced dismissal if he did not pass the Step 1 exam by a specific deadline. At the conclusion of his leave of absence, the medical school dismissed the student. The student then applied for readmission on two separate occasions, but was rejected both times. The student was ultimately diagnosed with a tumor of the pituitary gland, which he was able to treat. He brought a lawsuit against the medical school under Section 504 and the ADA.

The district court dismissed his ADA claims finding that Congress had not appropriately abrogated sovereign immunity necessary for monetary relief for Title II claims in higher education. This decision was upheld on appeal. However, the district court also dismissed his Section 504 claims. Here, the Fifth Circuit disagreed. The Fifth Circuit found the student sufficiently alleged that he was qualified as it was not certain that the Step 1 exam was an “essential” requirement of the program or for readmission. The Fifth Circuit further found that the plaintiff alleged his disability was the “sole reason” for his constructive dismissal/failure to readmit. It also cited a statement by the Dean of Admission that the student was “not an acceptable applicant,” that his failure to retake a test he could not

take because of his disability was unacceptable, and that the student was “a liability for psychiatric reasons.”¹¹¹ The case settled following remand to the district court. **See also *Ramsay v. Nat’l Bd. of Med. Examiners*, 968 F.3d 251 (3d Cir. 2020)** (affirming preliminary injunction that medical school student with dyslexia and ADHD receive double time as an accommodation).

Remember that to be protected by the ADA and Section 504, students need to be “qualified.” Failure to show qualifications dooms a number of students’ lawsuits challenging their dismissals. In ***Goldberg v. Fla. International University*, 838 F. App’x 487 (11th Cir. 2020)**, a student with ADHD was granted 50% extended time on examinations but denied his request for 100% extended time.¹¹² He failed this examination and the University recommended expulsion. However, following the student’s new diagnosis of tinnitus, the University allowed the student to stay in the program and provided with him 100% extended time. Despite this accommodation, the student failed multiple exams, clerkships, and was dismissed from his program. In his lawsuit, the student asserted that the University violated the ADA and Section 504 by initially denying and then delaying his accommodation of 100% extended time. The court found for the University after concluding that the student was not qualified. Explained the court, the student was unable to show that there was an accommodation. **See also *Jain v. Carnegie Mellon Univ.*, 2021 WL 840928 (3d Cir. Mar. 5, 2021)** (finding student with ADHD was not qualified)

Often, students ask for accommodations related to their dismissals. Generally speaking, courts do not require colleges and universities to excuse past conduct as a reasonable accommodation. In ***Qui v. University of Cincinnati*, 803 Fed.Appx. 831 (6th Cir. 2020)**, a student was accused of multiple instances of academic dishonesty.¹¹³ He did not attend the disciplinary hearing and about a month after such hearing, was informed that the University decided to dismiss him. The student brought a lawsuit under the ADA and Section 504 asserting that the University should have scheduled a new hearing on the allegations of academic misconduct as an accommodation for his disability. The court disagreed, finding that this accommodation would amount to “retroactive leniency.” The court further found that there was no evidence that the student’s disability was the reason for the dismissal.

Similarly, in ***Profita v. Regents of the University of Colorado*, 709 Fed.Appx. 917, (10th Cir. Oct. 11, 2017)**, a medical school student was dismissed from medical school. He later received treatment and then sought, as a reasonable accommodation, to be readmitted with full credit for the work previously performed. The medical school denied this request and stated that the student would have to re-apply. The lower court dismissed his ADA lawsuit, and this decision was upheld by the Tenth Circuit. The court concluded



that this accommodation would require the medical school to “ignore, override, or reverse his previous dismissal for unsatisfactory academic performance” which is not required.¹¹⁴ In analyzing this case, the court found persuasive cases under Title I of the ADA analyzing issues of employment discrimination.

VII. CONCLUSION

Ensuring that higher education is accessible to students with disabilities is critical to their growth, confidence, and empowerment—developments that benefit not only the students, but also their peers and all of society. The ADA, Section 504, and FHEA offer important protections for students with disabilities, while ensuring that colleges and universities maintain their academic standards. The tools made available to advocates by these laws ensure that colleges and universities can work with students to make their relationship productive and beneficial.

