

An Overview of Selected Legal Issues in Higher Education

Host: Hamline University

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by

Peter C. Wolk, Esquire

Washington, DC

Nonprofitlaw@aol.com

Presentation Topics

- I. Discrimination.
- II. Affirmative Action.
- III. Sexual Harassment.
- IV. Torts.
- V. Student Misconduct and Discipline.
- VI. Campus Security.
- VII. FERPA.
- VIII. Disability Discrimination.



I. DISCRIMINATION

- Public entities are restricted by 14th Amendment's Equal Protection clause.
- Federal fund recipients, public and private, are covered by Title VI of the Civil Rights Act of 1964; 1994 Dept. of Educ. Guidance.
- Minnesota Human Rights Act: - race, color, creed, religion, national origin, sex, marital status, family status, disability, public assistance, age, sexual orientation, activity with a local human rights council.
- Various covers employment, housing, public accommodations, public services, education, credit, business.

Discrimination Prohibitions

- Title VI provides that “[n]o person in the United States shall, on the ground of **race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”
- Title IX provides that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

Gender Discrimination

- Discrimination based on gender receives Intermediate Scrutiny.
- See continued existence of single-sex colleges.
- Supreme Court: Admitting only men at Virginia Military Institution violated Equal Protection because VMI offered a unique educational experience in VA not otherwise available to women,.



Scholarships

- Podberesky (1994)—
Scholarship benefiting only
African-Americans
unconstitutional b/c not
narrowly tailored.
- S.Ct: U. of Mich. Grutter and
Gratz. Race classifications are
Constitutionally-suspect.
- **Context matters.** Financial
aid consists of many
scholarships, grants, and loans
— how overall?
- Key: Does it remedy
past discrim? Achieve
educ'l benefits diverse
stu body?
- Privately-funded
scholarships may be
subject to Title VI
requirements if a
college administers.
- States can restrict race
conscious scholarships.

Racial Discrimination/ Admissions

- Racial, national origin discrimination subject to strict judicial scrutiny.
- There must be a "compelling State interest."
- Race-conscious provisions must be "narrowly tailored" to meet that interest.
(E.g., WWI internment of people of Japanese descent.)
- Form 1023 IRS "Public Policy" forbids educational institutions from engaging in racial discrimination.
- Forbidden in admissions.
- See Affirmative Action.

II. AFFIRMATIVE ACTION



2003 S.Ct: Grutter: diversity can be a ‘compelling State interest’ that justifies race-sensitive admissions, provided many conditions are met:

1. College faculty or admin’s must make ‘professional judgment’ that diversity is of compelling interest to their college to pursue its mission.

Affirmative Action Okay if...

2. First seriously review race-neutral alternatives to racial preferences.
3. Narrowly tailored to be used as GOALS, not quotas (Mich wanted ‘critical mass’ of minority students for diversity purposes);
Not Okay: fixed # or % of opportunities for a certain min’y group.
4. It includes: “holistic” review of applicants.
Not Okay: Using single variable to screen out or advance applicants.
5. Must dev. admissions criteria/ procedures in advance.
6. Not Okay: Assigning preset weight to criteria- instead, assign weight only after reviewing contents of each applicant’s file.

Affirmative Action Okay if...

7. Decision-makers must be trained; policies must be aligned.
8. Not Okay: if any racial group is unduly burdened (e.g., Mich showed it admitted some non-min'y w/ lower tests over some min'y app'nts).

Case: U of Wash sent letter for ethnicity substant'n; d/n/h to send to all applicants, used to ID effect of disclosed min'y status.

9. Must have durational limitations – are racial preferences still needed to create 'critical mass?'

Affirmative Action Okay if:

10. U.S. Dept. ED:
suggested alternatives
to racial preferences:

a. Percentage/class rank
guaranteed admission
plans (less helpful for
grad/prof. schools;
difficult to contain
class size; fewer
discretionary
admissions for
diversity;

- (has resulted in lower
min'y admissions in
States that have tried)
- Needs effective
outreach, recruitment.
- b. Socio-Economic
Alternative.
- c. Holistic, Race-Neutral
Admissions.

