

UCLA

UCLA Electronic Theses and Dissertations

Title

Implementation of Disability Compliance for Patron Services in Post-Secondary Education Libraries

Permalink

<https://escholarship.org/uc/item/6sk9g695>

Author

Hughes, Janet Lorraine

Publication Date

2012

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA

Los Angeles

Implementation of Disability Compliance
for Patron Services in Post-Secondary Education Libraries

A thesis submitted in partial satisfaction
of the requirements for the degree
of Master of Library and Information Science

by

Janet Lorraine Hughes

2012

© Copyright by
Janet Lorraine Hughes
2012

ABSTRACT OF THE THESIS

Implementation of Disability Compliance
for Patron Services in Post-Secondary Education Libraries

by

Janet Lorraine Hughes

Master of Library and Information Science

University of California, Los Angeles, 2012

Professor Beverly P. Lynch, Chair

This paper describes situations and proposed activities that can prepare library staff in post-secondary institutions of higher education in provision of services to the disabled. To improve library services for the disabled, librarians and library staff need information on policies, procedures and services as well as a working understanding of disability as defined by federal law. To provide that information, I researched significant decisions by the courts, the Department of Justice, and the Department of Education, Office for Civil Rights as well as changes in and additions to statutes and regulations as presented in LRP Publications' *Disability Compliance for Higher Education*. Most cases, however, are *not* about libraries or librarians; most cases are about disputes between disabled individuals and post-secondary institutions in general. Therefore, I review cases that lend themselves to application in a library setting and then summarize the decisions for re-interpretation and application in the creation of policies, procedures, and training programs.

The thesis of Janet Lorraine Hughes is approved.

Anne J. Gilliland

Gregory H. Leazer

Beverly P. Lynch, Committee Chair

University of California, Los Angeles

2012

DEDICATION

Gary B. Nash, Ph.D. for teaching diversity and tolerance in revolutionary times.

Joan Waugh, Ph.D., for encouragement and moral support.

Steven E. Brown, M.D., for encouragement and love.

Wayne C. Sander, M.D., Ph.D. for perseverance and guidance.

Beverly P. Lynch, Ph.D. for tolerance and patience.

In Memory

Dorothy J. Ganger (1926-1990)

Melvin R. Ganger (1920-1990)

John King, Ph.D.

Vernie Lynch Browning, M.P.H.

Sharla Schroeder, M.A.

Deborah A. Thompson, Esq.

Bruce Browning

Vee Salabiye, M.L.I.S.

Melissa L. Meyer, Ph.D.

Steven E. Brown, M.D. (1952-2011)

A well-regarded institution of higher learning . . . should be committed to the success of all its students, and surely that entails a sincere evaluation of their abilities and needs before issuing a decision to dismiss them.

Singh v. George Washington University School of
Medicine and Health Sciences, No. 03-1681 (RCL)
(Dist. Ct.). D.C. July 12, 2006

TABLE OF CONTENTS

ABSTRACT OF THE THESIS ii

DEDICATION iv

TABLE OF CONTENTS vi

ABBREVIATIONS viii

ACKNOWLEDGMENTS ix

SECTION 1 DISCUSSION 1

 INTRODUCTION 1

 ISSUE: APPLICABILITY OF TITLE II OF THE ADA TO EDUCATIONAL ENVIRONMENTS 3

 Court Cases 3

 Summary 6

 Recommendations 6

 ISSUE: TRAINING OF ADMINISTRATORS, FACULTY, AND STAFF 6

 Summary 8

 Recommendations 9

 ISSUE: APPLICABILITY OF DISABILITY AS DEFINED 10

 Court Cases 11

 Legislation 16

 Summary 17

 Recommendations 17

 ISSUE: SECTION 504 OR ADA COORDINATOR 18

 Summary 19

 Recommendations 19

 ISSUE: DOCUMENTATION REQUIRED FOR PROVISION OF SERVICES 20

 Summary 22

 Recommendations 22

 ISSUE: DOCUMENTATION DERIVED FROM AN INFORMATION INTERVIEW 23

 Summary 26

 Recommendations 26

 ISSUE: INTERACTIVE PROCESS 27

 Summary 29

 Recommendations 29

ISSUE: ASSISTANCE FOR THE HEARING IMPAIRED	30
Summary	31
Recommendations	32
ISSUE: ALTERNATIVE FORMAT FOR THE VISION IMPAIRED	32
Summary	34
Recommendations	35
ISSUE: SERVICE ANIMALS	35
Summary	36
Recommendations	36
ISSUE: WHEELCHAIR ACCESS	36
Summary	37
Recommendations	37
ISSUE: MENTAL HEALTH	37
Summary	38
Recommendations	39
ISSUE: INTERVENTION	39
Summary	40
Recommendations	40
ISSUE: DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS INVESTIGATIONS	40
OCR Resolution Process	41
Early Complaint Resolution Process	42
Summary	42
Recommendations	42
ISSUE: DEPARTMENT OF JUSTICE REVIEW PROCESS	43
Compliance Review	43
Summary	43
Recommendations	43
SECTION 2 CONCLUSION	44
APPENDIX A CITED CASES AND STATUTES	46
APPENDIX B CITED CASES BY YEAR	49
References	51

ABBREVIATIONS

ADA	Americans with Disabilities Act 42 U.S.C. § 12182
ADAAA	ADA Amendments Act of 2008 (Public Law 110-325, September 25, 2008)
ASL	American Sign Language
DOJ	Department of Justice
EEOC	Equal Employment Opportunity Commission
GAO	Government Accounting Office
OCR	Office for Civil Rights
Section 504	Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 947(a)
U.S. Const. Amend. XI	The Constitution of the United States, Amendment 11
Title II	Title II of the Americans with Disabilities Act 42 U.S.C. § 12182

ACKNOWLEDGMENTS

I extend my appreciation to the State of California, Department of Rehabilitation for their sponsorship, which includes academic fees, materials, and equipment.

I thank the Will Rogers Memorial Scholarship, offered through University of California, Los Angeles, Office for Students with Disabilities, for equipment funding.

I also acknowledge the generosity of Steven E. Brown, M.D., for financial and moral support, which includes reference materials, equipment, adaptive devices, travel expenses, and hours of conversation on the topic of disability.

SECTION 1 DISCUSSION

INTRODUCTION

According to the U.S. Department of Education, National Center for Education Statistics, in the 2007-08 academic year 10.8 percent of all undergraduate students in postsecondary institutions self-disclosed as disabled. Since passage of the Americans with Disabilities Act of 1990, colleges and universities have modified facilities, teaching practices, policies, procedures, and more, in an effort to provide equal access to education for all students. It has been a monumental effort with monumental success. The success continues as the U.S. Department of Education, Office for Civil Rights, the Department of Justice, and the U.S. courts examine those cases brought by disabled students who could not find resolution elsewhere. Those extreme cases offer insight to how colleges and universities can continue the effort toward equal access to education for all students. This paper examines those extreme cases through the lens of library management to present examples and discussions and to provide librarians and their staff with suggestions for implementation of policies, procedures, and training that will further the objective of equal access.

Librarians have responsibilities and authority to perform services unique to those of other college and university faculty and staff. For example, librarians perform information interviews with all patrons; that is, they converse with patrons to ascertain their individual research needs and how they might fulfill those needs. In addition, librarians, as bound under the Code of Ethics of the American Library Association, guard a patron's "privacy and confidentiality" (ALA Code of Ethics, 2008). Those two responsibilities combined give a credentialed librarian authority to interview disabled persons and make decisions as to what particular services the library may

extend, services that might be extraordinary to the general public. This paper describes situations and proposed activities that can prepare librarians and library staff in post-secondary institutions of higher education to assist their disabled patrons. To improve library services for the disabled, librarians need information on policies, procedures, and services as well as a working understanding of disability as defined under federal law.

For each year through 2008, LRP Publications produced an edited yearbook, a compilation of disability-related articles that summarized governmental action over the course of the prior year, entitled *Disability Compliance for Higher Education*. Each yearbook covers significant decisions by the courts, the Department of Justice (DOJ), and the Department of Education, Office for Civil Rights (OCR) as well as changes in and additions to statutes and regulations. Publication of the yearbook stopped in 2008, but case summaries and commentary continue in the monthly publication by the same title. Overriding themes repeat through the summaries that give prevalence to the responsibilities of persons with disabilities and of educational institutions that provide accommodations to the disabled. I abstract the interpretations derived from DOJ and OCR decisions and from disability-related court cases as reported by *Disability Compliance for Higher Education*. For sake of comprehension, I have rearranged the information by category. For sake of accuracy, often the text herein quotes or closely resembles that found in *Disability Compliance*. To do so fulfills my objective to study and analyze the decisions and cases for summary with an eye toward re-interpretation and applicability in a library setting for the provision of services to disabled patrons.

Bold italics identify each category of issues below, followed by discussion or presentation of governmental decisions or both. Each issue section closes with a summary and a list of recommendations directed toward library administration and staff. As stated above, rather

than a comprehensive presentation, this serves as an introduction to providing services to the disabled in a post-secondary educational library setting.

ISSUE: APPLICABILITY OF TITLE II OF THE ADA TO EDUCATIONAL ENVIRONMENTS

Application of the Americans with Disabilities Act (42 U.S.C. § 12182) (ADA) in post-secondary educational environments pivots upon a provision of the 11th Amendment of the U.S. Constitution (U.S. Const. Amend. XI) and a conflicting provision under the ADA. The 11th Amendment expresses states' rights that preclude lawsuits against a state by individuals:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. (U.S. Const. Amend. XI)

Title II of the Americans with Disabilities Act (42 U.S.C. § 12182) prohibits discrimination against a person with disabilities as concerns the “services, programs, or activities of a public entity” (ADA, 2009). Thus, questions regarding Title II applicability to educational institutions arise due to the expression of states' rights under the 11th Amendment.

Court Cases

Applicability of the ADA in post-secondary education reached the U.S. Supreme Court in *Board of Trustees of the University of Alabama v. Garrett* 531 U.S. 356 (2001), 193 F.3d 1214, reversed, and in *Tennessee v. Lane*, 541 U.S. 509 (2004), 315 F.3d 680, affirmed. Marc P. Charmatz, attorney with the National Association of the Deaf Law Center in Silver Spring, Maryland, explains that the Supreme Court determined in *Alabama v. Garrett* “that private individuals could not sue states for monetary damages under Title I of the ADA.” The court found it contrary to the 11th Amendment “by failing to act pursuant to a valid exercise of power

given to Congress under Section 5 of the 14th Amendment” (Charmatz, 2006a, p. 2-47), which states, “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article” (U.S. Const. Amend. XIV). The court in *Alabama v. Garrett* added a footnote, however, which states that individuals retain the right to sue the state as pertains to Title II of the ADA. Subsequent, the Supreme Court substantiated that footnote with the decision in *Tennessee v. Lane*, wherein the court “held that private individuals could sue states for monetary damages under Title II” of the ADA (Charmatz, 2006a, p. 2-47).

In *Jordan Press v. State Univ. of N.Y. at Stony Brook*, 388 F.Supp.2d 127 (E.D.N.Y. 2005), however, the U.S. District Court interpreted *Tennessee v. Lane* as applicable only to “the narrow issue of access to the courts.” Hence, in the *Jordan Press v. N.Y.* decision, the court leaned instead toward *Johnson v. Southern Connecticut State Univ.*, 2004 WL 2377225 (D. Conn. 09/30/04), wherein the U.S. District Court for Connecticut held that “education is not a constitutional or fundamental right,” and therefore, states are immune from lawsuits under the 11th Amendment (Charmatz, 2006b).