¹ This legal brief was written by Barry C. Taylor, Vice President of Systemic Litigation and Civil Rights, Rachel M. Weisberg, Employment Rights Helpline Manager & Attorney with Equip for Equality, the Illinois Protection and Advocacy Agency (P&A). The authors would like to recognize Paul Grossman for sharing his insights and materials. The authors would also like to thank the following Equip for Equality legal interns for their valuable contributions: Megan Grenville, Kaitlynn Milvert, and Erin Monforti. Equip for Equality is providing this information under a subcontract with Great Lakes ADA Center.

² 42 U.S.C. §§ 12131–12134 (Title II of the ADA); 42 U.S.C. §§ 12181–12189 (Title III of the ADA); 29 U.S.C. § 794 (Section 504).

³ 42 U.S.C. § 12182(a).

⁴ 42 U.S.C. § 12181(7)(J).

⁵ *Id.* at § 12187; *see also White v. Denver Seminary*, 157 F. Supp. 2d 1171, 1174 (D. Colo. 2001) (holding that a seminary is “exempt from the provisions of Title III of the ADA”); 28 C.F.R. § Pt. 36, App. C (“The ADA’s exemption of religious organizations and religious entities controlled by religious organizations is very broad [I]f a church itself operates a day care center, a nursing home, a private school, or a diocesan school system, the operations of the center, home, school, or schools would not be subject to the requirements of the ADA”).

⁶ 28 C.F.R. § 35.104.

⁷ 42 U.S.C. § 12132.

⁸ 28 C.F.R. § 35.105-107.

⁹ 29 U.S.C. § 794. The application of Section 504 is not limited by the purpose of the federal funds the college or university receives. *Id.* (“For the purposes of this section, the term ‘program or activity’ means all of the operations of . . . a college, university, or other postsecondary institution, or a public system of higher education[,] . . . any part of which is extended Federal financial assistance.”).

¹⁰ *See, e.g.,* Letter from OCR, Dep’t of Educ., to Western Seminary-Portland Campus, OCR Reference No. 10132035 (Apr. 25, 2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10132035-a.pdf>.

¹¹ 29 U.S.C. § 794(a).

¹² 34 C.F.R. §§ 104.1 to .61. Sections 104.41 to 104.47 contains regulations that apply specifically to institutions providing a postsecondary education.

¹³ 29 U.S.C. § 794; 42 U.S.C. § 2000d-7; *see also, e.g., Haybarger v. Lawrence Cty. Adult Prob. & Parole*, 551 F.3d 193, 199 (3d Cir. 2008); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 289 (5th Cir. 2005); *Garrett v. Univ. of Alabama at Birmingham Bd. of Trustees*, 344 F.3d 1288, 1293 (11th Cir. 2003).

¹⁴ *See Tennessee v. Lane*, 541 U.S. 509 (2004) (concluding that Congress lawfully abrogated state sovereign immunity for denial to courtroom access because it is a fundamental right). *Compare Shaikh v. Texas A&M Univ. Coll. of Med.*, 739 F. App'x 215, 224-25 (5th Cir. 2018) (Title II did not abrogate Eleventh Amendment immunity of state university from private damages suit) *with Association for Disabled Americans v. Florida International University*, 405 F.3d 954 (11th Cir. 2005) (finding that *Lane's* holding should extend to claims regarding higher education).

¹⁵ *Compare, e.g., Falcone v. Univ. of Minn.*, 388 F.3d 656, 659 (8th Cir. 2004) (dismissing the plaintiff's claim because "no rational factfinder could conclude that Falcone was dismissed *solely* because of his learning disabilities"), *with, e.g., McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1078 (11th Cir. 1996) (holding that the ADA "requires only a finding of 'but-for' causation"). *See generally Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468-70 (4th Cir. 1999) (discussing the difference between the causation standards under Section 504 and under the ADA).

¹⁶ 29 U.S.C. § 794(a) (emphasis added).

¹⁷ 42 U.S.C. § 12132.

¹⁸ 34 C.F.R. § 104.42(b)(4).

¹⁹ 34 C.F.R. § 104.42(c).

