

Accommodations in Housing and Other Nonacademic Services

Week 9

Section 504

- No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extra-curricular, or postsecondary program or activity.

Section 504 Regulations, 34 CFR 104.43(a)

Legal Imperatives for non-academic programs and activities

- Non-discrimination
- Meaningful access
- Services provided must be equally effective
- Activities and services must be offered in the most integrated setting appropriate
- Establishment of comprehensive policies regarding the provision of aids and services

Reference: Salome Heyward (2009) Disability and Higher Education, LRP Publications

Right to Access All Programs

- Once admitted, students with disabilities have the **right to access all programs, academic and non-academic**, that are available to other students **in the most integrated setting**
- Public entities must administer programs in the “most integrated setting” appropriate to the needs of qualified individuals with disabilities.”
- Programs to consider: housing, dining, libraries, computer labs, registration systems, service and companion animals, technology, online resources, and websites, athletics and recreational programs, study abroad programs, and more.

Housing Accommodations

- If your school provides housing options for any student, then it is required to provide both reasonable accommodations to its housing policy and accessible housing options.
- Options must be comparable, convenient, accessible, and at the same cost. Housing must be in sufficient quantity and variety to provide a comparable housing experience.
- The school may not charge more for accessible housing or housing provided with a reasonable accommodation than it charges for comparable inaccessible housing.
- Institutions that provide housing have an affirmative obligation to provide accessible housing to students with disabilities.

Reference: Salome Heyward (2009) Disability and Higher Education, LRP Publications

Housing Accommodations

Examples of reasonable accommodation in campus housing include:

- housing located close to campus or to a shuttle or bus stop
- priority for single or larger units
- allowing a student to have a service or companion animal despite a “no pets” policy
- campus-sponsored activities taking place in student housing must be held in accessible areas, and reasonable accommodations must be provided
- Ground floor or wheelchair accessible units
- Private bathroom
- Kitchen access

Housing Accommodations

- Fialka-Feldman v. Oakland University, 678 F Supp 2d 576 (2009)
- Plaintiff, a student with a cognitive disability in a part time college program, requested waiver of a housing policy that allowed only full time degree seeking students to live in campus housing.
- The university refused claiming the request was not a reasonable accommodation and that housing the plaintiff would require “fundamental alteration” of its housing program.

Housing Accommodations

- The university also argued that allowing the plaintiff to live in university housing would be granting a preference to the plaintiff over other students.
- The court's response: "Preferences will sometimes prove necessary to achieve the ADA's basic equal opportunity goal...requires preferences in the form of reasonable accommodations needed for those with disabilities to obtain the same opportunities."

Service Animals

- **Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.** Examples of such work or tasks include 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, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. 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. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

Service Animals

- **Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.** For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

Reference: (and for more information)

http://www.ada.gov/service_animals_2010.htm

Service Animals and Universities

- Ensure that access is granted to handlers with service animals in all areas of facilities where members of the public, participants in services, programs or activities and/or visitors are allowed to go.
- Identify the office or administrator responsible for verifying that the animal is a service animal and making exclusion decisions. Instruct that all questions or concerns be referred to that office or individual.

Service Animals (cont.)

Adopt verification procedures that provide that:

- It is presumed that the individual and the animal are entitled to be onsite.
- The inquiry process will not be invoked under circumstances where it is observable and obvious what work or task the animal is performing for the handler.
- Absent extraordinary circumstances, all contact with the handler will be limited to the statutorily approved inquiries. Further inquiry will not be made unless there is credible, objective evidence reflecting that the animal is not performing as a service animal.

Service Animals (cont.)

- The policy should prohibit any additional restrictions, charges or fees imposed solely on the basis of the presence of a service. (include comfort animals)
- The responsibilities of handlers should be clearly spelled out in the policy. They include:
 1. To maintain control of the service animal by lease, tether, voice control, signals or other effective means.
 2. The proper care, feeding, maintenance and overall supervision of the animal
 3. To provide evidence of vaccinations or immunizations and compliance with local health ordinances

Service Animals (cont.)

- Adopt a process requiring an individualized determination prior to excluding a service animal. There should be no general or categorical exclusions (e.g., no animals permitted in labs). The reasons for exclusion should be strictly limited to those provided in the ADA.
- The exclusion procedure should a) require a full analysis of all pertinent facts and that there be actual evidence that supports the exclusion; b) provide the individual an opportunity to resolve or address the issues that would warrant exclusion; and c) ensure that a proper determination is conducted prior to excluding an animal judged to be a “direct threat.”

Service Animals (cont.)

- Even under circumstances where a decision is made that exclusion is warranted, a determination must be made as to whether there are modifications or accommodations that could be implemented or offered that would permit the individual and his/her service animal to participate prior to actual exclusion.
- If a service animal is legitimately excluded, the individual with the disability should be given the opportunity to continue participating in the program or activity and alternative accommodations should be provided, if necessary.
- The policy should provide that service animals will not be removed solely because individuals assert that they have allergies and/or fear dogs.