Affirmative Action: Practice Tips

1. Draft admissions, other policies to identify why student diversity is of compelling interest to your college, and make official info (e.g. brochures, website, reports) consistent.
2. Academic officials should explain why race-neutral admissions are not workable.
3. Know your admissions data.
4. Keep useful admissions notes.

III. SEXUAL HARASSMENT

- Is a form of discriminatory harassment.
- Title VII (Civ.Rts Act '64) and Title IX (Ed Am's '72) bar sex discrimination in employment and educational programs.
- 1980: EEOC 'unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature ... IF (1) 'It's explicitly or implicitly a condition of an individual's education/employment, (2) submission or rejection is a basis for decisions or (3) it unreasonably interferes with an individual's performance or creates a hostile work/learning environment.'

Sexual Harassment of Students

- S Ct 1998: School liability if an official:
 - (1)Has “actual knowledge” of the harassment;
 - (2)Has authority to institute corrective measures to resolve the problem; (1999 OCR – can be almost any school employee) and
 - (3)Fails to adequately respond to the alleged harassment, “deliberate indifference.”
- 2002 (D.Mich): Title IX’s ban on sexual harassment extends to study abroad programs, and “sweeps within its scope every single university education program. . . .”
- S.Ct 1998: Not a civility statute;it bans same sex harassment.

Sexual Harassment: Defense and Policy Ideas

- 1998: Employers liable if 'tangible' employment action taken (firing, non-promotion).
- Otherwise, defense is:
(1) we had a reasonable procedure to correct the harassment, and (2) the victim unreasonably failed to use it.
- Make sure Sexual Harassment Policy: (1) explicitly prohibits harassing conduct (with e.g.'s); (2) says where to make complaints; (3) says complaints need not be brought to immediate supervisor (e.g., teacher); (4) prevents retaliation.

IV. TORTS: IN GENERAL



- A civil (not criminal) wrong committed against another.
- Types: Intentional, negligence, and nuisance.
- Negligence: (1) Duty of Care to act as a reasonably prudent person to the plaintiff; (2) Breach of the Duty; (3) Proximate Cause of injury; and, (4) Damage or injury was suffered.

In Loco Parentis: 1960's – 1980's: Limited Duty of Care

- Justified authority to discipline students in place of the parent.
- Curtailed by courts in 1960's when used to punish sit-in's w/o due process (Dixon).
- Misnomer – it gave colleges immunity, not liability.
- 1979 3rd Cir – univ no duty to stu injured by fellow stu drinking alcohol that univ knew about and funded; Colleges are not 'insurers' of stu safety.
- Other courts – w/o special rel'p no duty to protect stu's from other stu's, intruders.
- 1986 no duty when drunk stu fell on field trip; prof knew stu's had had alcohol.

In Loco Parentis: 1980's – Present: Increased Duty of Care

- Freshman abducted from res hall and raped. College had duty to provide 'reas campus security' esp'y for stu'd req'd to live on campus who cannot take own sec'y measures. Mullins v. Pine Manor College (Mass. 1983).
- Higher duty of care.
- Univ liable for student injured in off-campus internship assigned by univ. Nova Southeastern Univ. v Gross.
- 'Duty arises when one creates a foreseeable zone of risk.

Hazing Injuries: Reas. Care?

- Univ's failure to intervene despite knowledge of prohibited hazing activ's.
- Univ's control of potentially dangerous stu activities does not create an educationally inappropriate environ't. Furek v. U of Del. (1991).
- Univ has duty as landowner for foreseeable actions of 3p (frat brothers) that pose unreas risks to invitees (stu) handcuffed, forced alcohol, fell, injured. Knoll v. U Neb (1999).
- Univ not liable for hazing injuries w/o knowledge of. Lloyd v. Cornell (1999).