A subsequent case further addresses the right-to-sue issue as it applies to institutions of higher education. The 11th U.S. Circuit Court of Appeals, which serves the Southeastern United States, reviewed *Association for Disabled Americans, Inc. v. Florida International University*, 405 F.3d 954 (11th Cir. 2005). The 11th Circuit reversed the lower court’s decision and in doing so established that although “equality in education” remains outside the definition of fundamental rights in the U.S., it “is vital to the future success of our society” (Charmatz, 2006a, p. 2-48). The 11th Circuit reasoned that in passing the ADA, Congress documented a history of “unequal treatment” of persons with disabilities and, as such, “concluded that there was a substantial risk of future discrimination . . . and unconstitutional treatment.” The court further

concluded that discrimination of students with disabilities “affects their future ability to exercise and participate in the most basic rights and responsibilities of citizenship, such as voting and participation in public programs and services” (Charmatz, 2006a, p. 2-48). Thus, “the 11th Circuit Court held that state colleges and universities do not enjoy 11th Amendment immunity in Title II lawsuits brought by students with disabilities” (Charmatz, 2006a, p. 2-47). Further, in *Ass’n for Disabled Americans v. Florida Int’l Univ.* the Court of Appeals established, in effect, that “Congress abolished the states’ 11th Amendment right with respect to higher education” (Charmatz, 2006b, p. 2-50). Thus, through the ADA, an individual’s right to sue supersedes the states’ right to immunity from lawsuits brought by individuals.

Acceptance of federal funding by educational institutions also affects an educational institution’s legal status in relation to ADA compliance, as defined in two 2005 cases. In *Constantine v. George Mason University*, No. 04-1410 (105 LRP 25490) (4th Cir. 2005), the 4th Circuit Court of Appeals (which serves the mid-Atlantic states from Maryland to South Carolina and east to West Virginia) determined that educational institutions waive their immunity right under the 11th Amendment when they accept federal funding (Charmatz, 2006b, p. 2-50). The rule applies to any type of federal assistance accepted by an educational institution. In *Bennett-Nelson v. Louisiana Board of Regents*, No. 03-31198 (431 F.3d 448) (5th Cir. 2005), the court found that if an educational institution merely accepts federal financial assistance in the form of Federal Work Study and Pell Grant funds, then the institution waives its 11th Amendment shield from liability for discrimination under the ADA (*Bennett-Nelson v. Louisiana*, 2005).

Summary

The U.S. Supreme Court and the Courts of Appeal have set the standards for applicability of the ADA in post-secondary education. Individuals retain their right to sue the state as pertains to Title II of the ADA. Due to substantial risk of discrimination against disabled persons, 11th Amendment immunity cannot serve as a remedy for state colleges and universities in legal conflicts with disabled individuals. In effect, the courts abolished states' 11th Amendment rights with respect to higher education. In addition, as an educational institution accepts federal funding, including financial aid for students, it waives the 11th Amendment privilege of immunity in ADA disputes. Under those circumstances, the ADA applies to post-secondary educational institutions and their libraries.

Recommendations

- College and university administration should determine whether their institution is subject to the ADA.
- University and library administration can diminish possible violations of the ADA as they track federal law and court decisions that cover the types of services the educational institution provides and use the information derived to keep their programs up-to-date in terms of accessibility and compliance.

ISSUE: TRAINING OF ADMINISTRATORS, FACULTY, AND STAFF

The U.S. Government Accounting Office (GAO) reports three “common challenges” for disability service offices in postsecondary education: (1) students’ lack of knowledge “about what their rights and responsibility are regarding accommodations”; (2) faculty members’ lack of “knowledge regarding institutions’ legal requirements for supporting students who have disabilities”; and (3) lack of resources. The Department of Education agrees with the GAO’s

assessment and plans to create a work group to outline an approach to assistance for postsecondary educational institutions (“GAO Report,” 2010). In the meantime, educational institutions and their libraries must promote disability awareness through their own programs.

Following an OCR investigation regarding communication about persons with disabilities within an organization in an employment situation, Kutztown University denied “a reasonable accommodation which would have allowed her [an employee] to return to work” (“University Must Provide,” 2010). The university entered into an agreement with OCR that requires that the university issue a memorandum to faculty and administrators that outlines the university’s policy with regard to “provision of reasonable accommodations for an otherwise qualified employee with a disability.” The memorandum must include the “consequences” of failure to provide reasonable accommodations. The memorandum must also “instruct all faculty members regarding their role in referring requests to the Disability Services Office” (“University Must Provide,” 2010).

University of Oklahoma made concessions to a complaining student and revised its policies and procedures prior to completion of an OCR investigation. Among the policies and procedures changed, the university now trains faculty and deans in requirements for disability accommodation and academic adjustments in particular. Among the concessions to the student, the university agreed to “refrain from discussing information about the complainant” without prior written consent (“College Agrees,” 2009).

Winick and Gomez (2007) make several recommendations as to training that apply to all training sessions—training of students and training of staff, faculty, and administration (“Ease Professors’ Anxiety,” p. 2-28). In advance of a training session, include in your published materials and on your Web site, and then announce in training sessions, that modifications and

accommodations are available for persons with disabilities. An organization can prepare lists of available services and accommodations so that the patron can select what is available without performing a personal audit of the facility and its services. Upon request, staff, faculty, and administrators can work with individuals to discover the best way the educational institution might serve disabled persons. In doing so, the educational institution should seek a mutually effective means that best addresses both the student's needs and the student's customary methods as that means falls within the legal boundaries of what is reasonable for the organization. The institution and its departments can solicit feedback from participants (or patrons, as the case may be) to identify successful outcomes and implement change due to unsuccessful results.

Anita H. Stockbauer, director of Learning Enhancement Services at University of Nevada, Las Vegas, uses a top-down approach in working with faculty, beginning with the deans and provosts ("Work Through Deans," 2006). In training sessions, Stockbauer uses participatory programs with simulations, quizzes, and role-playing, and then awards a certificate to each participant. The certificate remains with the participant's employment record as verification of training.

Summary

The Department of Education, in response to a GAO report, will create a work group to create an approach for resolving problems faced by post-secondary institutions with regard to disability awareness. In the meantime, educational institutions and their libraries must promote disability awareness through their own programs. An educational institution should provide students, faculty, staff, and administration with written notification of the institution's policies and procedures for accommodations to the disabled and explain the consequences that result from failure to provide accommodations. In providing accommodations, the person

accommodating must obtain written consent from the disabled person prior to discussion with any third party. Educational institutions can implement a program through publication of policies and procedures by working on an individual basis with students, faculty, staff, and administration, and then by solicitation of feedback to facilitate improvements and changes in policy and procedures. In a top-down approach to implementation, one institution gains the support of deans and provosts, and then gives credit in personnel files to those within the institution who participate in disability awareness programs.

Recommendations

- A training program can be a low-cost approach to initiate improvements to library access for the disabled. In doing so, the training program should include the training of library staff in working with disabled persons as patrons and as co-workers.
- Librarians should prepare to familiarize professors in library services for disabled persons so that professors know what to expect from the library as well as from the student.
- The library may consider an incentive program coordinated with the university's human resources department to give credit in personnel files to those who participate in ADA compliance training programs.
- In the library's training sessions and published materials, including Web sites, presenters should inform the audience that modification to established policies and procedures as well as accommodations in terms of physical accessibility are available for persons with disabilities.

- The library can establish a method of follow-up to obtain feedback regarding training sessions with and about disabled patrons to discover successful approaches to information access.
- The library may identify successful combinations of services and publish them.

ISSUE: APPLICABILITY OF DISABILITY AS DEFINED

As noted by attorney Allan L. Shackelford (2008), “several court cases . . . have confirmed OCR’s position that a one-size-fits-all approach to accommodation for the disabled is legally unacceptable.” According to one court, an educational institution must consider each disabled person on an individual basis and must do so in consideration of disability as defined in the Code of Federal Regulations (Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.

§ 647(a):

The regulations implementing Section 504 at 34 C.F.R. Section 104.3(k)(3) define a qualified handicapped person with respect to postsecondary education programs as one who has a physical or mental impairment which substantially limits one or more major life activity [sic], has a record of a physical or mental impairment, or is regarded as having such an impairment, who meets both academic and technical standards requisite to admission or participation in the recipient’s education program or activities. (*Letter to: Bevil State, 2008*)

The definition of disability as interpreted by various courts digresses from that intended by Congress with passage of the ADA and varies from one court decision to another. In addition, the various courts that seek to apply a definition of disability look to various definitions found in various precedent court cases; the courts often interpret those definitions differently, from one subsequent case to another. Further, the courts use various definitions of disability found in

various sections of the Code of Federal Regulations. Finally, in 2009 Congress imposed legislation to return the scope of the definition of disability to that intended by Congress with passage of the ADA. The cases below exemplify the convoluted approach to defining disability after passage of the ADA and prior to 2009.

Court Cases

In 2002 the Supreme Court reiterated that, to bring a lawsuit under the ADA, an individual must establish disability “by offering evidence that the extent of the limitation [caused by their impairment] in terms of their own experience . . . is substantial,” *Toyota Motor Mfr., Kentucky, Inc. v. Williams*, 534 U.S. 184, 198, 122 S.Ct. 681, 151 L.Ed.2d 615 (2002) (brackets and omissions in original; internal quotation marks omitted). (Here the court is also “(quoting *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 567, 119 S.Ct. 2162, 144 L.Ed.2d 518 (1999).”) In application, the courts must consider the definition on a case-by-case basis. (Here the court is “citing 42 U.S.C. § 12102(2); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 483, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999); *Albertson’s*, 527 U.S. at 566; *Bragdon v. Abbott*, 527 U.S. 624, 641-642, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998); 29 C.F.R. § 1630.2(j).”) (*Brettler v. Purdue*, 2007, p. B-69).

In *Bartlett v. New York State Board of Law Examiners*, 226 F.3d 69 (2nd Cir. 2000), the court applied an interpretation of the definition of disability that favored a woman with a reading disability who had self-accommodated in the past and who had requested accommodations for the New York State Bar Exam. The court found in favor of the disabled person because she could not compete on a “level playing field” with other applicants in what serves as an employment test. Therefore, under the law, she is impaired in the major life activity of work (*Bartlett v. New York*, 2000).

In 2003, several precedents brought the courts to constrain the definition of disability in the determination that,

to establish a claim under Title II, . . . [a person] must prove: (1) that he is a qualified individual; (2) with a disability; and (3) that he was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was otherwise discriminated against by any such entity; (4) by reason of his disability. *See Henrietta D. v. Bloomberg*, 331 F.3D 261, 272 (2d Cir. 2003); *Lazaris v. Springs*, No. 04-C-844-C, 2005 WL 701699, (W.D.Wis. Mar. 25, 2005) (citing cases); *Dorsey v. City of Detroit*, 157 F.Supp.2d 729, 731 (E.D.Mich. 2001) (citing *Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 5 (1st Cir. 2000)); *Bowers v. National Collegiate Athletic Ass'n.*, 118 F.Supp.2d 494, 511 (D.N.J. 2000); see also 42 U.S.C. § 12132. (*Brettler v. Purdue*, 2007, p. B-69)

Different views on thought processing add to disjunction of opinion among educators as well as the courts. “Even disability providers may think—consciously or unconsciously—that speed influences thinking, said Nicole Ofiesh, assistant professor of special education at the University of Arizona” (“Know Students,” 2006). One court emphasizes that speed serves as a poor measure of knowledge. In *Rush v. National Board of Medical Examiners*,

No. CIV.A2:03-CV-140-J (103 LRP 40731) (N.D. Tex. 2003), the U.S. District Court ruled, that forcing an individual with a reading disability to adhere to prescribed time limits that do not allow him adequate time to process test information makes the testing situation more difficult for him than his peers and does not test the person’s mastery of the subject. Instead, it tests the level of the individual’s disability. (“Court Orders Medical Examiners,” 2004, p. 4-10)

Note also that the decision in *Rush v. Nat'l Board of Medical Examiners* demonstrates the depth of understanding required when defining and recognizing disability.

