



# 504 COORDINATOR TRAINING & CERTIFICATION COURSE

## COURSE SLIDE PACKET

*This training manual is intended to provide assistance for achieving best practices with respect to campus sexual misconduct, but is not given and should not be taken as legal advice.*

*Before acting on any of the ideas, opinions or suggestions in this publication, participants should check first with a licensed attorney in their own jurisdiction.*




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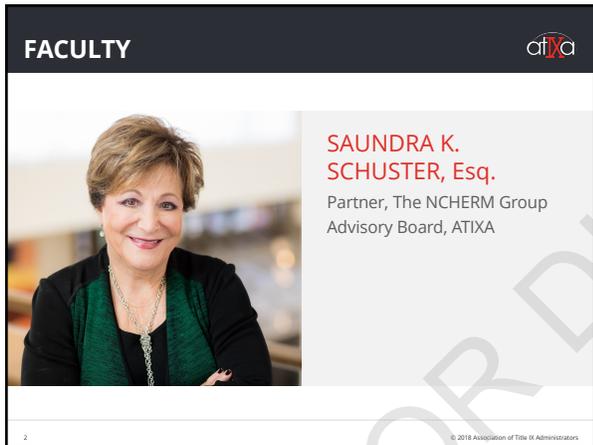
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**TO GET US STARTED:**



- Gather in small groups (6-8), ideally from different institutions
- Share the following information:
  - Your role in regards to Title IX
    - Are you the Disability Services Coordinator as well as the 504/ADA Coordinator?
- Discuss your knowledge/responsibility regarding disability services, accommodations, and grievance processes.
- As a group list your issues/concerns (to be shared with the larger group)

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**504 AND ADA**



504 and ADA are not designed to ensure equal results...  
 But to create a "just result" and to provide equal opportunities for success.

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**CONSIDERATIONS FOR PROVIDING "EQUALITY" IN OPPORTUNITIES**



- What can the institution do to provide students or employees with disabilities equal access to the educational benefits or job opportunities?
- How do the educational or work opportunities and benefits provided to individuals with disabilities compare to those provided to individuals without disabilities?
  - Are they **equally available**?
  - Are they **available in a timely manner**, similar to those provided to students without disabilities?
  - Will it be **more difficult** for students or employees with disabilities to obtain the educational opportunities than for non-disabled students or employees?

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**DISABILITY LAWS** 

504 OF THE REHABILITATION ACT	FAIR HOUSING ACT
AMERICANS WITH DISABILITIES ACT	STATE LAWS

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**WHY IS IT IMPORTANT TO UNDERSTAND DIFFERENT LAWS?** 

- Laws apply differently to housing than to the campus in general, including classrooms and dining facilities
- Laws apply different definitions and standards as it relates to service vs. assistance/emotional support animals (ESAs).
- Laws may impose different standards or response protocols.

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**SECTION 504 OF THE REHABILITATION ACT, 1973** 

- Prohibits **discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance.
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services.
- Enforced by the U.S. Dept. of Education, Office of Civil Rights.
- Codified at **29 U.S.C. § 701**.

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**SECTION 504 STATES:** 

- "No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, 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."

*704(a) Promulgation of nondiscriminatory rules and regulations*

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**TITLE II & III ADA, 1990** 

<p><b>Title II:</b></p> <ul style="list-style-type: none"> <li>• Prohibits discrimination on the basis of disability by <b>public entities, including state colleges and universities</b>, regardless of whether they receive federal financial assistance.</li> </ul>	<p><b>Title III:</b></p> <ul style="list-style-type: none"> <li>• Prohibits discrimination on the basis of disability in <b>private education facilities and in the activities of places of public accommodation.</b></li> </ul>
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Both Title II & Title III are enforced by the Dept. of Justice.

The language of ADA tracks Section 504 and explains that the remedies, procedures, and rights under the ADA are the same as under the Rehabilitation Act.

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**HOW IS 504 DIFFERENT FROM ADA?** 

- Section 504 (1973) and the ADA (1990) are both civil rights laws.
- Section 504 was created to protect individuals with disabilities from discrimination for reasons related to their disabilities. **504 protections are applied to programs or businesses that receive federal funds.**
- ADA, Sec II & III adds to the strength of Section 504 by **extending it to private institutions, workplaces, and to state and local government funded programs.**
- Between the two laws, all government funded programs are covered.

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### HOW IS 504 DIFFERENT FROM ADA?



- All qualified individuals with a disability **must be provided with aids, benefits, or services that provide an equal opportunity** to achieve the same result or level of achievement as others.
- Institutions **may provide a different or separate aid, benefit, or service than requested by the qualified individual with a disability only if doing so is necessary** and ensures that the aid, benefit or service is **as effective as the one requested.**

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### FAIR HOUSING ACT



- FHA makes it unlawful to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a **dwelling**, or in the provision of services or facilities in connection with such a dwelling because of a handicap person...”
- FHA applies to residential “dwellings,” a term that likely encompasses campus housing, including residence halls and dormitories.
- FHA requires allowance for “assistance animals” for a qualified individual with a disability in all dwellings.
- Enforced by the Department of Housing and Urban Development, Fair Housing Act.

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### DISABILITY OVERVIEW

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### WHO IS PROTECTED UNDER SEC 504 & ADA?



- Under this law, **qualified individuals with disabilities** are defined as:
  - Persons **with** a physical or mental impairment which substantially limits one or more major life activities;
  - Persons who have a **record of** having a physical or mental impairment; or
  - Persons who are **regarded as** having a physical or mental impairment that substantially limits one or more major life activities.

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### WHAT DOES IT MEAN TO BE A "QUALIFIED INDIVIDUAL WITH A DISABILITY"?



- A qualified individual with a disability is someone who, with or without **reasonable modifications** to rules, policies or practices or provision of auxiliary aids and services, meets the **essential eligibility requirements** to be able to receive the receipt of services or to participate in programs or activities of the educational entity.