Alcohol, Violence: Reas Care

- Duty to protect from voluntary intoxication IF:
- Univ. ee's supervising party;
- Ee's knew/should have known alcohol given to underage stu's; AND,
- Ee's knew stu was drunk prior to injury. (Iowa 1999)
- Ex-felon w history of drug abuse and violence unknown to univ raped and murdered student living off-campus. J/Univ not negligent, no reports of unreasonable, threatening behavior. Eiseman v. State (1987).

Overseas Student Liability

- Student in Florence injured when his apt balcony railing gave way. (Paneno 2004) (3p Duty owed).
- Student in Austria broke ankle on ice (McNeil 1998) perm. nerve damage; doctor (German) may have advised immed. surgery (J/ no duty to supervise medical care, no in loco parentis).
- Student ill on 3 week Peru trip left in small town w/o trip leaders, denied t'r to Lima and call home, unnecessary appendectomy, sexual assault. (Fay v. Thiel College 2001).
- Waiver invalid – K of adhesion (take it or leave it), coll. authz'n to make medical decisions created special rel'p, duty.

Overseas Program Liability: Lessons

- Paneno:
- Inspect facilities if you sponsor program.
- If not, (and even if so) get program sponsor to inspect and: (1) indemnify college; (2) be named addit'l insured; (3) agree on where/how disputes settled (forum, arbit).
- McNeil: Secure world-wide travel and medical insurance.
- Train staff, inform students extent of resp'y for medical care.
- King: Female students sexually harass'd on Australia program (King).
- Train re sexual harassment rules, overseas reporting, handling

Overseas Program Liability: Lessons

- Fay:
- Supervise (do not leave injured/ill students and their care.
- Communicate with family.
- Get release re level of medical care available.
- Student on Mexican semester ignored travel warnings; raped when alone in long cab ride. (Bloss).
- Public institution was exercising discretionary gov't function (policy-making) so statutory immunity. (U Minn.)

Suicidal Student: Case Study

- MIT suicidal student.
- Many visits to campus admin's, campus psychiatrists.
- Missed transfer of information; warnings heeded to various degrees.
- Commits suicide.
- Contract claim against private institution to provide necessary medical services, also against admin's, drs.
- Tort claim against admin's, doctors.

Case Study: Suicidal Student

- Mass trial court – MIT's, admin's, doctors' representations were 'too vague and indefinite to form an enforceable contract' re medical services.
- Admin's could reasonably foresee student would hurt herself w/o supervision, so 'special relationship' formed with duty of care.
- Doctors – genuine issue of fact whether failure to form and conduct an immediate plan to protect student was gross negligence.
- No respondeat superior.

V. WHAT IS STUDENT MISCONDUCT: Public Entities

- Public Schools: 1AM protects Free Speech.
- Physically harassing *conduct* is not Free Speech, hence campus conduct codes.
- Issue: when is the action speech, not conduct?
- S.Ct. – Fighting words, obscenity not protected.



Public: What is Student Misconduct?

- S.Ct: St. Paul law banning “fighting words” that arouse “anger, alarm or resentment on the basis of race, color, creed, religion or gender” not Constitut’l.
- ‘Majority preferences must be expressed in some fashion other than silencing speech on the basis of content.’ (1992).
- Banning racial slurs, threats of violence; imposing time, place, and manner restrictions can be Constit’l.
- Can regulate speech to protect students from d’n and harassmt IF the content-based regulation prohibits unprotected speech and is not generally overbroad or vague.

Public: What is Student Discipline?

- Public schools = to State Action
 - 14th AM: “No state shall deprive any person of life, liberty, or property w/o due process of law.
- Continued enrollment is a liberty and property interest protected by due process.
- Issue: how much process? Notice and opportunity to be heard before a student is disciplined. Dixon v. Alabama (1961) lunch counter sit-in; demonstration.
- Opportunity to be heard – informal give and take can be suff.
- Need impartial, unbiased decision-makers.
- No rt. to attorney; if so, no cross-exam, educ’l, not adversarial process; more if criminal charges pending.