Comfort Animals

- **Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?**
- **A.** No. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. However, some State or local governments have laws that allow people to take emotional support animals into public places. You may check with your State and local government agencies to find out about these laws.

Fair Housing Act (FHA) and Pets

- The FHA makes it unlawful for a person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”
- “A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability . . .”
- Exceptions to “No Pets” policies have been shown to be a reasonable accommodation. The person with the disability must show a link between his/her disability and need for the animal.

Comfort Animals

- Requests for the use of comfort/assistance/support animals will be treated as accommodation requests.
- The key issue to be addressed is whether sufficient documentation is provided to establish that the animal is necessary to “afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program.”

Comfort Animals (cont.)

- Students will be required to provide documentation establishing a) the existence of a disability and b) a need and/or nexus between the disability and the comfort or assistance the animal provides.
- A proper individualized assessment will be conducted prior to denying the use of animal based upon the fact that it would fundamentally alter the program or service; pose a direct threat; and/or would impose an undue financial or administrative burden.
- Approval of the use of a comfort/assistance/support animal should include clear notice of any limits regarding the use and/or access of the animal.
- **Reference:** ADA Compliance In Higher Education, For State and Local Governments Conference, Salome Heyward, JD, May 14, 2014

Outstanding legal questions regarding emotional support/comfort animals

- The statute does not specify types of animals that may be allowed as comfort animals.
- Can universities require health certificates?
- Can universities impose breed/safety restrictions?
- How do universities deal with students with animal allergies?

Food Services and Accommodations

- **Food allergies**
- A December 2012 agreement with Lesley University requires the university to make reasonable modifications to ensure full and equal enjoyment of meal plan and food services for students with celiac disease and other food allergies. The university was also required to pay \$50,000 to individuals affected by its earlier policies and practices.

Food allergies as a disability

- “A disability as defined by the ADA is a mental or physical impairment that substantially limits a major life activity, such as eating. Major life activities also include major bodily functions, such as the functions of the gastrointestinal system. Some individuals with food allergies have a disability as defined by ADA, particularly those with more significant or severe responses to certain foods. This would include individuals with celiac disease and others who have autoimmune responses to certain foods, the symptoms of which may include difficulty swallowing or breathing, asthma, or anaphylactic shock.”

Reference: U.S. Department of Justice Civil Rights Division. Questions and Answers About the Lesley University Agreement and Potential Implications for Individuals with Food Allergies. Available at www.ada.gov/q&a_lesley_university.htm Accessed Nov. 5, 2014.

Food Service

Policies and procedures to properly accommodate students:

- Adopt a clear process for students to follow who wish to request food service modification plans that includes an interactive process involving the student and a knowledgeable representative of the institution, as well as, the participation of necessary Food Service Provider staff.
- The procedures should include clear guidance to students regarding their participation in the process.

Food Service (cont.)

- Include information regarding available options for student with food allergies in relevant student handbooks and catalogs and on portions of the internal website linked to Dining/Food Services. The information should also identify a dining services staff person as a designated contact person(s).
- Post notices regarding food allergies in dining halls and food eatery, including the cooking areas and/or food preparation areas in each facility.

Food Service (cont.)

- Ensure that students are offered the same range of choices regarding where they elect to have lunch and dinner as other students.
- Ensure that contracts with third party Food Service Providers require compliance with the institutional policies and procedures regarding reasonable modifications and outline the responsibility of their staff to take reasonable steps to prepare and provide meals in conformance with modification plans developed for students with food allergies.

Food Service (cont.)

- Provide necessary training to Food Service staff regarding a) food allergy awareness; b) cross-contamination, proper food storage, preparation and food safety practices; c) handling inquiries regarding allergies; and d) the University's procedures for addressing student requests for meal plan modifications and exemptions.

Best Practices for Food Allergy Management on Campus

The following principles represent best practices for addressing the needs of students with food allergies. Schools should develop and maintain:

- A collaborative, campus-wide approach.
- A transparent and flexible process capable of meeting student needs without being burdensome.
- A comprehensive food allergy policy that includes: § A clear process for requesting accommodations/modifications, § Documentation required to establish an individual's food allergy as a disability, § A process for determining appropriate accommodations/modifications, § Implementation of accommodations/modifications, § Outreach and marketing, and § Assessment of services.
- Emergency response plans and training.
- Confidentiality. § As with other medical information, information about a student's food allergy or celiac disease should only be shared with those staff members directly involved in the implementation of accommodations/modifications, or in the emergency plans for these students.

Reference: <http://www.foodallergy.org/file/college-pilot-guidelines.pdf>