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### WHAT IS A "PHYSICAL OR MENTAL IMPAIRMENT"?



#### A "Physical Impairment"

- Is any physiological disorder or condition, cosmetic disfigurement or anatomical loss that affects one or more of the body systems:

- |                                |                  |
|--------------------------------|------------------|
| Neurological                   | Reproductive     |
| Musculoskeletal                | Digestive        |
| Special sense organs           | Genitourinary    |
| Respiratory (including speech) | Lymphatic        |
| Cardiovascular                 | Skin & Endocrine |

#### A "Mental Impairment"

- Is a mental or psychological disorder includes mental retardation, emotional or mental illness, and specific learning disorders

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### WHAT IS THE DIFFERENCE BETWEEN AN IMPAIRMENT AND A DISABILITY?



- The law draws a distinction between an impairment and a disability.
- There are more people with impairments than with disabilities.
- The difference lies in the **effect** the impairment has on the person.
- If the impairment causes a “substantial limitation” of a “major life activity” then the person has a disability.

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### WHAT IS A “MAJOR LIFE ACTIVITY”?



#### Major Life Activity

- Major life activities include caring for one’s self, performing manual tasks such as:
  - Walking
  - Seeing
  - Hearing
  - Speaking
  - Breathing
  - Working
  - Learning

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### WHAT IS A “MAJOR LIFE ACTIVITY”?



#### Major Life Activity

- Examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are:
 

– AIDS	– Diabetes
– Alcoholism	– Drug addiction
– Blindness or visual impairment	– Heart disease
– Deafness or hearing impairment	– Mental illness
– Cancer	– Learning disability

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**WHAT DOES "RECORD OF" AND "REGARDED AS" HAVING AN IMPAIRMENT MEAN?**



- A **Record of having an impairment** means that an individual has a history of having a mental or physical impairment that limits one or more major life activities.
- **Regarded as having an impairment** means a person may or may not have a qualifying impairment, but is treated as having an impairment that qualifies as a disability.

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**HOW IS THE 504 COORDINATOR DIFFERENT FROM THE DISABILITY SERVICES COORDINATOR?**

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**504 COORDINATOR V. DISABILITY SERVICES COORDINATOR**



- Disability Services Coordinator is responsible for verification of the intake of requests for accommodations; engaging in the interactive process; identifying with the student or employee appropriate accommodations; serving as liaison with faculty and supervisors.
- The 504/ADA Coordinator is responsible for publication of non-discrimination notice; oversight of the grievance process; investigation of grievances,
- Can it be the same person? Should it be the same person?

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# 504 COMPLIANCE AND ROLE OF 504/ADA COORDINATOR

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**SECTION 504/ADA GENERAL COMPLIANCE REQUIREMENTS** 

- If the institution accepts federal funds or employs more than 50 people the institution **must designate an employee to coordinate all efforts to comply** with and carry out its responsibilities, including:
  - **Ensuring dissemination of notice** of the institution's non-discrimination policy.
  - **Adopting civil rights grievance procedures** that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of discrimination.
  - **Conducting investigations** of complaints regarding noncompliance with the legal mandates of ADA or 504.
  - **Providing notice** of the name, office address, and telephone number of the employee or employees designated to oversee 504/ADA compliance.

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**TYPICAL 504/ADA COORDINATOR ADMINISTRATIVE REQUIREMENTS** 

- The Section 504/ADA Coordinator is, at a minimum, responsible for:
  - **Coordinating and monitoring compliance** with Section 504 and Title I, II or Title III of the ADA;
  - **Overseeing state civil rights requirements** regarding discrimination and harassment based on disability;
  - **Overseeing prevention efforts** to avoid Section 504 and ADA violations from occurring;
  - **Implementing the institution's discrimination complaint procedures** with respect to allegations of Section 504/ADA violations, discrimination based on disability, and disability harassment; and
  - **Investigating complaints** alleging violations of Section 504/ADA, discrimination based on disability, and disability harassment.

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**REQUIRED STANDARD NOTICE**



*In accordance with the requirement of 504 of the Rehabilitation Act of 1973 and Title II [or Title III if a private school] of the Americans With Disabilities Act of 1990 (ADA) the [name of your institution] will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The [name of institution] does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Dept. of Education, the U.S. Dept. of Justice and the U.S. Equal Employment Opportunity Commission.*

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**GRIEVANCE POLICY SHOULD INCLUDE**



- A description of how and where a complaint under 504/ADA may be filed.
- If a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative.
- A description of the time frames and processes to be followed by the complainant and the institution.
- Information on how to appeal an adverse decision.
- A statement of how long complaint files will be retained and where they are retained.

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**ELEMENTS OF A GRIEVANCE PROCESS**



- All grievances related to disability discrimination or harassment should be directed to the 504 Coordinator.
- The complaint should be in writing, clearly stating the issue presented.
- The 504 Coordinator should conduct an investigation of the complaint (could be formal or informal).
- The investigation must be thorough, reliable, and impartial.
- The 504 Coordinator shall issue a written report and decision.
  - Must have a time limit here
  - Recommend 30 days

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### ELEMENTS OF A GRIEVANCE PROCESS (CONT'D)



- The Individual filing the Complaint may appeal the decision by providing a written appeal to (insert appropriate person) within 10 days of the decision by the 504 Coordinator.
- The decision by the Appeal Officer is a final decision.
- The availability and use of the grievance procedure does not prevent a person from filing a complaint with the state Civil Rights Commission or the U.S. Dept. of Education, Office for Civil Rights.

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### ACCOMMODATION PROCESS




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### THE ACCOMMODATION PROCESS



- Accommodations should be made on a case by case basis.
- An accommodation or modification is not required when:
  - It would result in a fundamental alteration of the nature of the program, service, or job function (28 CFR 35.130(b)(7)).
  - Neither Section 504 nor the Fair Housing Act requires accommodations that are an undue financial and administrative burden. Whether a particular accommodation will be an undue financial and administrative burden will depend on the facts and circumstances of the individual case.