In *Wong v. Regents of University of California*, 379 F.3d 1097 (2004), the U.S. District Court, Eastern District of California, used a strict application of disability defined. Wong, a medical student, received the diagnosis of learning disabled due to an impaired ability to “process and communicate information.” The university subsequently dismissed Wong because he could not pass his clinical courses. When Wong sued, an expert for the university argued that he failed to meet the definition of disabled because his ability to work exceeded that of the average person. On a procedural technicality, the District Court precluded Wong’s request to provide expert witnesses to refute the argument. Moreover, the District Court applied a strict interpretation of “disabled,” taken from a precedent case, that defines the term as applicable to persons who have difficulty with the most basic functions of daily life, such as “household chores, bathing, and brushing one’s teeth” (quoting *Toyota Motor Manufacturing Kentucky, Inc. v. Williams*, 534 U.S. 184, 122 S.Ct. 681, 151 L.Ed.2d 615 (2002)). Therefore, the Court of Appeals affirmed the District Court’s decision in support of the university and against the disabled person, Wong.

In *Brettler v. Purdue University*, 408 F.Supp.2d 640 (N.D. Ind. 2006), the court draws upon the definition of a “qualified individual with a disability” under Title II as a person who: with or without reasonable modifications to rules, policies, or practices . . . the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity [omission in original]. (*Brettler v. Purdue*, 2007, p. B-69)

Further in *Brettler v. Purdue*, the court references “a three-step inquiry to determine disability” based upon application of statutory law (Title 42, Chapter 126, § 12102) as well as common law. Within a complaint filed with the court by a plaintiff, the plaintiff ““must prove the existence of a mental or physical impairment.”” The plaintiff must also ““demonstrate that the impairment limits a major life activity.”” For a definition of major life activity, the court in *Brettler v. Purdue* looked to *Toyota v. Williams*, 534 U.S. 184 (2002) at 197, which describes “a major life activity” as “an activity ‘of central importance to daily life.’” Statutory law pertaining to equal employment at 29 C.F.R. § 1630.2(j) distinguishes a major limitation as a “major life activity that the average person in the general population can perform” that the disabled person cannot perform or that the disabled person is able to perform to a substantially lesser degree as compared to a person in the general population. In application of 29 C.F.R. § 1630.2(j), “a court considers ‘[t]he nature and severity of the impairment; [t]he duration or expected duration of the impairment; and [t]he permanent or long-term impact of or resulting from the impairment.’” 29 C.F.R. § 1630.2(j)(2)(i)-(iii).” The court in *Brettler v. Purdue* then incorporated the provisions of the *Code of Federal Regulations* that address discrimination at 45 C.F.R. § 84.3(j)(2)(ii), U.S. Department of Health and Human Resources definitions, Nondiscrimination On The Basis Of Handicap in Programs or Activities Receiving Federal Financial Assistance. The District Court states, “the regulations define ‘major life activities’ as ‘functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (*Brettler v. Purdue*, 2007, p. B-69). The court in *Brettler v. Purdue* thus extrapolated that a plaintiff must show substantial limitation(s) to daily functioning.

In *Calloway v. University of Louisville*, WL 1523229, 32 N.D.L.R. p. 216 (W.D. Ky. 2006), the court looked to U.S. Equal Opportunity Employment Commission (EEOC) regulations for its definition of “major life activities” and “substantially limit.” For the EEOC, “major life activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (29 C.F.R. § 1630.2(i), Section 29 C.F.R. § 1630.2(j)(1)(i)) and disabled means “unable to perform a major life activity that the average person in the general population can perform” (*Calloway v. Louisville*, 2007, p. B-34). This definition, narrow and strictly applied (as compared to the definition used in *Bartlett v. New York*) puts the burden upon the disabled person to prove the extent of their disability.

The court again leaned toward a narrow and strict interpretation in *Singh v. George Washington University School of Medicine and Health Sciences*, 508 F.3d 1097 (D.C. 2007). Among its determinations, the court reiterated *Albertson’s v. Kirkingburg*, 527 U.S. 555, 567, 119 S.Ct. 2162, 144 L.Ed. 519 (1999), which states, “that a mere diagnosis is not sufficient to establish a disability under the ADA” (*Singh v. George Washington Univ.*, 2007, p. B-30). To prevail in a presentation of disability before a court of law, the disabled person must demonstrate the extent of their disability on a subjective basis and show that the disability or disabilities affect a major life activity. In this case, the student failed to make such a demonstration of disability. The court also, however, cautioned the university that it acted imprudently with dismissal of a student after it received documentation of disability and without consideration of that documentation. Further, the court stated that

a well-regarded institution of higher learning, such as George Washington University, should be committed to the success of all its students, and surely that entails a sincere

evaluation of their abilities and needs before issuing a decision to dismiss them. (*Singh v. George Washington Univ.*, 2007, p. B-31)

Legislation

Effective January 1, 2009, legislation entitled the *Americans with Disabilities Amendments Act of 2008* (Public Law 110-325, 2008) (ADAAA) changes the applicable definition of the term “disability” under the ADA and Section 504. Regulatory agencies, such as DOJ and OCR, now have “authority to define ‘disability’ and substantial limitation.” The agencies use a broad application of the definition of disability, one that tends to favor the disabled individual. The 2008 legislation requires that agencies apply the definition simply, without “extensive analysis” of a person’s disability or disabilities. Moreover, entities are to accommodate persons with obvious disabilities and other documented disabilities without further inquiry and with “focus only on the question of academic adjustments or reasonable accommodations” (Masinter, 2010).

The ADAAA mandates consideration for those who are deaf, blind, intellectually disabled, missing limbs, or use a wheelchair as persons with obvious disabilities. Those who have “autism, major depression, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia” fall within the category that requires documentation. For those with learning disabilities, an individualized assessment may be required. If so, use a liberal approach that looks to *Bartlett v. New York* as the standard (Masinter, 2010).

Similarly, a person with psychiatric impairments such as the need for “time and effort to think or concentrate, the diminished capacity to effectively interact with others, the length or quality of sleep the individual gets, the individual’s eating patterns or appetite, or the effect on other major life activities, is an individual with a disability” (Masinter, 2010, quoting ADAAA).

Further, the ADAAA reiterates the definition of major life activities as described in *Calloway v. Univ. of Louisville*, above, to state that “major life activities include, *but are not limited to*, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working” (ADAAA, emphasis added). Further still, the ADAAA incorporates “major bodily functions” in the definition of disability to include “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions” without exclusion of other functions that may also qualify.

Summary

As of 2009, two criteria establish disability: (1) an obvious disability, such as blindness, hearing impairment, and obvious mobility problems and (2) a documented disability, which in effect, includes any disability supported by valid documentation. Educational institutions must apply a liberal interpretation of disability, one that favors the disabled person. In all cases, the educational institution must consider disabled persons on an individual basis.

Recommendations

- Librarians and library staff should become familiar with the definition of disability and its applicability in a library environment.
- The law as pertains to the definition of disability changed as different courts applied different interpretations of the definition of disability. The 2009 legislation redefines disability. Note, however, that the 2009 law is also subject to judicial review.

Therefore, educational institutions and their libraries need to monitor changes in

regulations, legislation, and court decisions in order to ensure they know and can act under the current definition of disability.

ISSUE: SECTION 504 OR ADA COORDINATOR

Every college or university that accepts federal funding must designate a Section 504 (of the Rehabilitation Act of 1973) officer to oversee and coordinate compliance with federal disability laws. In current nomenclature, the appointed person may hold the title of Section 504 officer, ADA officer, or some other designation that identifies the person who deals with disability issues for an educational institution or a department or division within the institution.

OCR conducted a Title IX (of the Educational Acts of 1972) and Section 504 review of College of Notre Dame of Maryland. In the process, OCR found inconsistent publication of the name of and contact information for the Section 504 compliance officer. In addition, OCR found no publication of information concerning “discrimination by third parties” nor specific grievance procedures related to presentation of “information, witnesses, and other evidence” (“College Resolves Compliance Issues,” 2010). In another case, although OCR found no discrimination in *Letter to: Texas College*, No. 06082079 (OCR 11/21/08), OCR required the college to revise its nondiscrimination notice to “include the name and/or title, office address, and office telephone number” of the Section 504 officer (“OCR Orders College,” May 2009). In *Letter to: University of Utah*, No. 08092024 (OCR 06/24/09), the university failed to publish the name and/or title of their Section 504/Title II coordinator. OCR stated that the information should appear “in disability notices published on posters, university regulations, brochures and Web pages” (“OCR Notes Institution’s Failure,” 2009). In *Letter to University of Washington School of Medicine*, No. 10082043 (OCR 07/07/09), the university agreed to assign persons within the respective program to coordinate accommodations for persons with disabilities and agreed to publicize

availability of disability accommodations along with a statement of commitment to “nondiscriminatory access to its [the university’s] programs, services and activities” (“Training, Accommodations,” 2010).

Summary

Every college or university that accepts federal funding must designate a Section 504 officer to oversee and coordinate compliance with the ADA and other federal disability laws. In one case, OCR recommended the assignment of an individual within a particular program to serve as an ADA compliance coordinator. Information concerning the identity of a Section 504 officer, the location of their office, and the contact information must be published in disability notices on all publications, including posters, regulations, brochures, and Web pages.

Recommendations

- Librarians and library staff should know who within the institution holds responsibility for ADA compliance.
- Due to librarians’ unique relationship with students and their authority to interview and document patron’s disabilities, libraries should designate an individual within the library to serve as ADA non-discrimination officer and to coordinate policies, programs, and services.
- Whether or not the library has its own ADA non-discrimination officer, the library should coordinate with the educational institution’s ADA officer to ensure continuity of non-discrimination policies and procedures and their implementation.
- Whether or not an individual within the library serves as an ADA non-discrimination officer, the name, location, and contact information for an ADA non-discrimination

officer must be in all publications, including library posters, regulations, brochures, and Web pages.

- All post-secondary educational institution publications, including library publications, must include a non-discrimination statement with regard to access to programs, services, and activities.

ISSUE: DOCUMENTATION REQUIRED FOR PROVISION OF SERVICES.

A student's file with the Office for Students with Disabilities should contain appropriate and adequate documentation to support the accommodations requested. Responsibility for requesting and maintaining documentation that supports the requested accommodations rests with the educational institution. Therefore, from time to time, the educational institution may request current documentation of a student's disabilities to ensure that the student receives appropriate accommodations for current disabilities. As OCR notes, "the nature of a student's disability may change over time" (*Letter to: Ivy Tech*, 2008, p. A-1).

