

“Disability Law Issues for High Risk Students”
AALS Education Law, Law and Mental Disability and Student Services Sections
Campus Violence: Prevention, Response and Liability

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The events of Virginia Tech, Appalachian Law School, and Northern Illinois University have raised concerns about campus violence. One of the major legal issues relevant to developing policy issues appropriate to respond to these concerns is disability discrimination law, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The presentation focuses on the importance of developing thoughtful and careful policies that take disability issues and confidentiality into account while ensuring a safe environment. The unintended consequences of some policies (even though they comply with disability discrimination requirements) should be considered. In particular the requirement that professional licensing authorities have in most states requiring the student and the educational program to report mental health treatment and diagnosis may deter students from getting needed treatment.

Legal Overview

WHO IS PROTECTED

Must be substantially limited in one or more major life activities; be regarded as so impaired or have a record of such an impairment.

ADA Amendments Act of 2008 provides for a broad interpretation of the definition of disability under the ADA and Section 504 and indicates that whether an individual is substantially limited is to be determined without reference to mitigating measures, with an exception for ordinary eyeglasses and contact lenses.

The new definition of major life activities specifically includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and operating major bodily functions (which are further defined). Many of the conditions previously found not to be disabilities may prospectively be determined to fall within the definition, so long as the condition substantially limits one or more of those major life activities.

To receive accommodations, student must make “known” the disability and have appropriate documentation, and must do so in a timely manner.

OTHERWISE QUALIFIED

Must be otherwise qualified – able to carry out the essential functions of the program with or without reasonable accommodation. Undue hardship, fundamental alteration, lowering standards – not required.

Student must not pose a direct threat to self, property, or others.

Students must be able to carry out the essential requirements of the program, with or without reasonable accommodation. School need not lower standards nor fundamentally alter the program.

The ADA Amendments Act of 2008 provides that “Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations involved.

REASONABLE ACCOMMODATIONS

Institutions should engage in interactive process to determine reasonable accommodations.

For students with substance abuse and mental health issues, a leave of absence for treatment may be an accommodation that should be considered.

Modification of course scheduling (including reducing course loads) to accommodate treatment or to reduce stress might also be considered.

KEY CASE FOR SETTING STANDARD FOR REASONABLE ACCOMMODATIONS

Wynne v. Tufts University School of Medicine, 932 F.2d 19, 26 (1st Cir. 1991). In cases involving modifications and accommodation burden is on the institution to demonstrate that relevant officials within the institution considered alternative means, their feasibility, cost and effect on the program, and came to a rationally justifiable conclusion that the alternatives would either lower academic standards or require substantial program alteration.

READMISSION

What about a student who is removed for behavior issues, then is diagnosed with bipolar disorder? Or the student who has depression but does not request accommodations until after academic failure?

No clear judicial guidance. May depend on whether student knew of disability, failed to request accommodation?

Institution only required to make accommodations to known disabilities.

MENTAL AND SUBSTANCE ABUSE IMPAIRMENTS

1. Is there any way to know there is a problem student in the application process? Application questions should probably only ask about behavior and conduct, not status or treatment or history.

Clark v. Virginia Board of Bar Examiners, 880 F. Supp. 430 (E.D. Va. 1994). Provides a detailed discussion of mental health history questions in professional licensing and a review of the status in other jurisdictions.

For an excellent overview of this issue, see Stanley Herr, *Questioning the Questionnaires: Bar Admissions and Candidates with Disabilities*, 42 Villanova L. Rev. 635 (1997).

2. Procedural safeguards and balancing with safety issues? Those dealing with students need to be educated on the ADA/504 obligations involving expulsion and other disciplinary measures relating to individuals with disabilities (including mental disabilities and contagious diseases).

3. Conduct and behavior issues

Misconduct and misbehavior need not be excused even if it is caused by mental impairment.

REFERENCES

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SSRN Reference – <http://ssrn.com/author=37905>

Student Mental Health & the Law: A Resource for Institutions of Higher Education, published by the JED Foundation, www.jedfoundation.org/legal