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**WHAT DOES THIS MEAN FOR STUDENTS, FACULTY & STAFF?**



- For students, this means that a qualified student with a disability will be “otherwise qualified” for admission to a specific academic program if he/she can meet all the necessary and articulated “essential functions” of the college program with reasonable accommodations.
- For employees, it means that if the employee meets the qualifying elements to perform a job, the institution must provide appropriate accommodations.
- Students and employees with disabilities are also protected from discriminatory harassment directed at them because of their disabilities.

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**PROGRAM STANDARDS FOR STUDENTS**



- Creation of well-articulated program standards are essential to address circumstances when students with a disability cannot complete a program or benefit from it.
  - Identify graduation competencies.
  - Ensure any licensure/certification requirements are identified and programs appropriately aligned.
  - Ensure program requirements are consistent with accreditation requirements.
  - Ensure all field requirements are identified (both in clinical assignments and in the profession).
  - Look at each course to determine what the outcomes are and how students with disabilities may be able to accomplish these with accommodations.

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**PROGRAM STANDARDS FOR STUDENTS (CON'T)**



- Ensure any use of web-content or e-readers are fully functional to accommodate spectrum of disabilities.
- Consider applying Universal Design: Universal Design for Learning (UDL) is an educational framework, based on research, that guides the development of flexible learning environments that can accommodate individual learning differences.

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### WHAT IS THE UNIVERSAL DESIGN FOR LEARNING?



- The goal of Universal Design for Learning (UDL) is to remove any barriers to learning and give all students equal opportunities to succeed.
- It does not target students with learning disabilities but builds flexibility into the learning environment that allows for adjustment for all students' strengths and needs.
- Examples include:
  - Closed captioning
  - Automatic doors
  - Variations for textbooks (text, audio, video, hands-on)

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### STANDARDS FOR THE WORK ENVIRONMENT



- The determination of whether an individual with a disability is "qualified" for a job begins with deciding whether the individual satisfies the prerequisites for the position, such as possessing the appropriate education, experience, skills, licenses, etc.
- The next step is to determine whether or not the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation.
- Essential functions are the fundamental job duties of the employment position the individual with a disability holds or desires. They do not include the marginal functions of the position.

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### STANDARDS FOR THE WORK ENVIRONMENT



- A job function may be considered essential for any of several reasons, such as:
  - The reason the position exists is to perform that function;
  - There are a limited number of employees available among whom the performance of that job function can be distributed;
  - And/or the function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

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**ACCOMMODATION PROCESS: NOTIFICATION** 

A COLLEGE HAS NO OBLIGATION TO ACT OR TO PROVIDE ACCOMMODATIONS UNTIL A REQUEST IS MADE...

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**ACCOMMODATION PROCESS** 

**Step One:**

- Student or employee notifies the appropriate office on campus that addresses accommodations for disabilities.
- Student or employee claims disability and seeks accommodation.

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**ACCOMMODATION PROCESS** 

**Step Two:**

- Student or employee provides documentation supporting disability claim and the professional recommendation for accommodation(s).
- Disability Services Coordinator reviews disability claim and documentation.
- Note: The institution is not bound to honor IEP's from the student's high school.

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### ACCOMMODATION PROCESS: DOCUMENTATION



- Colleges may establish reasonable standards for documentation.
- Source should be from an appropriately trained individual.
- A person with a master's degree in education or developmental psychology may be appropriate to evaluate a learning disability.
- A medically trained person is necessary to diagnose medical or psychological matters or pregnancy-related matters.
- If the claim or supporting documentation is in question the institution may request a second opinion, but the institution must pay.

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### ACCOMMODATION PROCESS



#### Step Three:

- Institutions should engage in an "interactive process" to determine appropriate accommodations that meet an individual's needs.
  - Although the program as a whole must be accessible and services provided in the most integrated setting possible, the law does not require a college to lower its standards to accommodate a disabled student or employee.
  - Determining what form of accommodation is appropriate is an important task. Discouraging students from defining themselves by what they can't do is critical.
- All aids and adjustments must be provided in a timely manner.

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### SOME IMPORTANT THINGS TO KNOW



- An institution is not required to provide:
  - Personal devices such as wheelchairs
  - Individually prescribed devices such as prescription eyeglasses or hearing aids
  - E-readers for personal use or study
  - Services of a personal nature including assistance in eating, toileting or dressing

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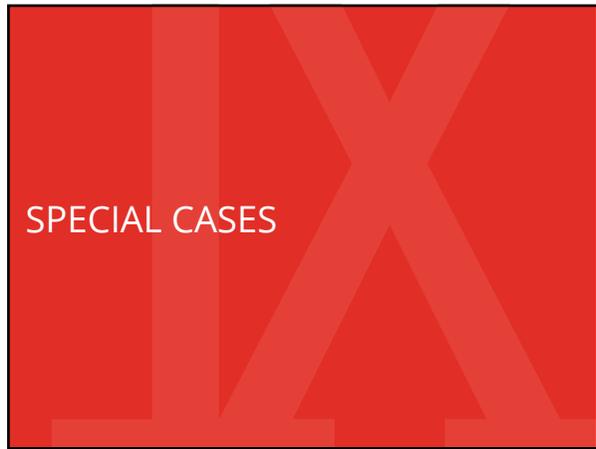
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**ADA & ACADEMICS** 

- "Higher Education Institutions are only required to provide effective and reasonable accommodations, not necessarily what the students ask for."

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*Southeastern Community College v. Davis*  
*U.S. Supreme Court, 1979*

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**SOUTHEASTERN COMMUNITY COLLEGE V. DAVIS**



- **Facts:** Frances Davis sought admission to the nursing program at Southeastern Community College. She suffered from a hearing disability and was unable to understand speech without lip reading.
- Her application for admission was denied. She appealed and was again denied. She filed a lawsuit.
- The District Court (E. Div. North Carolina) ruled against her, the U.S. Court of Appeals for the 4th Circuit overturned the trial court's decision and the College appealed.