For use of facilities open to the public, which includes all state colleges and universities, the disabled person who *appears* as disabled falls under the protection of the ADA without documented proof (as mentioned above). Note also that, under a provision of the ADA, libraries of state colleges and universities might be considered repositories of information on disabilities and therefore available for access by all disabled persons, whether they are faculty, staff, student, or member of the public. Thus, anyone who enters the library of a post-secondary institution and appears disabled or provides documentation to that effect should receive special treatment.

Examples follow.

In *Garber v. Embry-Riddle Aeronautical University*, 259 F.Supp.2d 979 (D. Ariz. 2003), a man "experienced significant walking difficulty," limped, and had breathing trouble, among

other observable problems. Although “none of these symptoms necessarily results in the finding of a disability,” a reasonable person would conclude that the man does indeed have a disability that affords him protection under the ADA (*Garber v. Embry-Riddle*, 2004, p. B-38).

In *Abdo v. University of Vermont*, 263 F.Supp.2d 772 (D.Vt. 2003), the court found that “while the university had the right to request specific documentation, its requirement that the documentation state a precise medical diagnosis was unreasonably burdensome” (*Abdo v. Univ. of Vermont*, 2004, p. B-28). For further argument on this issue, consider *Guckenberger v. Boston University*, 974 F.Supp. 106 (D. Mass. 1997) at 135, wherein the court decided that “a university is prevented from employing unnecessarily burdensome proof-of-disability criteria that preclude or unnecessarily discourage individuals with disabilities from establishing that they are entitled to reasonable accommodation” (*Abdo v. Univ. of Vermont*, 2004, p. B-30). In other words, the university cannot require documentation to “screen out” disabled persons.

In *Letter to: Antioch University-Seattle*, No. 10072087 (OCR 02/27/09), a hearing-impaired student, unable to wear hearing aids due to allergy, requested real-time captioning in the classroom (captioning simultaneous with the lecture). The university demanded physician documentation of the allergies and refused real-time captioning until the documentation arrived. The student endured the first four weeks of class able to hear only fifty percent of oral lecture and discussion. Once the letter arrived, the university provided real-time captioning. The student filed a complaint with OCR and received the determination that the university “violated Section 504 of the Rehabilitation Act” by its refusal to provide real-time captioning pending documentation (Refusal to Provide, August 2009).

Gillard v. Northwestern University, No. 09-3449 (7th Cir. 03/10/10) brings to light that members of the public may use libraries within institutions of higher education for certain

purposes. The plaintiff argued that persons outside the educational institution's community may use a public university's libraries "to conduct personal research concerning the rights of individuals with disabilities" because the educational institution falls within the definition of "public places of accommodation" under ADA, Title III and Civil Rights Act, Title VI. Although the court dismissed the case in favor of the university because the complainant failed to disclose a disability, the argument opens the possibility that the general public may use college and university libraries for certain specific purposes ("Patron Cannot Show," 2010).

Summary

A person with an obvious disability need not provide documentation to receive services in a library. Any student or employee, however, may be required to maintain proof of disability with an institution's office for disabled students or employment office and update the documentation as needed. In general, members of the educational institution outside the office for disabled students or the employment office, as applicable, must obtain permission of the student or employee to receive information from either the disabled students' office or the employment office. Proof of disability, however, may not be burdensome to the disabled person and provision of services must be timely to the disabled person's needs regardless of documentation. Because the library of a public college or university might fall within the definition of public places of accommodation under the ADA, members of the general public who otherwise would be disallowed might argue that they have the right use the institution's libraries to conduct personal research on disability rights.

Recommendations

- A library must include, as part of its published accessibility information, a written policy that describes the documentation required in order to receive

accommodations for library services. The library must update the policy and its publication as appropriate and in a timely manner.

- The institution's administration or library administration, or both, should keep library personnel informed of the library's documentation of disability policy, the location of its publication, and any changes.
- Librarians who need information from a student's documentation on file with the educational institution should communicate directly with the disabled students' office and do so with prior written consent from the student.
- Librarians who need information from an employee's documentation on file with the university should communicate directly with the employment office and do so with prior written consent from the employee.
- Because the law is not yet clear as to use of an educational institution's library by a member of the general public to conduct personal research on disability rights, the library should establish clear policy and procedure regarding such access.

ISSUE: DOCUMENTATION DERIVED FROM AN INFORMATION INTERVIEW

Disability Compliance reports on a presentation given by Adam Meyer, director of the Students with Disabilities Office at Eastern Michigan University, at an Association on Higher Education and Disability conference. Meyer suggests that emphasis on information derived from an in-depth information interview with the disabled student provides greater insight to the student's needs than does documentation provided by outside professionals. If the interviewer documents the interview, then that interview, in and of itself, serves as documentation under the ADA for purposes of secondary education, "as long as they can show what information was used to arrive at a decision" ("Promote Inclusiveness," 2010).

Meyer recommends the interviewer obtain certain information from the student. In essence, the interviewer should obtain a self-report of the disability that describes how the disability affects the student and how the environment affects the disability. The interviewer should obtain a description of “the disability’s impact” in other environments, as well. As part of “an outline of past accommodations” the student received, the interviewer should obtain a description of accommodations that worked and that did not work (“Probing Questions,” 2010).

In addition, Meyer distinguishes environmental accommodations from those that require change in policy or procedure. He finds formal documentation from an outside expert unnecessary in the first case and therefore provides the accommodation based upon his unit’s own documentation. In the second case, he requires documentation provided by an outside expert. Over time, Meyer found that less documentation allowed his staff to spend more time on services and less time on paperwork. In addition, he finds that students who cannot afford to obtain documentation now receive needed services and that students are more apt to request the accommodations they need (“Policy Change,” 2010).

In contrast, Salome Heyward, attorney with Heyward, Lawton and Associates, recommends some caution with regard to limited documentation (such as that derived from an information interview). She notes that documentation requirements changed with the implementation of the ADAAA in 2008 and with that implementation, educational institutions can no longer use the definition of disability to preclude students from services. She also notes that the definition of “‘major life activities’ expanded to include conditions such as the ability to concentrate” (“Be Flexible,” 2010). In general, physical disabilities—“epilepsy, use of a wheelchair, cancer, bipolar, and many psychiatric conditions”--require less documentation than invisible disabilities, such as “learning disabilities, asthma and back conditions.” In sum,

Heyward recommends that educational institutions continue the collection of formal documentation to “verify that ‘the accommodations request is legitimate and appropriate under the circumstances’” (“Use Common Sense,” 2010).

Further, Heyward offers her own guidelines for documentation to allow access to those entitled without overemphasis on procedure. The person providing accommodations should consider that different conditions require different “standards of review” and should “require documentation from those seeking disability services to establish that they have an impairment that substantially limits a life activity if the disability isn’t obvious.” The person providing accommodations should also gather information about the student’s limitation to “ensure that each accommodation request is justified.” She advises that the courts “defer to the judgment of institutions if it [the accommodation] is rational and legitimate” (“Use Common Sense,” 2010).

The Association on Higher Education and Disability also recommends “practices for documentation.” First, “all documentation should be reviewed on an individual, case-by-case basis and the documentation can be augmented through an interview, which is appropriate as determination of accommodations should be an interactive process.” Documentation of the disability need not be in any particular language or jargon; it need only provide clear descriptions of the disabled student’s needs. An interviewer in the course of a documentation interview should consider any information obtained as confidential, shared only on a need-to-know basis. In addition, keep in mind that the information acquired in an interview serves as only one part of the provision of services for disabled students (*Adams v. Forest Preserve*, 2007, p. B-23; Association on Higher Education And Disability, 2012).

In addition, avoid other discriminatory practices. For example, in interviews, avoid questions “about race, religion, sex, national origin, height, weight, marital status, children, age, economic status or disabilities” (O’Brien and O’Brien, 2009).

Summary

The information interview may serve as documentation if the interviewer arrives at a decision, documents it, and retains the document. In the documentation, the interviewer should include information regarding the disability’s impact on the patron’s ability to use the library and information regarding the impact of environment on the disability. In documentation of the interview, the interviewer should distinguish between needed environmental changes, which may be resolved immediately, and changes in policy or procedure, which may require more time to process. The interviewer should use a consistent approach in the collection of information from disabled persons and document the process to ensure the educational institution provides legitimate and appropriate accommodations. The interviewer should consider documentation on a case-by-case basis and provide a written description of the patron’s needs that includes a clear statement of those needs. In the interview and in the documentation, avoid all other forms of discrimination such as race, religion, sex, national origin, height, weight, marital status, children, age, economic status as well as disabilities.

Recommendations

- When deciding on policies and procedures, the library and the university should consider all approaches and adhere to what is practical, efficient, and best serves the patrons.
- The interviewing librarian should always document the interview whether or not the patron provides formal documentation.

- As an ethical issue, all information interviews should remain confidential. Interviews with disabled persons must remain confidential not only as a matter of ethics but also as a matter of law.
- All documents acquired by the library and associated with patron disabilities and information interviews, whether in paper or in digital format, must remain in a secure environment. Paper documents should remain in a locked file or safe; digital documents should be password protected and maintained on a sequestered portion of the library computer system or on a separate, portable storage device stored in a locked file or safe.
- The institution should consider making permanent environmental changes as appropriate when many disabled persons request the same accommodation.

ISSUE: INTERACTIVE PROCESS

In *Letter to: Northwestern Connecticut Community College*, No. 01-08-2058 (OCR 01/13/09), a “student claimed that the college failed to provide her with requested academic adjustments for one course in violation of Section 504 and Title II.” She also complained that a professor mistreated her “during the accommodations process.” In response, OCR explained that (1) the college must “engage in a dialogue” with students who request accommodations, (2) the student must “engage in an interactive process” to determine appropriate and reasonable accommodations, and (3) the college must “ensure that . . . adjustments are made” and “respond to problems” during the process (“OCR Finds,” July 2009).

Once aware of a student’s disability, the educational institution has “a high burden to engage with the [student] in an exploration of potential accommodations to meet its academic and technical requirements” (“Concorde Career Institute,” 2007, p. A-8). On three occasions, a

student disclosed his disability to faculty and staff in conversations about his academic performance and behavior. OCR found the institution failed to engage in an interactive process to provide the student with accommodations and found the institution in violation of Section 504. The matter resolved with an agreement between OCR and the institution.

Once a student receives approval from the institution's office for students with disabilities for particular accommodations and once the student or the office for students with disabilities communicates that approval to the person who is to provide the accommodation, the student asks once and only once. In *Letter to: University of Tennessee at Martin*, No. 04-09-2099 (10/16/09), a student made accommodation arrangements, received approval, and the instructor attempted to modify the arrangements, which in effect put additional burden on the student. OCR determined the instructor's actions constituted a violation of Section 504 and disability discrimination. OCR and the university entered into a resolution agreement ("Placing Conditions," 2010).

In *Letter to: Kent State University*, No. 15-05-2055 (106 LRP 24201) (OCR 2005), the student failed to advise the university that the "procedures for obtaining a note-taker were ineffective for the student's aesthetics class" ("Student Needs to Tell," 2007). Therefore, just as OCR obligates a university to work with a student in provision of accommodations, OCR requires that the student advise the university when problems arise with a requested accommodation.

Fundamental to the interactive process, university faculty, staff, and administration should understand that certain language offends people with disabilities. Word selection or word arrangement may create a positive communication exchange. "For example, say 'a student with a mental illness' rather than 'a mentally ill student.'" Similarly, "handicap" now holds a negative

connotation whereas “disability” remains acceptable. Avoid the phrase, “not normal.” In general, follow the student’s lead with regard to use of terminology in conversation (“Employ Tact,” 2007, p. 2-45).