²⁰ 34 C.F.R. § 104.42(b)(1).

²¹ From the regulations implementing Title II of the ADA, "A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." 28 C.F.R. § 35.130(b)(8). From those implementing Section 504, colleges and universities "[m]ay not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available." 34 C.F.R. § 104.42(b)(2). Finally, Title III prohibits "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered." 42 U.S.C. § 12182(b)(2)(a)(i).

²² *Kawika Smith v. Regents of the University of California*, RG1904622 (Cal. Dist. August 31, 2020), *See also* Press Release, Public Counsel (Sep. 1, 2020), http://www.publiccounsel.org/press_releases?id=0138

²³ *Binno v. American Bar Association*, 826 F.3d 338 (6th Cir. 2016).

²⁴ Statement on the Amicable Resolution of the *Binno v. LSAC* lawsuit (Oct. 7, 2019), <https://www.prnewswire.com/news-releases/statement-on-the-amicable-resolution-of-binno-v-lsac-lawsuit-300931402.html>; Staci, Zaretsky, *Major Changes Coming to the LSAT with Removal of Logic Games Section*, ABOVE THE LAW (Oct. 8, 2019, 1:43 PM), <https://abovethelaw.com/2019/10/major-changes-coming-to-the-lsat-with-removal-of-logic-games-section/>.

²⁵ Consent Decree, *United States v. Compass Career Management, L.L.C.*, No. 2:15-cv-01347 (E.D. La. filed Apr. 27, 2015); *available at* http://www.ada.gov/compass_career_mgmt/compass_cd.html; *see also* Press Release, U.S. Dep't of Justice, Justice Department Settles with Private Career College for Discrimination Against Applicant with HIV (Apr. 27, 2015), *available at* <https://www.justice.gov/opa/pr/justice-department-settles-private-career-college-discrimination-against-applicant-hiv>.

²⁶ *Sjostrand v. Ohio State University*, 750 F.3d 596 (6th Cir. 2014).

²⁷ *E.g., Mallett v. Marquette Univ.*, 65 F.3d 170 (7th Cir. 1995) ("[W]e accord [the defendant-law school] significant discretion in establishing its admission standards and evaluating the academic credentials of applicants.") (citing *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 225 (1985)).

²⁸ *Power v. Univ. of North Dakota School of Law*, 954 F.3d 1047 (8th Cir. 2020)

²⁹ 34 C.F.R. § 104.44.