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**SOUTHEASTERN COMMUNITY COLLEGE V. DAVIS**



- The U.S. Supreme Ct. ruled in favor of the College, stating, "An otherwise qualified individual with a disability is one who meets all the program requirements in spite of his handicap."
- The court stated, "Even with an improved hearing aid, Davis still required lip-reading to understand speech and therefore was not 'otherwise qualified' and could not be admitted to Southeastern's program without substantial changes to the admission requirements. The College did not discriminate against her in rejecting her admission."

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**CASE EXAMPLE: ADA & ACADEMICS**



*Russell Campbell v. Lamar Institute of Technology, (5th Cir., 11/23/2016)*

- Campbell was a student at Lamar Institute of Technology (LIT), and was provided accommodations for his learning disability.
  - Campbell had a brain injury impacting his ability to retain and process information.
  - LIT provided extended time for all exams, and a laptop and a voice recorder to help him with note-taking.
  - A faculty member even gave him two different final exams two weeks apart - the faculty member created a second exam.

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**CASE EXAMPLE: ADA & ACADEMICS**



- Campbell asked for two extra weeks of study time after the other students took the final for all his exams.
  - Campbell provided a Dr.'s note that stated, "he needs a week to two weeks to retain new information prior to testing over that material."
- LIT refused the two extra weeks' request, as they considered it:
  - Unreasonable because all faculty would have to create two exams.
  - The accommodation would give Campbell an unfair advantage over other students.
  - Could require faculty to lower the standards of their class.

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**CASE EXAMPLE: ADA & ACADEMICS**



- LIT met with Campbell and his wife and said he could ask individual instructors to accommodate him.
- Campbell met with instructors, who denied his request for two weeks to study, indicating it was not reasonable.
- Campbell had missed some classes and exams and dropped his classes to preserve his GPA.
- Campbell filed a grievance RE: denial of accommodations. He was offered to have LIT "provide reasonable accommodations supported by medical documentation and would waive tuition and fees for the next semester."
  - Campbell rejected the offer because he did not feel welcome at LIT.

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**EXAMPLES OF ACCOMMODATIONS**



- Additional time to complete tests, coursework, or graduation;
- Substitution of nonessential courses for degree requirements;
- Adaptation of course instruction;
- Tape recording of classes; and
- Modification of test taking/performance evaluations so as not to discriminate against students with sensory, manual, or speaking impairments (unless such skills are the factors the test purports to measure).



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**EXAMPLES OF ACCOMMODATIONS** 

- Qualified interpreters
- Note takers
- Computer aided transcription services
- Written materials, assistive listening systems
- Closed caption decoders
- Open and closed captioning, TDDs
- Readers, taped texts, audio recordings
- Large print and Brailled materials
- Acquisition or modification of equipment



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**ACADEMICS AND ADA**

The Case of Elyce



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**THE CASE OF ELYCE** 

Elyce provided documentation to the Disability Services Office that she frequently experienced panic attacks, especially when she was under pressure or stress. The Office reviewed her documentation and determined that she was entitled to request additional deadlines for completion of her academic work.

She met with her professor, who taught psychology, in a large lecture class (the course was required for Elyse's major) and presented the accommodation letter from the Office of Disability Services.

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**THE CASE OF ELYCE**



She told the professor that she read the syllabus and noted that the professor does not give make-up exams in the course. Elyce told the professor, "What if I get a panic attack during the exam? You have to give me a make-up exam. This letter says so."

The Professor has now come to you to explain that the course in question is required of all psychology majors and is the core course of Elyce's program. The professor stated, there are exams, lab reports, presentations, and papers in a tightly choreographed sequence that barely fits into the term.

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**THE CASE OF ELYCE**



Falling behind in one assignment could cause a cascading problem for Elyce and leave her at risk for failure in the rest of her program. The Professor stated, "I simply cannot provide or allow for make-up exams, given the rigor of this program."

What will you advise the Professor and Elyce?

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**ADA & PREGNANT & PARENTING STUDENTS**

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**ACCOMMODATION PROCESS: NOTIFICATION** 

*"A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex."*  
34 C.F.R. 106.40

- June 2007 "Dear Colleague Letter"
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

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**OCR, TITLE IX, AND PREGNANCY** 

June 25, 2007 "Dear Colleague Letter"

- Affirms the application of the pregnancy-related portions of the regulations to athletics departments, and summarized a school's obligations to pregnant student-athletes.

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**PREGNANCY & TITLE IX** 

- The June 25, 2007 DCL also includes:
  - Information on how to develop programs to support these students;
  - An overview of students' rights under Title IX; and
  - Guidance on how to share your complaint if you feel your rights are not being met.
- While the pamphlet is focused on secondary education, the DCL states that "legal principles apply to all recipients of federal financial assistance, including postsecondary education."

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**PREGNANCY & TITLE IX**



- June 25, 2013 DCL on pregnancy and parenting students:
  - Educators must ensure pregnant and parenting students are **not discriminated against**.
  - Educators must ensure that pregnant and parenting students are **fully supported in preparation for graduation and careers**.
  - Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX.

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**PREGNANCY & TITLE IX:  
TITLE IX REGULATORY LANGUAGE**



**Pregnancy and related conditions:**

- A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient."
  - 34 C.F.R. 106.40

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**PREGNANCY & TITLE IX:  
TITLE IX REGULATORY LANGUAGE**



**Pregnancy and related conditions (cont.):**

- A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity only so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician."
  - 34 C.F.R. 106.40

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**PREGNANCY & TITLE IX:  
TITLE IX REGULATORY LANGUAGE**



**Pregnancy and related conditions (cont.):**

- A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.”  
– 34 C.F.R. 106.40

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**PREGNANCY & TITLE IX:  
BUT NOTE**



- You probably don't have a "temporary disability" policy.
- That's because neither 504, nor the ADA recognizes a temporary impairment as a disability unless its severity is such that it results in a substantial limitation of one or more major life activities.
- The issue of whether a temporary impairment is substantial enough to be considered a disability must be resolved on a case-by-case basis, taking into consideration the duration of the impairment and the extent to which it limits a major life activity.
- Documentation is critical. DO NOT ASSUME!