Summary

An educational institution must “engage in a dialogue” with those who request accommodations and a student must “engage in an interactive process” to determine appropriate and reasonable accommodations. The educational institution has a high burden to engage in the dialogue, it must ensure compliance with agreed accommodations, and it must respond to problems during the process of providing accommodations. When a student receives approval for accommodations, the student need ask once and only once for the accommodations from the person or persons providing the services. When conversing with a disabled person, the person communicating should avoid potentially derogatory terms.

Recommendations

- Librarians should understand that the information interview provides the baseline for accommodations and the interactive process facilitates adjustment to the accommodations as needed.
- If the institution requires changes to a disabled person’s accommodations, then the change must fall within the parameters of an interactive process with the patron.
- Documentation of accommodations may assist the librarian in curtailing possible problems over time. Therefore, the librarian should note any adjustments to accommodations and add a notation to the patron’s documentation on file.

ISSUE: ASSISTANCE FOR THE HEARING IMPAIRED

Not only must an educational institution provide a sign language interpreter for the deaf and hearing impaired, the interpreter and the hearing-impaired person must effectively communicate with one another. In *Hayden v. Redwoods Cmty. Coll. District*, No. C-05-01785 NJV (107 LRP 1398) (N.D. Cal. 2007), a deaf person complained that the university disallowed his participation in selection of sign language interpreters for classroom purposes and that some of the interpreters could not effectively communicate with him. The court decided in favor of the deaf student in that “‘interpreting for a deaf student requires not only special skills but the ability to effectively communicate through ASL’ [American Sign Language]” (“Student Secures Trial,” 2008, p. 4-5; *Hayden v. Redwoods Comm. Col. Dist.*, 2008, p. B-55; “Hearing Impairments,” 2009). As such, require the student’s participation in the selection process to determine the effectiveness of an ASL interpreter’s communication skills.

As an alternative to ASL, speech-to-text software now provides a sophistication level that brings it into the realm of appropriate accommodation for the hearing impaired. For example, a microphone connected to a computer with speech-to-text software captures speech, and then the computer digitally converts it to text so that a student can read a lecture at the same time the professor delivers it. Thus, as a viable alternative to sign language interpretation and in some cases a preferred accommodation, speech-to-text software proves useful in the classroom (“Consider Content,” 2007, p. 2-5). Just so, consideration for the hearing impaired in library meetings and presentations as well as interviews may include use of real-time speech-to-text technology. As a simple approach, a patron interview by a librarian may be conducted in writing on a computer and provide an adequate accommodation for the hearing-impaired.

In similar manner, with the use of a laptop and a Web camera, the hard of hearing can communicate through an interpreter who uses the same equipment. The system works in or outside the classroom (“Meet Demand,” 2007, p. 2-25) and, with implementation of the ADAAA, regulations include video remote communication as an auxiliary communication aid (“Understand Revamped Accessibility,” 2010, p. 4). Information about technical interpreters for the hearing impaired is available through PEPNet, a federally funded program that serves postsecondary education (<http://www.pepnet.org/>) (Bedrossian, 2010; “Use Available Resources,” 2010). To facilitate the process, the educational institution should create a list of providers of alternative technology available within the institution (“Know Who Provides,” 2009, p. 9).

Disability Compliance offers the following general recommendations for communication with the hearing impaired: 1) wave your hand or tap the person on the shoulder to gain attention; 2) face the person, do not turn away, to facilitate lip reading and observation of gestures; 3) “converse in a well-lit area”; 4) “do not cover your mouth or chew gum”; 5) ask the listener if he hears you; 6) talk in a quiet location, free of background noise and distraction; 7) “speak slowly and distinctly”; 8) use repetition; 9) consider that some who use sign language are weak in written communication; and 10) ask the person if they need communication assistance, such as a sign language interpreter and in what language. In the alternative, universities may use a Web-based sign language interpreter service (“Hearing Impairments,” 2007, p. 2-25).

Summary

The best format for communication with the hearing impaired is the format with which the hearing-impaired person is accustomed. The educational institution may provide alternative formats as appropriate and with agreement of the hearing impaired. The educational institution

may consider such options as speech-to-text software, written communication on computer, or a sign language interpreter via a computer-mounted Web camera. The educational institution must publish and follow general guidelines that facilitate efficient communication.

Recommendations

- Librarians should be familiar with methods of communication with the hearing impaired.
- All librarians should be aware of the alternative technology available on demand via the Internet and be prepared to use it.
- The library as an institution should have a list of available sign language interpreters as well as a list of acceptable alternative formats to offer for use by the hearing impaired.
- The library that offers virtual library services, such as librarian access via online chat, inherently accommodates the hearing disabled.

ISSUE: ALTERNATIVE FORMAT FOR THE VISION IMPAIRED

Traditionally, Reading for the Blind and Dyslexic provides recorded books to the vision impaired. If Reading for the Blind does not have a particular book, however, the visually impaired may have to wait until the needed recorded text is available. Also traditionally, library services for the vision impaired include the employ of a proxy, a person who accesses and checks out books on behalf of the vision-impaired person. The vision impaired person may also employ someone to read the text aloud or may use alternative format such as a text reader—an electronic device that converts text to digital audio which is “read” and communicated in a digitally produced voice.

Stephanie Gaddy, professor and university supervisor at Walden University's College of Education and Leadership, suggests that disability services providers arrange "work arounds" for texts in alternative format. Digital text created for use with text readers such as Kurzweil and Jaws can be problematic in that the bookbinding must be broken to allow scanning and conversion to digital format. Gaddy suggests that, in the alternative, disability services providers employ someone to read the text aloud to the disabled student (Gaddy, 2010).

The legal trend, however, prevails for digital accessibility. In 2007, attorney Michael Masinter stated that Section 504 may or may not apply to digital accessibility, which opens "a major civil rights issue for students with disabilities and their advocates" (Masinter, 2007, p. 2-33). By 2010, OCR and DOJ as well as the State of California determined that accessibility indeed applies to the digital environment.

Under a California law signed on October 1, 2009, publishers must meet the requirement of alternative format for all educational materials provided to post-secondary schools (AB 386). For example, publishers must provide text-based educational materials in digital format and textbook material in a format "compatible with commonly used Braille translation" and digital audio translation. Publishers and manufacturers must provide "computer files or other electronic versions of nonprinted [sic] instructional materials." Publishers must also provide "a captioned format of instructional materials, or an electronic format of those materials, and a license to create a captioned format of the materials when requested by a public postsecondary educational institution." If the publisher fails to respond to a request for alternative format, the law authorizes the institution to produce the needed format itself. Film distributors must provide film or audio materials in captioned format. In the alternative, the respective film distributors must allow

educational institutions to create the digital and captioned formats (“New California Law,” 2010).

In January 2010, the National Federation of the Blind, the American Council of the Blind, and Arizona State University (ASU), under the jurisdiction of DOJ, Civil Rights Division, Disability Rights Section, entered into a settlement agreement as concerns the use of Kindle DX for distribution of educational text materials. ASU had begun a pilot project in a course that included 59 students. (Eight other universities participated in similar pilot programs.) At the time of the settlement, despite the text-to-speech capability of the Kindle DX, the device remains inaccessible to blind students due to controls and menus that lack audio features. As such, ASU committed to discontinue use of the Kindle DX or any similar device unless it affords accessibility for all students (“Settlement Agreement . . . National Federation,” 2009).

U.S. Department of Education letters written subsequent to the ASU investigation and sent to colleges and universities warn that use of the Kindle DX, the iPad, or other electronic devices that are inaccessible to vision impaired students violate current federal law. The letter from the Department to post-secondary institutions states that such requirements comprise discrimination under Section 504 and the ADA in that “the technology is inaccessible to an entire population of individuals with disabilities” unless the educational institution provides devices that allow the same level of effectiveness and educational experience to vision impaired students (“Letter from ED,” 2010).

Summary

To provide services for the vision impaired, arrange alternatives for translation of print materials either by use of human readers or digital readers. Service providers should coordinate with the disability services unit for conversion of text to digital audio format if available and be

aware that the Department of Education disallows certain alternative format, such as the Kindle DX, for classroom use due to inaccessibility by the disabled.

Recommendations

- The library should establish and publish policies and procedures for services to the visually impaired.
- If feasible, the library should provide alternative format for access to online library catalogs.
- Librarians should coordinate with professors with regard to class-related reserve reading to ensure alternative format is available for disabled persons.
- Librarians and library staff should keep abreast of trends in digital format and computer accessibility for the vision impaired.

ISSUE: SERVICE ANIMALS

In *Letter to: Concordia University-St. Paul*, No. 05-07-2073 (OCR 2007), a student complained because the university required registration, certification documents, and testing of a service animal prior to its use on campus. OCR explained that the university “may not set conditions, limitations and procedural prerequisites to the use of service animals.” The university agreed to revise their policies and procedures to comply with Section 504 (“OCR Finds,” 2009).

On July 23, 2010, the U.S. Attorney General signed new regulations that augment the ADA with amendments to Title II and Title III. The new law specifies the definition of a service animal as a dog “trained to do work or perform tasks” and explicitly excludes dogs “used purely for emotional support” from that definition (“Understand Revamped Accessibility,” 2010). In other words, while service dogs may accompany the blind, the deaf, or the physically disabled in university buildings by law, allowance of therapy or comfort animals is at the discretion of the

educational institution. Winick and Gomez warn institutions that although allowance of therapy animals may seem justified, allowance may lead to lawsuits initiated by students denied use of their animals or by persons inconvenienced or attacked (“Initiate Discussions,” 2008, p. 2-6).

Summary

The library may not place limitations on the use of a service animal in the library facility. The legal definition of service animal, however, excludes animals used only for emotional support and therefore excludes use of such animals and their owners from legal protection. When allowed in a library, animals used for emotional support expose the institution to legal action if the animal misbehaves.

Recommendations

- The library should establish and publish policies and procedures regarding the use of service animals in the library.
- Institution administration and library administration should prepare librarians and library staff in how to respond to inquiries from patrons about animals and their use in libraries.

ISSUE: WHEELCHAIR ACCESS

The ADAAA distinguishes between the traditional wheelchair and other power driven vehicles that the educational institution must also allow on campus and in buildings “unless a covered institution can demonstrate that such use would fundamentally alter its programs, services or activities.” In addition, if the power driven vehicle, other than the traditional wheelchair, causes a direct threat or a safety hazard, then the institution may prohibit use of the vehicle within the facility or campus.

Summary

The educational institution may disallow some mobility vehicles in campus buildings, including the library facility, due to hazard to the person in the vehicle or to other patrons.

Recommendations

- Librarians should be generally familiar with the types of wheelchairs and other power driven vehicles that disabled patrons may use safely in their particular facility. One means of facilitating that familiarity is by documenting the width of aisles and doorways and advising patrons, either in person or by publication, of physical access limitations that the educational institution will not and is not required to alter.
- Due to changes in building codes and federal requirements, accessibility requirements for wheelchair access changes at the time of a building renovation and at the time of new construction. To gain an understanding of current information regarding wheelchair access, contact the institution's architect or see ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) at <http://www.access-board.gov/adaag/html/adaag.htm>, or both.
- The library that offers virtual library services, such as librarian access via online chat, may facilitate accessibility for some mobility-impaired patrons.
- In accommodating disabled persons, librarians should allow as much unassisted access as possible, and then provide as much assistance as needed.