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- ³⁰ OCR Resolution Agreement with Irvine Valley College, 09-17-2090, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09172090-b.pdf>
- ³¹ Resolution Agreement Between O.C.R., U.S. Dep't of Educ. & Oakland Univ., No. 15-19-2070 (May 15, 2020). See also Resolution Agreement Between O.C.R., U.S. Dep't of Educ. & Univ. of Washington–Seattle, No. 10-1302176 (July 30, 2019) (requiring features similar to those specified in the Oakland University agreement). See also Resolution Agreement between O.C.R., U.S. Dep't of Educ., and Univ. of Notre Dame, No. 05-13-2495 (June 30, 2014) (requiring a request procedure have specifics features such as timeframes and specifying when a student's instructor is involved in determining whether a requested modification is reasonable).
- ³² *Rogers v. Western Univ. of Health Sciences*, 2019 WL 4887847 (9th Cir. Oct. 3, 2019).
- ³³ 34 C.F.R. § 104.44(d)(1); see also 28 C.F.R. § 36.303(a).
- ³⁴ 34 C.F.R. § 104.44(d)(2); see also 28 C.F.R. § 36.303(b).
- ³⁵ 42 U.S.C. § 12103; 28 C.F.R. § 36.303(b); 28 C.F.R. § 35.104.
- ³⁶ *Argenyi v. Creighton University*, 703 F.3d 441 (8th Cir. 2013).
- ³⁷ *Id.* at 448–49 (quoting *Loye v. County of Dakota*, 625 F.3d 494, 499 (8th Cir. 2010)).
- ³⁸ *Id.* at 450.
- ³⁹ See Michael Argenyi: A Case for “Meaningful Access,” An Expectation for Common Decency, Disability Rights Nebraska (Dec. 19, 2013), <https://perma.cc/AW3Y-BF2F>.
- ⁴⁰ *Payan v. Los Angeles Community College*, 2019 WL 2185138 (C.D. Cal. May 21, 2019).
- ⁴¹ *Payan v. Los Angeles Cmty. Coll. Dist.*, 2019 WL 3298777 (C.D. Cal. July 22, 2019).
- ⁴² See, e.g., Resolution Agreement Between O.C.R., U.S. Dep't of Educ. & Univ. of Montana, No. 10-12-2188 (Mar. 10, 2014).
- ⁴³ Consent Decree, *Dudley v. Miami Univ.*, No. 14-cv-38, 2016 WL 8814603 (S.D. Ohio Dec. 14, 2016), https://www.ada.gov/miami_university_cd.html.
- ⁴⁴ Complaint, *Nat'l Assoc. of the Deaf v. Harvard Univ. (NAD v. Harvard)*, No. 15-cv-30023 (D. Mass. filed Feb. 12, 2015); Complaint, *Nat'l Assoc. of the Deaf v. Mass. Inst. of Tech. (NAD v. MIT)*, No. 15-cv-30024 (D. Mass. filed Feb. 12, 2015).
- ⁴⁵ Statement of Interest of the United States, *NAD v. Harvard*, No. 15-cv-30023 (D. Mass. filed June 23, 2015), https://www.ada.gov/briefs/harvard_soi.pdf; Statement of Interest of the United States, *NAD v. MIT*, No. 15-cv-30024 (D. Mass. filed June 25, 2015), https://www.ada.gov/briefs/mit_soi.pdf.
- ⁴⁶ *Nat'l Ass'n of the Deaf v. Harvard Univ.*, 2016 WL 6540446, at *2 (D. Mass. Nov. 3, 2016); *Nat'l Ass'n of the Deaf v. Massachusetts Inst. of Tech.*, 2016 WL 6652471, at *1 (D. Mass. Nov. 4, 2016) (incorporating decision in *NAD v. Harvard*).
- ⁴⁷ *National Association of the Deaf v. Harvard University*, 377 F.Supp.3d 49 (D. Mass. 2019).
- ⁴⁸ Consent Decree, *NAD v. Harvard*, No. 15-cv-30023 (D. Mass. approved Feb. 26, 2020); Consent Decree, *NAD v. MIT*, No. 15-cv-30024 (D. Mass. approved July 21, 2020). <https://www.nad.org/2020/02/18/landmark-agreements-establish-new-model-for-online-accessibility-in-higher-education-and-business/>
- ⁴⁹ 34 C.F.R. § 104.44(a).
- ⁵⁰ *Id.*; see also 28 C.F.R. § 35.130(b)(7), (8).
- ⁵¹ *Guckenberger v. Boston University*, 957 F. Supp. 306, 314–15, 318–19 (D. Mass. 1997).
- ⁵² *Id.* at 311.
- ⁵³ *Guckenberger v. Boston University*, 8 F.Supp.2d 82, 85-86 (D. Mass. 1998).
- ⁵⁴ *Newell v. Central Michigan University Board of Trustees*, 2020 WL 4584050 (E.D. Mich. Aug. 10, 2020).
- ⁵⁵ *Rogers v. Western University of Health Sciences*, 787 Fed. Appx. 932 (9th Cir. 2019).
- ⁵⁶ *Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326, 329–30 (Iowa 2014).
- ⁵⁷ *Wynne*, 932 F.2d at 19.
- ⁵⁸ See *Peters v. University of Cincinnati College of Medicine*, 2012 WL 3878601 (S.D. Ohio Sept. 6, 2012).
- ⁵⁹ 34 C.F.R. § 104.44(b).
- ⁶⁰ Settlement Agreement Between United States and Southern Illinois University, DOJ No. 204-25-85 (Jan. 11, 2016), http://www.ada.gov/southern_illinois_sa.html.
- ⁶¹ See, e.g., Resolution Agreement Between O.C.R., U.S. Dep't of Educ. & Temple Univ., No. 03-20-2244 (Aug. 20, 2020).
- ⁶² 42 U.S.C. § 12203(a).