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**PREGNANCY & TITLE IX:  
TITLE IX REGULATORY LANGUAGE**



**Pregnancy and related conditions (cont.):**

- In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a **justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.**”  
– 34 C.F.R. 106.40

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**PREGNANCY & TITLE IX CASE DISCUSSION** 

Janet is 7 months pregnant and has had an easy pregnancy. She's in the Allied Health Program for ENT. In this cohort program, clinical/experiential placements only occur during the Spring term. Janet is scheduled to graduate next December. The paramedic program to which she's been assigned won't allow her to participate on their ambulance runs because of her pregnancy. She needs to complete this program this term.



**What will you suggest?**

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**PREGNANCY & TITLE IX CASE DISCUSSION** 

Sasha is an elementary education teacher who has fulfilled all of her course requirements and is one-third of the way through her required student teaching experience when she has a baby. She faced medical complications with the birth and her doctor tells her she will miss at least a month of her student-teaching. If her graduation date is delayed, she will miss that year's hiring cycle.



**What are some possible approaches?**

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**ADA & MENTAL HEALTH ISSUES**

*NOT FOR DISTRIBUTION*

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**504/ADA GUIDELINES REGARDING MENTAL ILLNESS**



- A greater percentage of students arrive at college these days with a history of emotional or mental health problems, and even more will be diagnosed during their period of enrollment at your institution.
- A student or employee with a documented mental disorder is a qualified person with a disability.
- As the DSS or 504 Coordinator, you must take individual needs into account but also to uphold educational standards and well-functioning work environments.

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**504/ADA GUIDELINES REGARDING MENTAL ILLNESS**



- Both the ADA and Section 504 Apply
  - Section 504 gives recourse to students and employees who are discriminated against on the basis of a recognized disability.
  - The Americans with Disabilities Act (ADA) entitles students or employees who are otherwise qualified to participate in the programs and activities of the college to reasonable accommodations once they seek qualification with the campus disability services office.
  - A suicidal student or employee may reasonably be regarded as having a psychiatric disability.

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**A PSYCHIATRIC DISABILITY IS....**



- Defined as a mental impairment that substantially limits one or more major life activities
- Examples of mental disabilities include:
  - Major depression
  - Bipolar disorder
  - Schizophrenia
  - Anxiety disorders
  - Post-traumatic stress disorders
  - Autism Spectrum Disorders

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**SPRING ARBOR UNIVERSITY DECISION (DECEMBER 2010)** 

**Facts**

- A student told admissions representative that he had a disability (anxiety and depression).
- The student later reported that the admissions representative did not refer him to the school's Disability Services Office.
- The student did not independently seek accommodation from Disability Services, nor identify himself to Disability Services as an individual with a disability.
- The summer following the student's first term of enrollment, he experienced increased emotional symptoms and was diagnosed as bipolar. At school, the student engaged in cutting behaviors, uncontrolled crying, and persistently discussed his problems with other students.

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**SPRING ARBOR** 

**Facts (continued)**

- During this period of time, however, the student remained in good academic standing.
- In the fall term following his diagnosis, as a result of his behavior on campus, the Vice President and other university officials requested a meeting with the student, under the guise of a meeting with him about his "academic success."
- The student was assured that this was not a disciplinary meeting, but immediately was confronted with "complaints" about his behaviors. The student became very upset and stated his intent to withdraw from school immediately based on medical necessity.

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**SPRING ARBOR**



- The following spring, the student applied for re-admission to the university. He was informed that before he could return he was required to provide medical documentation, a release of medical treatment records, a student agreement form, and other standard elements for re-admission. The university did not require 504 plans or medical treatment documentation of other students seeking re-admission, and was not informed of these conditions when he “voluntarily” withdrew.
- The student was denied re-admission and subsequently filed a complaint with OCR based on disability discrimination under Section 504 of the Rehabilitation Act.

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**SPRING ARBOR**



**OCR Determination**

- The OCR initially determined that although the student voluntarily withdrew from school, the institution's actions in presenting him with a behavior contract that had many elements related to mental health treatment resulted in the student being “regarded” as having a disability.
- The OCR further determined that the university then discriminated against the student, based on his disability, by imposing requirements on the student's re-admission that were not required of other students seeking re-admission to the university.

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**SPRING ARBOR**



**OCR Determination**

- The university argued that they were trying to ensure that the student could be successful upon re-admission.
- However, the student had never demonstrated that he couldn't be successful academically and, at the time of his voluntary withdrawal, he was in good academic standing and had never been disciplined.
- Thus, OCR determined that the university's reason was not a legitimate non-discriminatory one and was instead a pretext for disability discrimination.

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### SPRING ARBOR



#### OCR Determination (continued)

- The OCR stated that a university may remove a student with a disability or deny admission to that student if the university applied a "direct threat test."
- This test may be applied only when an individual poses a significant risk to the health and safety of others. The significant risk must represent a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In this matter, the university stated that it believed the student was a threat to himself, but not to others.

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### ADDRESSING INVOLUNTARY WITHDRAWAL



- Engaging in involuntarily removing a student or employee with a disability is complex
  - The law changed in 2011 - no longer applies to "harm to self" as a basis for involuntary withdrawal.
  - If a student is suicidal, no documentation is needed to assume a disability
  - Students and employees with disabilities have specific rights set forth by law
  - The institution must engage in the "Direct Threat" Test.

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### "DIRECT THREAT" TEST



- OCR says DUE PROCESS is necessary to challenge factual assumptions that behavior is a "Direct Threat" that would support involuntarily removing a student or employee from the institution
- A "Direct Threat" analysis applies to any individual who poses a "significant risk" of substantial harm or safety to others that cannot be eliminated or reduced by reasonable accommodation.
- To rise to the level of a direct threat, there must be a **high probability of substantial harm and not just a slightly increased, speculative, or remote risk.**

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**"DIRECT THREAT" TEST**



Significant risk determination must be made by considering:

- (1) the duration of the risk,
- (2) the nature and severity of risk,
- (3) the likelihood that the potential harm will occur,
- (4) the proximity of the potential harm.