ISSUE: MENTAL HEALTH

Mental health issues carry an unwarranted stigma of behavioral problems for students as well as employees of educational institutions. Faculty and staff, however, should manage their own behavior in consideration of a student's mental health whether or not the student has a

documented disability. Regardless of an individual's mental health, the educational institution retains the obligation to maintain the integrity of its program.

When dismissed from a medical school program, a student diagnosed with bipolar disorder filed complaint with OCR. The student demonstrated poor performance in her first semester and, as the result, faced dismissal in January 2005. That same month she underwent psychiatric examination and then submitted an appeal to the university. The university scheduled a hearing for the following March. At the hearing, the school's board upheld the decision to dismiss the student. The student filed with OCR, which found that the board made its decision based upon "generalized stereotypes about the student's bipolar disorder" ("OCR Finds University Discriminated," 2008). Given that the student had started treatment as soon as she had received her diagnosis, the university agreed to resolve compliance issues identified by OCR.

In *Letter to: Eastern Oregon University*, No. 10-06-2064 (OCR 2006), for reasons related to the side effects of medication, a student requested a change in his student-teaching assignment to either reduce driving time or allow him to start each day at a later time. In response, "the disability services coordinator requested permission from the student to discuss his disability with the program chair." The student refused. OCR found no violation in the request for consultation with the program chair ("Depression," 2009, p. 16).

Summary

Faculty, staff, and administrators must manage their own behavior when dealing with students. At all times, the members of the educational institution retain the responsibility to maintain the integrity of the institution. In addition, when dealing with students the service provider (administration, faculty, or staff) must realize that persons with mental or psychological disorders carry with them a stigma with regard to behavior and, as such, the service provider

must avoid stereotypical assumptions when working with disabled persons. Faculty, staff, and administrators may request access to a student's disability documentation once informed of the disability; the student, however, retains the right to refuse.

Recommendations

- Some people with physical disorders may appear to have mental or psychological disorders. Librarians should practice communication techniques that circumvent what may be a distraction when working with people who have physical disorders.
- Librarians should be aware that mental or psychological disorders, when treated, might render a person functional for educational purposes although disabled.
- Librarians should be aware that some people on medication might display unusual behavior that does not constitute a disability under the law.
- Librarians should use good judgment in determining whether to take security measures in light of disruptive behaviors by patrons.
- Faculty, staff, and administration must manage their own behavior regardless of another person's disability.

ISSUE: INTERVENTION

April 16, 2007, a student at Virginia Polytechnic Institute and State University shot 33 people. Investigation of the incident revealed that the student had at one time received a diagnosis of autism spectrum disorder. Fellow students believed he had clinical depression or paranoid schizophrenia. The student had not self-reported a disability. A faculty member noticed that other students were uncomfortable around him, yet no one referred the student to counseling. In view of this incident, Winick and Gomez (2008) advise that an educational institution's code

of conduct might apply to a disabled student despite disability (“The Year in Review,” 2008, pp. 1-1 - 1-2).

Disability Compliance presents OCR’s guidelines for dealing with potentially violent students: 1) “make an individualized determination of risk”; 2) “ensure that the scope of your intervention is specific to students’ particular situations”; 3) follow due process; 4) provide students with “the opportunity to appeal institutional decisions.” While expulsion may provide the student with grounds for legal intervention, the institution may suggest that the student take a leave of absence. “This will give students time to get the help they need and return once they are in a more stable condition” (“Turn to OCR,” 2009, p. 4).

Summary

In situations where a person is in physical danger, protections under the ADA do not apply. OCR guidelines for dealing with potentially violent students include an individualized assessment of risk, intervention specific to the situation, due process, and the opportunity to appeal decisions. Rather than expulsion as a resolve, suggest the student take a leave of absence.

Recommendations

- The educational institution, library included, must establish and publish policies and procedures regarding disability and conduct in violent situations.
- The educational institution should include in published policies and procedures that disability might not be a defense in violent situations.

ISSUE: DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

INVESTIGATIONS

OCR expects a student to exhaust all possible remedies for discrimination by following the policies and procedures of the educational institution. As concerns investigation of possible

discrimination, OCR enforces Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA. The complaint process is formal in content requirements and in timeliness. As to a complaint for disability discrimination, the student must file the complaint within 180 days of “the last act the complainant believes was discriminatory” (*OCR complaint processing procedures*, 2010). A late complaint should include reasons for the delay, which may provide OCR with reason to make exception to the 180-day rule. In addition to timeliness, the student should ensure that the complaint contains adequate information for OCR to proceed. Should OCR need additional information to clarify the complaint, OCR contacts the student with a request for additional information and allows the student 20 days to provide the information.

OCR Resolution Process

OCR implements a three-step effort at resolution of a complaint. First, if OCR finds the educational institution outside ADA compliance and if the university is willing, OCR will “negotiate a voluntary resolution agreement.” OCR specifies the violations and outlines “specific remedial actions.” The institution agrees to resolve the violations by way of the specific actions within a given period. OCR monitors the institution’s compliance to ensure that the institution resolves the identified violations. Second, if the institution refuses to negotiate, OCR gives 30 days’ notice that the institution must negotiate or “OCR will issue a Letter of Finding” which gives notice of “a factual and legal basis” for noncompliance with the ADA. Third, should the institution continue its refusal to negotiate, OCR “will issue a Letter of Impending Enforcement Action” in an attempt “to obtain voluntary compliance.” Should the university continue its refusal, OCR may refer the case to DOJ or may “initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue federal financial assistance to the recipient”

and may “immediately . . . deter any new or additional federal financial assistance to the institution” (*OCR complaint processing procedures*, 2010).

Early Complaint Resolution Process

If the parties to a complaint agree, OCR will introduce an Early Complaint Resolution process. With OCR as facilitator and prior to OCR investigation, the student and the educational institution may enter into an agreement between themselves that OCR does not monitor. The student, however, retains the right to re-file a complaint with OCR if the institution fails to fulfill the agreement (*OCR complaint processing procedures*, 2010; “University, Student Use ECR Process,” 2008).

Summary

OCR may initiate investigation of an educational institution at any time and without provocation. A student may request OCR investigation within 180 days of a suspected violation of disability law. OCR negotiates with an educational institution with the goal of voluntary compliance; otherwise, OCR issues legal notice of violation with the possibility of cessation of federal funding to the educational institution. An educational institution may negotiate and come to an agreement with a complainant without assistance of OCR, which may curtail OCR investigation. If the educational institution fails to comply with the agreement, however, the student retains the right to re-file the complaint.

Recommendations

- The educational institution and its library must establish policies and procedures that require quick response to disability-related complaints.

- The educational institution and its library must create a timely protocol that establishes who will respond to disability-related complaints and the timeframe for each response.
- The educational institution and its library must make policies and procedures available to students, faculty, staff, and administration by publication in print and on the educational institution's Web site.

ISSUE: DEPARTMENT OF JUSTICE REVIEW PROCESS

Compliance Review

Under the ADA, Congress mandates “periodic compliance reviews” of public accommodations by DOJ (“Settlement Agreement . . . IntelliTec Colleges,” 2009). Moreover, Congress gives DOJ authority to bring suit, obtain a court order, money damages, and civil penalties against persons and organizations who violate the ADA and refuse voluntary compliance (42 U.S.C. §§ 12188(a)(2) and 12188(b)).

Summary

DOJ may investigate disability compliance of a post-secondary educational institution at any time. Moreover, DOJ may initiate a lawsuit against educational institutions found in violation of ADA.

Recommendations

- Educational institutions and their libraries should maintain a high level of disability compliance.
- Educational institutions and their libraries should monitor legal developments in the area of disability compliance on a continuing basis.

SECTION 2 CONCLUSION

I intend this work as a basis for proactive change. I hope that it will prompt libraries and librarians to look at their organizations, their policies and procedures, and create an atmosphere that promotes learning for everyone.

Congress passed the Americans with Disabilities Act with the intent that it be a flexible law that applies to a broad spectrum of situations involving persons with disabilities. It is not intended as a protection for the disabled but rather as an incentive to the general public and institutions to integrate disabled persons into American society. In addition, the ADA serves as an incentive that provides disabled persons with opportunities to participate in the economy. To participate in the economy to the best of their abilities, disabled people who are otherwise qualified to enter an educational program may do so with consideration and accommodation for documented disabilities.

To ensure equal access, the ADA imposes a process that requires the disabled person to bring complaint to the infringing party or entity. In education, the institution must prepare by establishing policies and procedures that impose fair and equitable treatment. Moreover, the institution must prepare by introducing its faculty, staff, and employees to the types of behavior expected of them as well as the manner in which to engender appropriate behavior from the disabled person. The institution should also educate disabled persons who participate in their programs with regard to the institution's policies and procedures as well as the types of behavior expected from them.

Post-secondary education libraries must extend accommodation to persons who are staff, administration, faculty, or students and disabled, and perhaps to other disabled persons who

conduct personal research on disability rights. The best way to achieve accommodation and integration with the general public for disabled persons is through preparation.

Throughout this paper, I describe situations and propose action that prepares post-secondary education institution librarians and library staff in provision of services for their disabled patrons. It is not an all-encompassing outline but an introduction to laws, regulations, and situations that guide performance. The educational institution's utmost responsibility is to monitor emerging trends and law with regard to accessibility for the disabled as well as to serve the needs of the individuals who participate in the institution's programs and receive the services provided by its employees. The key to success, however, remains with students, faculty, staff, and librarians who facilitate change through interactive communication and resolution of conflict. As change emerges from conflict, documentation of successful outcomes and proliferation of the results will bring to fruition the ADA's promise of equal access for all students in post-secondary education.

**APPENDIX A
CITED CASES AND STATUTES**

Cases

Abdo v. University of Vermont, 263 F.Supp.2d 772 (D.Vt. 2003)..... 21

Adams v. Forest Preserve District of Cook County, (32 NDLR 207, 02 C 8452, U.S.D.C. N.D.IL, June 7, 2006)..... 25

Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555, 567, 119 S.Ct. 2162, 144 L.Ed.2d 518
(1999)..... 11, 15

Association for Disabled Americans, Inc. v. Florida International University, 405 F.3d 954
(11th Cir. 2005)..... 4

Bartlett v. New York State Board of Law Examiners, 226 F.3d 69 (2nd Cir. 2000) 11, 15, 16

Bennett-Nelson v. Louisiana Board of Regents, No. 03-31198 (431 F.3d 448) (5th Cir. 2005) 5

Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001), 193 F.3d 1214,
reversed 3, 4

Bowers v. National Collegiate Athletic Ass’n., 118 F.Supp.2d 494, 511 (D.N.J. 2000) 12

Bragdon v. Abbott, 527 U.S. 624, 641-642, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998) 11

Brettler v. Purdue University, 408 F.Supp.2d 640 (N.D. Ind. 2006)..... 11, 12, 13, 14

Calloway v. University of Louisville, WL 1523229, 32 N.D.L.R. p. 216 (W.D. Ky. 2006)... 15, 17

Constantine v. George Mason University, No. 04-1410 (105 LRP 25490) (4th Cir. 2005)..... 5

Dorsey v. City of Detroit, 157 F.Supp.2d 729, 731 (E.D.Mich. 2001)..... 12

Garber v. Embry-Riddle Aeronautical University, 259 F.Supp.2d 979 (D. Ariz. 2003)..... 20, 21