⁶³ 28 C.F.R. § 35.103(b)(1)(vii).

⁶⁴ Settlement Agreement Between the United States and Old Dominion University, DJ 169-79-0 (Feb 3, 2021) available <https://www.justice.gov/opa/press-release/file/1364301/download>

⁶⁵ 28 C.F.R. § 35.151; 28 C.F.R. § 36.401; 28 C.F.R. § 41.58.

⁶⁶ 28 C.F.R. § 36.304.

⁶⁷ 28 C.F.R. § 35.150; 28 C.F.R. §§ 41.56-57.

⁶⁸ *Twede v. University of Washington*, 309 F.Supp.3d 886, 903 (W.D. Wash. 2018).

⁶⁹ *Id.* at 902.

⁷⁰ Press Release, *UW, plaintiffs reach agreement on ADA lawsuit regarding parking facilities on campus* (May 2, 2018), available at <https://www.washington.edu/news/2018/05/02/uw-plaintiffs-reach-agreement-on-ada-lawsuit-regarding-parking-facilities-on-campus/>

⁷¹ *Guerra v. West Los Angeles College*, 812 Fed.Appx. 612 (9th Cir. July 17, 2020).

⁷² Settlement Agreement Between the United States and Central Texas College of Killeen (May 6, 2021), available at: https://www.ada.gov/ctc_sa.html

⁷³ Settlement Agreement Between the United States and Tidewater Community College, DJ # 204-79-334 (May 6, 2021), available at: https://www.ada.gov/tidewater_cc_sa.html

⁷⁴ Settlement Agreement Between the United States and University of Alabama at Birmingham, No. 204-1-75 (Feb 10, 2016), available at http://www.ada.gov/uab_sa.html

⁷⁵ Resolution Agreement between the United States and Central Michigan University, No. 15–18–2123 (Mar. 25, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/15182123-b.pdf>

⁷⁶ Resolution Agreement between the United States and Dixie State University, No. 08–17–2332 (Apr. 10, 2018), available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08172332-b.pdf>.

⁷⁷ Resolution Agreement between the United States and University of Texas – San Antonio, No. 06–18–2213 (Feb. 12, 2019), available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/06182213-b.pdf>

⁷⁸ 42 U.S.C. §§ 3601–19; see also 24 C.F.R. § 100.1 to .500 (regulations implementing the FHA).

⁷⁹ See, e.g., *J.D. v. Colonial Williamsburg Foundation*, 925 F.3d 663 (4th Cir. 2019) (finding, outside of the post-secondary context, that an individual with an individual with a severe gluten allergy was protected by the ADA).

⁸⁰ Settlement Agreement Between United States and Rider University, DOJ No. 202-48-32 (Feb. 21, 2019); see also Press Release, U.S. Attorney’s Office Reaches Agreement with Rider University to Resolve Allegations Under the Americans with Disabilities Act (Feb. 21, 2019), available at <https://www.justice.gov/usao-nj/pr/us-attorney-s-office-reaches-agreement-rider-university-resolve-allegations-under>.

⁸¹ *Id.*

⁸² Settlement Agreement Between United States and Lesley University, DOJ No. 202-36-231 (Dec. 20, 2012); see also Press Release, U.S. Dep’t of Justice, Justice Department and Lesley University Sign Agreement To Ensure Meal Plan Is Inclusive of Students with Celiac Disease and Food Allergies (Dec. 20, 2012), available at <https://www.justice.gov/opa/pr/justice-department-and-lesley-university-sign-agreement-ensure-meal-plan-inclusive-students>. The DOJ has posted a website with questions and answers about the settlement at http://www.ada.gov/q&a_lesley_university.htm.

⁸³ 28 C.F.R. § 35.136 (“Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity’s facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.”); see also 28 C.F.R. § 36.302(c).

⁸⁴ 28 C.F.R. § 35.104 (emphasis added); see also 28 C.F.R. § 36.104 (emphasis added).

⁸⁵ 28 C.F.R. § 35.104.