OCR is, by practice, deferential to our determination of direct threat, but they insist that we make one.

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**IDEATION, NON-SPECIFIC THREATS, GESTURES**



- The Direct Threat Test can tell us if a student who is ideating, threatening, or who is making non-specific gestures without a plan or means to carry through may or may not represent a high probability of substantial harm sufficient to involuntarily remove them from school.
- For example, in the next case, when George Washington University separated a student who reported suicidal thoughts at a hospital, it clearly overreacted. It did not make a finding that met the four elements of the direct threat test.

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**NOTT V. GEORGE WASHINGTON UNIVERSITY**



- Student, Jordan Nott sought treatment for depression and suicidal ideation following the suicide of a friend.
- The information was shared with administration at George Washington.
- Mr. Nott was removed from campus on an interim basis as a substantial and immediate harm to himself or others.
- The University offered Mr. Nott a hearing on the interim suspension or the right to voluntarily withdraw and take a leave of absence.

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### NOTT V. GEORGE WASHINGTON UNIVERSITY



- Following completion of recommended treatment and clearance by the counseling center, he would be allowed to return.
- Nott sued, alleging his rights were violated under ADA, Sec. 504, violation of privacy, infliction of emotional distress and other state and federal laws.
- George Washington University engaged in a confidential settlement agreement with Mr. Nott following this action.

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### POLICY IMPLICATIONS



#### Conduct Procedures & Codes

- Offer appropriate due process and follow your process.
- Use clearly written codes and referrals based on *behaviors*, not disabilities or conditions.
- Address *actual* significant disruption to campus, not simply *risk* of disruption.
- Be consistent in referrals – the same disruptive behavior should warrant a conduct process, regardless of the individual. Sanctioning should also be consistent.
- Do not treat students with disabilities differently than other students, other than providing reasonable accommodations under the law.

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### MENTAL HEALTH & ADA

The Case of Joel




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**MENTAL HEALTH & ADA  
THE CASE OF JOEL**



Joel is a first year student at your institution. He enrolled as an honors student and had outstanding credentials in high school. Your Journalism program is nationally recognized and very competitive. Joel was highly sought after and your school awarded him a prestigious scholarship.

Joel has a life-long dream of being a journalist and has even won several contests and recognitions for his writing.

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**MENTAL HEALTH & ADA  
THE CASE OF JOEL**



Your curriculum for a degree in Journalism requires three courses in public speaking. One on addressing a political issue, one on dealing with a controversial topic and one on persuasion.

Joel has never spoken in front of a group and the first time he got up in front of the class he stammered and could not speak. He ran out of the room. He was so upset about this that he went to a counselor to talk about what was going on. The counselor encouraged him to return to class and do his best.

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**MENTAL HEALTH & ADA  
THE CASE OF JOEL**



Joel did return to class and did his best to perform well but his grades for this first public speaking course were bad. Falling below a 3.0 could cost Joel his scholarship.

He became distraught to see his dream slip away and became increasingly anxious and depressed. He withdrew from campus organizations and events, seldom left his room and was clearly losing a lot of weight. His concerned parents took him to a physician who diagnosed him with depression and anxiety disorder and prescribed several medications.

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**ADA GUIDELINES RE: SERVICE ANIMALS** 

- Title II & III state that a service animal is a dog (or miniature horse) that has been individually trained to do work or perform tasks for the benefit of an individual with a disability.
- Title I of the ADA, which applies to the employment context does not define "service animals," nor require institutions to automatically permit a specific type of animal in the workplace. Rather, animals in the workplace should be treated as a "reasonable accommodation" and the employer may ask for appropriate documentation



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**ADA GUIDELINES RE: SERVICE ANIMALS** 

- "Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability.
- The Service animal does not need to be professionally trained, but cannot just be a 'service animal-in training.'
- You cannot require documentation that the animal has been certified, trained or licensed as a service animal
- Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA."

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**ADA GUIDELINES RE: SERVICE ANIMALS**



- Other animals, whether wild or domestic, do not qualify as service animals, except the use of trained miniature horses as alternatives to dogs, subject to certain limitations.
- This definition does not affect or limit the broader definition of “assistance animal” under the Fair Housing Act or the broader definition of “service animal” under the Air Carrier Access Act.

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**EXAMPLES OF WORK OR TASK OF SERVICE ANIMALS**



- Guiding people who are blind.
- Alerting people who are deaf.
- Pulling a wheelchair.
- Alerting and protecting a person who is having a seizure
- Reminding a person with mental illness to take prescribed medications.
- Preventing or interrupting impulsive or destructive behavior for those with psychiatric disability.
- For example, for autistic students, service animals can be trained to interrupt inappropriate repetitive behavior.



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**IMPORTANT INFO ABOUT RIGHTS OF INDIVIDUALS WITH A DISABILITY & SERVICE ANIMALS**



- An institution must modify policies, practices or procedures to permit the use of a service animal.
- Unless:
  - The animal is out of control
  - The animal isn't housebroken
- Service animals must be permitted to accompany their handler in all areas of the institution.
- You may not charge a fee for a service animal even if others accompanied by a pet are required to pay a fee.
- Service animals don't have to wear a vest, ID Tag, or specific harness to identify them as a service animal.

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**ADVICE MOVING FORWARD:  
GUIDELINES FOR SERVICE ANIMALS**



- Only dogs or miniature horses who perform work or a task for an individual with a qualifying disability are considered service animals.
- Must be individually trained to do the work or task.
- Must be housebroken.
- Must remain under the care and supervision of the owner at all times.
- Must be under the owner's control via a leash or harness unless it would interfere with their work.
- May not create a disruption to the environment.
- May not pose a direct threat to the health or safety of the campus.