Gillard v. Northwestern University, No. 09-3449 (7th Cir. 03/10/10) 21

Guckenberger v. Boston University, 974 F.Supp. 106 (D. Mass. 1997)..... 21

<i>Hayden v. Redwoods Cmty. Coll. District</i> , No. C-05-01785 NJV (107 LRP 1398) (N.D. Cal. 2007)	29, 30
<i>Henrietta D. v. Bloomberg</i> , 331 F.3D 261, 272 (2d Cir. 2003).....	12
<i>Johnson v. Southern Connecticut State Univ.</i> , 2004 WL 2377225 (D. Conn. 09/30/04)	4
<i>Jordan Press v. State Univ. of N.Y. at Stony Brook</i> , 388 F.Supp.2d 127 (E.D.N.Y. 2005).....	4
<i>Lazaris v. Springs</i> , No. 04C844c, 2005 WL 701699, 9W.D. Mar. 25, 2005).....	12
<i>Letter to: Antioch University-Seattle</i> , No. 10072087 (OCR 02/27/09)	21
<i>Letter to: Concordia University-St. Paul</i> , No. 05-07-2073 (OCR 2007)	35
<i>Letter to: Eastern Oregon University</i> , No. 10-06-2064 (OCR 2006).....	38
<i>Letter to: Kent State University</i> , No. 15-05-2055 (106 LRP 24201) (OCR 2005).....	28
<i>Letter to: Northwestern Connecticut Community College</i> , No. 01-08-2058 (OCR 01/13/09).....	27
<i>Letter to: Texas College</i> , No. 06082079 (OCR 11/21/08).....	18
<i>Letter to: University of Tennessee at Martin</i> , No. 04-09-2099 (10/16/09).....	28
<i>Letter to: University of Utah</i> , No. 08092024 (OCR 06/24/09).....	18
<i>Letter to: University of Washington School of Medicine</i> , No. 10082043 (OCR 07/07/09).....	18
<i>Parker v. Universidad de Puerto Rico</i> , 225 F.3d 1, 5 (1st Cir. 2000)	12
<i>Rush v. National Board of Medical Examiners</i> , No. CIV.A2:03-CV-140-J (103 LRP 40731) (N.D. Tex. 2003).....	12, 13
<i>Singh v. George Washington University School of Medicine and Health Sciences</i> , 508 F.3d 1097 (D.C. 2007)	v, 15, 16
<i>Sutton v. United Air Lines, Inc.</i> , 527 U.S. 471, 483, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999) ...	11
<i>Tennessee v. Lane</i> , 541 U.S. 509 (2004), 315 F.3d 680, affirmed.....	3, 4

Toyota Motor Mfr., Kentucky, Inc. v. Williams, 534 U.S. 184, 198, 122 S.Ct. 681, 151 L.Ed.2d 615 (2002)..... 11, 13, 14

Wong v. Regents of University of California, 379 F.3d 1097 (2004) 13

Statutes

29 C.F.R. § 1630.2(i) 15

29 C.F.R. § 1630.2(j) 11, 14, 15

42 U.S.C. § 12102(2) 11

42 U.S.C. § 12132..... 12

42 U.S.C. §§ 12188(a)(2) and 12188(b) 43

45 C.F.R. § 84.3(j)(2)(ii)..... 14

Americans with Disabilities Act 42 U.S.C. § 12182 passim

Americans with Disabilities Amendments Act of 2008 (Public Law 110-325, 2008) passim

Civil Rights Act, Title VI..... 22

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 647(a) passim

The Constitution of the United States, Amendment 11..... viii, 2, 3, 4

The Constitution of the United States, Amendment 14, § 5..... 5

Title II of the Americans with Disabilities Act (42 U.S.C. § 12182) passim

Title IX (of the Educational Acts of 1972) 18

**APPENDIX B
CITED CASES BY YEAR**

1997 *Guckenberger v. Boston University*, 974 F.Supp. 106 (D. Mass. 1997)..... 21

1998 *Bragdon v. Abbott*, 527 U.S. 624, 641-642, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998) 11

1999 *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 567, 119 S.Ct. 2162, 144 L.Ed.2d 518
(1999)..... 11, 15

1999 *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 483, 119 S.Ct. 2139, 144 L.Ed.2d 450
(1999)..... 11

2000 *Bartlett v. New York State Board of Law Examiners*, 226 F.3d 69 (2nd Cir. 2000). 11, 15, 16

2000 *Bowers v. National Collegiate Athletic Ass’n.*, 118 F.Supp.2d 494, 511 (D.N.J. 2000) 12

2000 *Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 5 (1st Cir. 2000) 12

2001 *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001),
193 F.3d 1214, reversed..... 3, 4

2001 *Dorsey v. City of Detroit*, 157 F.Supp.2d 729, 731 (E.D.Mich. 2001) 12

2002 *Toyota Motor Mfr., Kentucky, Inc. v. Williams*, 534 U.S. 184, 198, 122 S.Ct. 681, 151
L.Ed.2d 615 (2002) 11, 13, 14

2003 *Abdo v. University of Vermont*, 263 F.Supp.2d 772 (D.Vt. 2003)..... 21

2003 *Garber v. Embry-Riddle Aeronautical University*, 259 F.Supp.2d 979 (D. Ariz. 2003)
..... .20, 21

2003 *Rush v. National Board of Medical Examiners*, No. CIV.A2:03-CV-140-J (103 LRP 40731)
(N.D. Tex. 2003)..... 12, 13

2004 *Johnson v. Southern Connecticut State Univ.*, 2004 WL 2377225 (D. Conn. 09/30/04) 4

2004 *Tennessee v. Lane*, 541 U.S. 509 (2004), 315 F.3d 680, affirmed..... 3, 4

2004 *Wong v. Regents of University of California*, 379 F.3d 1097 (2004) 13

2005 *Association for Disabled Americans, Inc. v. Florida International University*, 405 F.3d 954
(11th Cir. 2005)..... 4

2005 *Bennett-Nelson v. Louisiana Board of Regents*, No. 03-31198 (431 F.3d 448)
(5th Cir. 2005)..... 5

2005 <i>Constantine v. George Mason University</i> , No. 04-1410 (105 LRP 25490) (4 th Cir. 2005)...	5
2005 <i>Henrietta D. v. Bloomberg</i> , 331 F.3D 261, 272 (2d Cir. 2003); <i>Lazaris v. Springs</i> , No. 04-C-844-C, 2005 WL 701699, (W.D.Wis. Mar. 25, 2005).....	12
2005 <i>Jordan Press v. State Univ. of N.Y. at Stony Brook</i> , 388 F.Supp.2d 127 (E.D.N.Y. 2005)...	4
2005 <i>Lazaris v. Springs</i> , No. 04C844c, 2005 WL 701699, 9W.D. Mar. 25, 2005).....	12
2005 <i>Letter to: Kent State University</i> , No. 15-05-2055 (106 LRP 24201) (OCR 2005).....	28
2006 <i>Adams v. Forest Preserve District of Cook County</i> , (32 NDLR 207, 02 C 8452, U.S.D.C. N.D.IL, June 7, 2006).....	25
2006 <i>Brettler v. Purdue University</i> , 408 F.Supp.2d 640 (N.D. Ind. 2006).....	11, 12, 13, 14
2006 <i>Calloway v. University of Louisville</i> , WL 1523229, 32 N.D.L.R. p. 216 (W.D. Ky. 2006)	15, 17
2006 <i>Letter to: Eastern Oregon University</i> , No. 10-06-2064 (OCR 2006).....	38
2007 <i>Hayden v. Redwoods Cmty. Coll. District</i> , No. C-05-01785 NJV (107 LRP 1398) (N.D. Cal. 2007).....	29, 30
2007 <i>Letter to: Concordia University-St. Paul</i> , No. 05-07-2073 (OCR 2007)	35
2007 <i>Singh v. George Washington University School of Medicine and Health Sciences</i> , 508 F.3d 1097 (D.C. 2007)	v, 15, 16
2008 <i>Letter to: Texas College</i> , No. 06082079 (OCR 11/21/08).....	18
2009 <i>Letter to: Antioch University-Seattle</i> , No. 10072087 (OCR 02/27/09)	21
2009 <i>Letter to: Northwestern Connecticut Community College</i> , No. 01-08-2058 (OCR 01/13/09)	27
2009 <i>Letter to: University of Tennessee at Martin</i> , No. 04-09-2099 (10/16/09).....	28
2009 <i>Letter to: University of Utah</i> , No. 08092024 (OCR 06/24/09).....	18
2009 <i>Letter to University of Washington School of Medicine</i> , No. 10082043 (OCR 07/07/09) ..	18
2010 <i>Gillard v. Northwestern University</i> , No. 09-3449 (7th Cir. 03/10/10)	21

References

- 28 CFR Parts 35 and 36: Nondiscrimination on the Basis of Disability in State and Local Government Services; Final Rules. Federal Register Vol. 75, No. 178. (2010). Retrieved from Federal Register: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-15/html/2010-21821.htm>
- 42 U.S.C. §§ 12188(a)(2) and 12188(b) – Enforcement. Title 42, Chapter 126, Subchapter 3, § 12188. (2012). Retrieved from Cornell University Law School, Legal Information Institute: <http://www.law.cornell.edu/uscode/text/42/12188>
- 45 CFR 84.3 - Definitions. Code of Federal Regulations – Title 45: Public Welfare. (2012). Retrieved from <http://cfr.vlex.com/vid/84-3-definitions-19933615>
- AB 386: An act to amend Section 67302 of, and to add Section 67302.5 to, the Education Code, relating to postsecondary education. C. Legislature, State of California Legislative Counsel's Digest (2009). Retrieved from ftp://leginfo.public.ca.gov/pub/09-10/bill/asm/ab_0351-0400/ab_386_bill_20091011_chaptered.html
- Abdo v. University of Vermont (1:02-CV-12, U.S. Dist. Ct., Vt., 2003). (2004). In E. Filo and V. Tee (Eds.), *Disability compliance for higher education: 2004 yearbook* (pp. B-28 - B-32). Horsham, PA: LRP Publications.
- Adams v. Forest Preserve District of Cook County (32 NDLR 207, 02 C 8452, U.S.D.C. N.D.IL, June 7, 2006) (2007) . In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book*. (pp. B-17 – B-26). Horsham, PA: LRP Publications.
- American Library Association (2008). "Code of Ethics of the American Library Association." In *Intellectual Freedom Manual*, 8th ed. Retrieved from <http://www.ifmanual.org/codeethics>

Americans with Disabilities Act of 1990, as amended. (2009). Retrieved from Department of Justice, ADA Home Page: <http://www.ada.gov/pubs/adastatute08.htm>

Association on Higher Education And Disability (2012). Best Practices Resources. Retrieved from <http://www.ahead.org/resources/best-practices-resources>

Bartlett v. New York State Board of Law Examiners, 226 F.3d 69 (2nd Cir. 2000). Retrieved from OpenJurist: <http://openjurist.org/226/f3d/69/marylyn-bartlett-v-new-york-state-board-of-law-examiners>

Be flexible regarding disability documentation requirements in light of ADA. (2010, September). *Disability Compliance for Higher Education*, 16(2), 7.
doi:10.1002/dhe.20033

Bedrossian, L. (2010, October). PEPNet can help you navigate your captioning options. *Disability Compliance for Higher Education*, 16(3), 6. doi:10.1002/dhe.20034

Bennett-Nelson v. Louisiana Board of Regents (431 F.3d 448, 5th Cir. 2005). Retrieved from LEAGLE:
http://www.leagle.com/xmlResult.aspx?page=1&xmldoc=2005879431F3d448_1874.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7

Brettler v. Purdue University (31 NDLR 208, 4:05-CV-6-PRC U.S.D.C., N.D.Ind., January 10, 2006). (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. B-57 - B-74). Horsham, PA: LRP Publications.