⁸⁶ Voluntary Compliance Agreement Between the United States and Mercy College (May 16, 2016), available at: https://www.ada.gov/mercy_college_sa.html

⁸⁷ 28 C.F.R. § 35.136(f).

⁸⁸ Letter Regarding the Resolution Agreement with Pennsylvania State University, OCR Complaint No. 03-18-2103 (Aug. 28, 2018), available at: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03182103-a.pdf>; Penn State Resolution Agreement, available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03182103-b.pdf>

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- ⁸⁹ 28 C.F.R. § 35.136(b); By control, the regulation specifies: “A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal’s safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler’s control (e.g., voice control, signals, or other effective means).” See *Thomas v. Univ. of South Florida*, 2019 WL 2452825, at *3-4 (M.D. Fla. June 12, 2019) (complaint dismissed because student failed to allege that he was able to keep his service animal leashed or harnessed).
- ⁹⁰ *Entine v. Lissner*, 2017 WL 5507619, at *6 (S.D. Ohio Nov. 17, 2017).
- ⁹¹ 28 C.F.R. § 35.136(i).
- ⁹² 28 C.F.R. § 35.136(i).
- ⁹³ *United States v. University of Nebraska at Kearney*, 940 F. Supp. 2d 974, 975 (D. Neb. 2013).
- ⁹⁴ Notice, U.S. Dep’t of Housing & Urban Development, Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act (Jan. 28, 2020), available at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>
- ⁹⁵ Letter Regarding the Resolution Agreement with Pennsylvania State University, OCR Complaint No. 03-18-2103 (Aug. 28, 2018), available at: <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03182103-a.pdf>; Resolution Agreement, available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03182103-b.pdf>
- ⁹⁶ Penn State Resolution Agreement.
- ⁹⁷ 29 C.F.R. § 1630.2(r); see also *Schl. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273 (1987).
- ⁹⁸ 29 C.F.R. § 1630.2(r).
- ⁹⁹ Bazelon Ctr. for Mental Health Law, Supporting Students: A Model Policy for Colleges and Universities (2007), available at <https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2017/04/SupportingStudentsCampusMHPolicy.pdf>.
- ¹⁰⁰ Settlement Agreement Between United States and Northern Michigan University Under the ADA (Oct. 18, 2018), available at https://www.ada.gov/nmu_sa.html.
- ¹⁰¹ *W.P. v. Princeton University, et al*, 14-cv-01893 (D.N.J.)
- ¹⁰² Settlement Agreement Between United States and Princeton University Under the ADA (Dec. 15, 2016), available at https://www.ada.gov/princeton_sa.html.
- ¹⁰³ *Mental Health & Wellness Coalition et al. v. The Board of Trustees of the Leland Stanford Junior University* Case No. 18-cv-02895 (N.D. Cal.), case documents available at: <https://dralegal.org/case/mental-health-wellness-coalition-v-stanford>
- ¹⁰⁴ *Mbawe v. Ferris State Univ.*, 751 Fed. Appx. 832 (6th Cir. Nov. 5, 2018).
- ¹⁰⁵ *R.W. v. Columbia Basin Coll.*, No 18-CV-5089 (E.D. Wash. October 4, 2019).
- ¹⁰⁶ *Id.*
- ¹⁰⁷ See also *R. W. v. Columbia Basin Coll.*, 842 F. App’x 153, 154 (9th Cir. 2021) (concluding that two college administrations were protected by qualified immunity per Section 1983).
- ¹⁰⁸ *Chenari v. George Washington Univ.*, 847 F.3d 740 (D.C. Cir. 2017).
- ¹⁰⁹ *Schimkewitsch v. New York Inst. Of Tech.*, 2020 WL 3000483, at *5 (E.D.N.Y. June 4, 2020).
- ¹¹⁰ *Shaikh v. Texas A&M University College of Medicine*, 739 Fed.Appx.215 (5th Cir. 2018).
- ¹¹¹ *Id.*
- ¹¹² *Goldberg v. Fla. International University*, 838 F. App’x 487 (11th Cir. 2020).
- ¹¹³ *Qui v. Univ. of Cincinnati*, 803 Fed.Appx. 831 (6th Cir. 2020).
- ¹¹⁴ *Id.* at 920.