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**EMOTIONAL  
SUPPORT, THERAPY,  
COMPANION ANIMALS**



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**THERAPY, COMPANION, AND  
EMOTIONAL SUPPORT ANIMALS**



- May be an animal other than a dog.
- Are generally not legally defined by federal law, but some states have laws defining **therapy animals**.
- They are usually the personal pets of their handlers, and provide comfort or emotional support.
- Federal laws have no provisions requiring people to be accompanied by therapy or comfort animals in places of public accommodation that have "no pets" policies other than dwellings under the FHA.
- Therapy animals usually are not service animals.

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### HUD: FAIR HOUSING ACT



- The Office of Housing and Urban Development (HUD) applies a broader definition of "assistance animal" when enforcing Sec 504 in the housing context.
- Under HUD the Fair Housing Act (FHA) requires that "assistance animals," which includes untrained emotional support (ESA), comfort, therapy as well as service animals, **must be allowed as an accommodation** for any qualified individual with a disability in any "dwelling which is occupied as a residence by one or more families".

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### HUD: FAIR HOUSING ACT



- Although institutions must accommodate a qualified individual with a disability by making provisions for an assistance/comfort/ESA in a residence hall or campus apartment, the institution is not required to allow the individual to bring that animal into the work environment, classroom, or other areas or buildings on campus unless the animal qualifies as a service animal.
- An individual requesting an assistance animal, as defined by HUD/FHA, is required to produce documentation of a disability, and demonstrate the nexus of the disability to the support or comfort that the assistance animal provides in order to have that animal in campus housing. There is no documentation required for service animals.

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### HUD ASSISTANCE ANIMAL REQUIREMENTS



- Those seeking support must have a qualifying disability.
- There must be an identifiable relationship or nexus between the disability and the assistance the animal provides.  
The animal that individual with a disability wish to accompany them must be necessary to afford those persons with an equal opportunity to use and enjoy a dwelling.
- The assistance animal must meet reasonable standards for the housing environment.

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### HUD GUIDELINES



- As long as the animals alleviate the “effects” of the disability and the animals are reasonably supported, they are acceptable.
- **Species other than dogs, with or without training**, and animals that provide emotional support are recognized as “assistance animals.” Courts have also upheld that animals need not be trained, nor do they need to be dogs to qualify as “reasonable accommodations.”
- Animals who pose a direct threat to the health and safety of others; who cause substantial physical damage to the property of others; who pose an undue financial and/or administrative burden; or would fundamentally alter the nature of the provider’s operations may be excluded.

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### ADVICE REGARDING SERVICE V. ESAS



- There is a difference between “therapeutic support” provided by ESAs and “psychiatric service animals”
  - A **psychiatric service dog** (for example) might be specifically trained to remind someone to take his or her medication, check a room, or turn on lights for someone with PTSD or anxiety disorder
  - An **ESA** is not specifically trained for a specific task to address a disability, rather they provide (important) emotional support

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### SOME IMPORTANT CASES:

U. Nebraska-Kearney




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**CASE LAW**



*Sec. of U.S. Dept. of Housing & Urban Development v. University of Nebraska at Kearney  
Office of Administrative Law Judge (Sept. 30, 2011)*

Brittany Hamilton was diagnosed with depression and anxiety sufficient to limit a major life activity of breathing and sleeping. She took medications for the symptoms and also relied on a comfort animal...her miniature pinscher named Butch. Through repeated conversations and provision of documentation to the University, the Director of Housing determined that Brittany did not meet the University's standards to allow her to bring her dog in housing because Butch was not certified.

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**KEARNEY CASE**



Brittany moved into housing without Butch and soon reported that her anxiety was out of control, causing her to miss class, only sleep 2 hours a night, and suffer severe anxiety attacks. She again requested to have Butch join her, and the University responded again that he was not certified and only certified animals could be in University housing.

She filed a complaint with the U.S. Dept. of Housing and Urban Development, under the Fair Housing Act, alleging discrimination based on her disability.

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**KEARNEY CASE**



An Administrative Law judge, under HUD, found that the University engaged in discriminatory housing practices under the FHA (who defines a dwelling to be "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families").

The judge issued an injunction against the University for discrimination against a person based on disability in any aspect of occupancy, use or enjoyment of a dwelling; awarded her damages sufficient to fully compensate her for her damages; awarded attorney fees; and issued a \$16,000.00 civil penalty against the University for each violation of the act.

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**BUT THERE IS MORE**



*United States of America v. University of Nebraska at Kearney, et. al, April 9, 2013*

Following the decision by the HUD Administrative Law judge, the Justice Department sued UNK, alleging that by refusing Hamilton to use her therapy dog in University housing the University was denying Hamilton an accommodation in violation of the FHA and 504. The District Ct. ruled in favor of Ms. Hamilton. The Court's ruling considered only the threshold issue of whether student housing at UNK is a "dwelling" within the meaning of the FHA .

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**UNITED STATES OF AMERICA V. UNIVERSITY OF NEBRASKA AT KEARNEY, ET. AL**



**Arguments Advanced #1:**

UNK argued that the FHA should not apply because student housing is temporary and since the FHA does not apply to hotels or other lodging for transient guests it should not apply there.

The Court disagreed, stating that the FHA has applied in a wide-variety of temporary housing contexts, including boarding schools and halfway houses. Student housing has common living areas, such as kitchens and living rooms where residents can socialize like a family. Simply put, students live in University housing for a significant time period and while they do they treat it like home.

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**UNITED STATES OF AMERICA V. UNIVERSITY OF NEBRASKA AT KEARNEY, ET. AL**



**Arguments Advanced #2 & #3:**

UNK then argued that University housing should be exempt from the FHA because it is (for these limited purposes) comparable to jail, which does not constitute a dwelling. UNK argued that like jail, University housing is mandatory, that students are assigned roommates and are subject to more rules and restrictions than normally associated with residential housing.

Additionally, UNK argued that the purpose of University housing is not primarily to provide a residence, but is educational.