Calloway v. University of Louisville (3:05-CV-389S, U.S. Dist. Court, W.D. KY, May 25, 2006). (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. B-32 – B-74). Horsham, PA: LRP Publications.

Charmatz, M. (2006a). Court ruling gives students more bite when suing public institutions under ADA. In E. Filo (Ed.), *Disability compliance for higher education: 2006 year book* (pp. 2-47 - 2-48). Horsham, PA: LRP Publications.

Charmatz, M. (2006b). Students show no sign of striking out in their right to sue universities. In E. Filo (Ed.), *Disability compliance for higher education: 2006 year book* (pp. 2-50 - 2-51). Horsham, PA: LRP Publications.

College addresses accessibility concerns by installing signs, fixing sidewalks. (2009, December). *Disability Compliance for Higher Education*, 15(5), 11. doi:10.1002/dhe.20024

College agrees to adopt new disability services procedures. (2009, November). *Disability Compliance for Higher Education*, 15(4), 11. doi:10.1002/dhe.20023

College resolves compliance issues through voluntary resolution. (2010, May). *Disability Compliance for Higher Education*, 15(10), 12. doi:10.1002/dhe.20029

Concorde Career Institute (32 NDLR 149, 09-05-2002, OCR, May 31, 2005). (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. A-8 – A-12). Horsham, PA: LRP Publications.

Consider content, skill of provider to decide on best speech-to-text accommodation. (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. 2-4 - 2-6). Horsham, PA: LRP Publications.

Court orders medical examiners to provide accommodations to test-taker. (2004). In E. Filo and V. Tee (Eds.), *Disability compliance for higher education: 2004 yearbook* (pp. 4-9 - 4-10). Horsham, PA, LRP Publications.

Depression. (2010, December). *Disability Compliance for Higher Education*, 16(5), 16. doi:10.1002/dhe.20036

Ease professors' anxiety about teaching students with LD. (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. 2-27 - 2-29).

Horsham, PA: LRP Publications.

Employ tact when dealing with students. (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. 2-45 – 2-46). Horsham, PA: LRP Publications.

Filo, E. and Tee, V. (Eds.). (2004). *Disability compliance for higher education: 2004 yearbook*. Horsham, PA, LRP Publications.

Gaddy, S. (2009, June). Preadmission consultations prepare students to be good self-advocates. *Disability Compliance for Higher Education*, 14(12), 7. doi:10.1002/dhe.20019

Gaddy, S. (2010, April). Implement creative work-arounds to accommodate students. *Disability Compliance for Higher Education*, 15(9), 6. doi:10.1002/dhe.20028

GAO report calls for more support for students with disabilities. (2010, March). *Disability Compliance for Higher Education*, 15(8), 9. doi:10.1002/dhe.20027

Garber v. Embry-Riddle Aeronautical University, CV-01-746-PCT-PGR (U.S. Dist. Ct., Ariz., 2003). (2004). In E. Filo (Ed.), *Disability compliance for higher education: 2006 year book* (pp. B-36 – B-39). Horsham, PA: LRP Publications.

Hayden v. Redwoods Comm. Coll. Dist., C-05-02785, NJV (2007). (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. B-55 - B-64). Horsham, PA: LRP Publications.

Hearing impairments. (2009, February). *Disability Compliance for Higher Education*, 14(7), 16. doi:10.1002/dhe.20014

Hernon, P. (2006). Literature Review. In P. Hernon & P. Calvert (Eds.), *Improving the Quality of Library Services for Students with Disabilities* (pp. 94-116). Westport, CT: Libraries Unlimited.

Initiate discussions on therapy animals so you're prepared for requests. (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. 2-5 - 2-7). Horsham, PA: LRP Publications.

Know students, their capabilities when deciding if they merit extra time. (2006). In E. Filo, (Ed.), *Disability compliance for higher education: 2006 year book* (p. 2-16). Horsham, PA: LRP Publications.

Know who provides instructional materials in alternative formats. (2009, February). *Disability Compliance for Higher Education*, 14(7), 9. doi:10.1002/dhe.20014

Letter from ED, Justice Department warns colleges against inaccessible electronic book readers. (2010, November). *Disability Compliance for Higher Education*, 16(4), 9. doi:10.1002/dhe.20035

Letter to: Bevil State (AL) Community College, (04-06-2070) (OCR 01-01-.1-06 (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (p. A-25). Horsham, PA: LRP Publications.

Letter to: Ivy Tech Community College, 05-06-2028 OCR (06-30-06). (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. A-1 - A -3). Horsham, PA: LRP Publications.

Masinter, M. (2007). Section 504 compliance is looming challenge for online institutions. In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. 2-32 - 2-33). Horsham, PA: LRP Publications.

Masinter, M. (2010, January). Proposed EEOC regulations offer guidance for dealing with broadened definition of “disability.” *Disability Compliance for Higher Education*, 15(6), 3. doi:10.1002/dhe.20025

Meet demand for sign-language interpreters with Web-based service. (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. 2-25 - 2-26). Horsham, PA: LRP Publications.

New California law to make it easier for institutions to provide alternative format materials. (2010, April). *Disability Compliance for Higher Education*, 15(9), 9. doi:10.1002/dhe.20028

O’Brien, D. and O’Brien, T. (2009, April). Understand the process for successful, fair hiring. *Disability Compliance for Higher Education*, 14(8), 8. doi:10.1002/dhe.20016

OCR complaint processing procedures. (2010). Retrieved from ED.gov, U.S. Dept. of Education: <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

OCR finds college’s procedure discriminatory. (2009, July). *Disability Compliance for Higher Education*, 14(12), 10. doi:10.1002/dhe.20019

OCR finds service animal policy limited access to university. (2009, February). *Disability Compliance for Higher Education*, 14(7), 11. doi:10.1002/dhe.20014

OCR finds university discriminated on basis of disability. (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. 3-16). Horsham, PA: LRP Publications.

OCR notes institution’s failure to publish disability coordinator’s name. (2009, December). *Disability Compliance for Higher Education*, 15(5), 11. doi:10.1002/dhe.20024

OCR orders college to revise nondiscrimination notice. (2009, May). *Disability Compliance for Higher Education*, 15(10), 11. doi:10.1002/dhe.20029

Office for Civil Rights: Overview of the agency. (2011). Retrieved from ED.gov, U.S. Dept. of Education: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Patron cannot show discrimination was reason for expulsion from library. (2010, August). *Disability Compliance for Higher Education*, 16(1), 14. doi:10.1002/dhe.20032

Placing conditions on provision of approved accommodations violates laws. (2010, June). *Disability Compliance for Higher Education*, 15(11), 11. doi:10.1002/dhe.20030

Policy change has been surprisingly pain-free. (2010, September). *Disability Compliance for Higher Education*, 16(2), 5. doi:10.1002/dhe.20033

Probing questions can help you evaluate accommodations need. (2010, September). *Disability Compliance for Higher Education*, 16(2), 4. doi:10.1002/dhe.20033

Promote inclusiveness with a light approach to documentation. (2010, September). *Disability Compliance for Higher Education*, 16(2), 4. doi:10.1002/dhe.20033

Public Law 110-325: ADA Amendments Act of 2008. Retrieved from United States Access Board: a federal agency committed to accessible design: <http://www.access-board.gov/about/laws/ada-amendments.htm>

Refusal to provide captioning violated student's rights. (2009, August). *Disability Compliance for Higher Education*, 15(1), 10. doi:10.1002/dhe.20020

Settlement Agreement Between the United States of America and Intellitec Colleges Under Title III of the Americans with Disabilities Act, DJ # 202-13-207. (2009). Retrieved from Department of Justice, ADA Home Page: http://www.ada.gov/intellitec_coll.html

Settlement Agreement between the United States of America; the National Federation of the Blind, Inc., and the American Council of the Blind, and the Arizona Board of Regents, for and on behalf of Arizona State University. (2009). Retrieved from U.S. Dept. of Justice, ADA Home Page: http://www.ada.gov/arizona_state_university.html

Shackelford, Allan L. (2008). Just how reasonable are single-housing requests? In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2008 year book* (p. 2-29). Horsham, PA: LRP Publications.

Singh v. George Washington University School of Medicine and Health Sciences (03-1681 (RCL), U.S.D.C., D.C., July 12, 2006). (2007). In S. Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (pp. B-26 - B-31). Horsham, PA: LRP Publications.

Student needs to tell SDS when procedures aren't working. (2007). In S Winick and C. Gomez (Eds.), *Disability compliance for higher education: 2007 year book* (p. 3-20). Horsham, PA: LRP Publications.

Student secures trial for inadequate interpreter claim. (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. 4-4 - 4-5). Horsham, PA: LRP Publications.

The year in review. (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. 1-1 - 1-2). Horsham, PA: LRP Publications.

Title 34 Education, Subtitle B Regulations of the Offices of the Department of Education, Chapter 1--Office for Civil Rights, Department of Education, Part 104--
Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal

- Financial Assistance. Retrieved from Ed.gov, U.S. Dept. of Education, Ed.gov:
<http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>
- Training, accommodations resolves student's complaint. (2010, April). *Disability Compliance for Higher Education*, 15(9), 12. doi:10.1002/dhe.20028
- Turn to OCR for guidance on how to best handle potentially dangerous students. (2009, November). *Disability Compliance for Higher Education*, 15(4), 4.
doi:10.1002/dhe.20023
- U.S. Constitution, Amendment XI. Retrieved from <http://constitutionus.com/>
- U.S. Constitution, Amendment XIV. Retrieved from <http://constitutionus.com/>
- Understand revamped accessibility regulations to ensure your institution is in compliance. (2010, December). *Disability Compliance for Higher Education*, 16(5), 4.
doi:10.1002/dhe.20036
- University averts investigation by agreeing to change student's transcripts. (2009, November). *Disability Compliance for Higher Education*, 15(4), 11. doi:10.1002/dhe.20023
- University must provide accommodation or demonstrate undue burden. (2010, October). *Disability Compliance for Higher Education*, 16(3), 11. doi:10.1002/dhe.20034
- University, student use ECR process to reach agreement. (2008). In S. Winick and C. Gomez, *Disability compliance for higher education: 2008 year book* (pp. 3-10 - 3-11). Horsham, PA: LRP Publications.
- Use available resources to accommodate hearing impairments. (2010, October). *Disability Compliance for Higher Education*, 16(3), 6. doi:10.1002/dhe.20034
- Use common sense to decide what to require. (2010, September). *Disability Compliance for Higher Education*, 16(2), 7. doi:10.1002/dhe.20033

Winick, S. and Gomez, C. (Eds.). (2007). *Disability compliance for higher education: 2007 year book*. Horsham, PA: LRP Publications.

Winick, S. and Gomez, C. (Eds.). (2008). *Disability compliance for higher education: 2008 year book*. Horsham, PA: LRP Publications.

Wong v. Regents of the University of California, 379 F.3d 1097 (2004). Retrieved from OpenJurist: <http://openjurist.org/379/f3d/1097/hk-wong-v-regents-of-university-of-california>

Work through deans, provosts to gain faculty's trust. (2006). In E. Filo (Ed.), *Disability compliance for higher education: 2006 year book* (p. 2-43). Horsham, PA: LRP Publications.