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UNITED STATES OF AMERICA V. UNIVERSITY OF NEBRASKA AT KEARNEY, ET. AL



Arguments Advanced #2 & #3:

The Court rejected UNK's argument about comparing student housing to jail (although many students may). The Court also said that just because a goal of student housing is educational, that would not exempt them from the FHA. Additionally, the Court noted that HUD specifically uses "dormitory room" as an example of a "dwelling" in the FHA implementing regulations (24 C.F.R. § 100.201). The Court deferred to HUD's interpretation and determined that UNK's student housing constituted a "dwelling" under the FHA.

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UNITED STATES OF AMERICA V. UNIVERSITY OF NEBRASKA AT KEARNEY, ET. AL



- The parties to the litigation agreed that in order to avoid more costly and protracted litigation they would settle the case. Some of the significant elements of the settlement include:
  - The University will adopt a "University Housing Reasonable Accommodation Policy" and an "Assistance Animal Policy and Agreement."
  - The University will provide broad training to all individuals with responsibility for disability issues.
  - The University will pay Ms. Hamilton \$140,000.

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SOME IMPORTANT CASES:

Grand Valley



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**CASE LAW** 

*Kendra Velzen & Fair Housing Center v. Grand Valley State University*  
*U.S. Dist. Ct., W. Dist. Michigan (2012)*

Ms. Velzen was diagnosed with depression and cardiac arrhythmia and had a pacemaker implanted. She relied on her attachment to animals as emotional support and was formally prescribed an emotional support animal....a guinea pig, Blanca.

The prescribing physician prescribed Blanca as a means of controlling Velzen's stress and managing her symptoms by reducing her depression, decreasing her heart rate and increasing oxytocin levels which impacted her sense of "life satisfaction".

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**CASE LAW** 

When she moved into a residence apartment she came with her guinea pig (Blanca) and a letter from her doctor supporting Bianca's presence in the residence hall. The doctor explained that Blanca provided emotional support and attachment, thereby helping Velzen to control stress and manage her symptoms.

The housing office informed her that her request to live with the guinea pig was denied because it was not a trained service animal. Velzen and the Fair Housing Center bought suit against Grand Valley State University and named individuals in their official capacities for violation of her ADA rights as conferred by the Fair Housing Act.

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**CASE LAW** 

In January 2013, the University settled the case for \$40,000. Additionally, the settlement requires that if Velzen chooses to live on campus and requests to live with a guinea pig or another animal similar in size or nature, the request will be approved by the University.

The University also agreed to create a "Support Animal Accommodation Policy" within 90 days and train their staff within 90 days of creation of the policy.

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**BUT BEWARE:  
THERE ARE SCAMMERS**



- In 2015, the National Service Animal Registry signed up eleven thousand users.
  - They are a commercial enterprise that sells certificates, vests and badges for "helper animals"
- Some pet owners purchase "emotional-support cards."
  - Having an emotional-support card means that your pet is registered in a database of animal owners who paid between \$70-\$200 to one of several organizations, none whom are recognized by the government

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**WHAT TO EXPECT FOR DOCUMENTATION  
FOR AN ESA**



- The documentation should be from a medical professional, trained to diagnose mental health conditions.
- Confirmation the individual has a mental health diagnosis.
- Request an explanation of how the animal helps alleviate the condition.
- Have them address the potential negative effects of the person not having the animal with him/her.
- Ask if the animal has any training to do what is needed to alleviate the disability.

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**ADVICE MOVING FORWARD:  
SERVICE ANIMALS & ESAS**



- Must be in good health and well cared for by the owner.
- Must meet all state requirements for vaccinations and licensing.
- The owner must clean up after the animal and must appropriately dispose of all animal waste.
- The animal may not disturb, annoy, or cause any nuisance to other members of the campus community.

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**ADVICE MOVING FORWARD: ESAS**



- May be limited to campus housing only.
- Should be considered on a case-by-case basis.
- The individual seeking to have a comfort animal must provide documentation of a qualifying disability.
- There must be a nexus between the disability and the role of the comfort animal.
- May be an animal other than a dog or horse.
- The institution may engage in the interactive process in determining the acceptance of the comfort animal, balancing the need for accommodation of the individual with the impact on the environment.

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**ADVICE MOVING FORWARD: ESAS**



- The animal cannot interfere with the reasonable use and enjoyment of others living in the same dwelling.
- The animal must always be under the control of the owner, either on a leash or harness or in a crate or carrier.
- The owner may not leave the animal for extended periods of time or overnight.

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**ADVICE MOVING FORWARD: ESAS**



- They may not pose an undue threat or fear to the residence environment.
- They may not cause undue financial or administrative burden to the institution in order to provide the accommodation.
- May not fundamentally alter the nature of the institution's operations.
- May not disrupt the environment by barking, meowing, scratching, screeching, or growling

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### SOME ADDITIONAL THINGS TO KNOW ABOUT ASSISTANCE ANIMALS



- Although HUD says that assistance animals can go anywhere within the housing unit, both the DOJ and the Kearney and Kent State Conciliation agreements permit the colleges to contain the animal to the student's personal room, suite or apartment, except to take the animal out for natural relief.
- This will be a frustrating element for you, but there is not a limit on how many assistance animals may be allowed in a residence as long as there is sufficient documentation that all the animals are necessary to alleviate the disability and the facility can accommodate them.

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### SOME MORE THINGS YOU MAY WANT TO KNOW



- What about roommates or neighbors with allergies? Not all allergies create a disability and you need to apply common-sense to addressing.
- Allergies or fear of dogs are not valid reasons for denying access or refusing service to people using service animals.
- A person with a disability does not have superior rights to the person without a disability.

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### GROUP DISCUSSION



What are your biggest challenges regarding 504/ADA issues moving forward?

What resources would be most helpful in doing your job?

What other 504/ADA challenges are you addressing on your campus?

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QUESTIONS?



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THANK YOU!

**Questions?**  
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