Public Entity Student Discipline; Campus Sexual Assault Victims Bill of Rights

- Some record of hearing req'd, need not be transcript or tape.
- Guilt must be by 'substantial evidence' (U Ill.; URI).
- Not req'd to allow appeals.
- Disciplinary hearings for alleged sex offenses must:
- Give accuser and accused same opportunities to have others present;
- Inform the accuser and the accused of the outcome of the proceeding.

Private: Student Misconduct and Discipline

- Private schools – Contract, not Constitut’l Law applies: based on schools’ rules, handbooks, procedures, publications; implied good faith dealing.
- Private college may not act arbitrarily and capriciously.
- Need reasonable grounds, good faith, fundamental fairness. (BU 3rd Cir. 1983).
- Must fulfill contract rights (e.g., handbook, procedures).
- Private schools - disciplinary procedures must be ‘fundamentally fair’ and follow written rules (e.g., handbook).

Crim. Proceedings; Off-Campus Acts

- Colleges not req'd to postpone their proceedings even if potential crim. liability.
- Accused often wants to avoid testifying to avoid waiving 5 AM right to avoid self-incrim'n.
- Okay to discipline for off-campus acts if the conduct was:
 - Criminal;
 - Directly related to campus mission or welfare;
 - College's conduct code says so, AND,
 - Institution is private.

VI. CAMPUS SECURITY ACT; REPORTING

- Student Right to Know and the Campus Security Act (1990) amended 1998 (Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act).
- All colleges rec'ing federal fin aid must report or face \$25,000 fine for non-reporting, misrepresentations.
- Who Must Report? – campus police, security, any indiv or org to which campus crimes should be reported, official responsible for student housing, discipline, judicial proc's, fac advisors to stu org's.
- Advise monthly campus admin communication.

Clery Act: What Must Be Reported?

- Law, not campus policy, violations, including: aggravated assault, arson, burglary, manslaughter, murder, car theft, robbery, sex offenses, hate crimes (by category); alcohol, drug, weapons arrests and non-arrests; Campus Disciplinary Referrals, actions.
- What geog scope? – Campus, college- owned, adjacent public property, foreign campuses (separately).
- Campus Security Policies Report – how Timely Warning Reports are issued, who reports, campus facility/ residence access policies

Campus Security Report

- Campus security procedures; Crime prevention, alcohol/drug policies/ programs; Sexual Assault prevention, reporting, counseling, protection, disciplinary action.
- Both accuser and accused have same rights to others present, info about outcome.

Who Gets the Report? All students, employees prospective students (upon request), U.S. ED.

How Distributed? Mail, email, Internet (with notice).

Crime Logs – campus police must keep clear daily crime log open to public, including nature, time, location of crime, follow-up.

Sexual Violence Reporting

- Minn. Law requires reporting of sexual abuse and sexual violence.
- Board of Minn State Colleges and Universities must adopt policies to inform victims of their rights.
- Also have to provide students with policy information when they register for classes.

VII. THE FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT (FERPA)

- FERPA (the Buckley Amendment) enacted 1974 in response to increased government record-keeping.
- Enacted to protect the privacy of student records.
- Applies to all U.S. Dept. of ED funding recipients.



FERPA Restrictions, Penalty

- General Rule: Third parties can not access student education records without the student's prior written consent.
- Electronic signatures that authenticate a student's identity are okay for consent to disclose information.
- The institution's failure to comply with FERPA may subject it to loss of federal funding or a lesser sanction.

Student Disciplinary Records As Educational Records

- FERPA restricts and penalizes disclosure of “educational records” – records (1) directly related to a student that (2) are maintained by an educ’l institution.
- Records created during disciplinary proceedings are education records because they are directly related to one or more students and are maintained by the college. Univ of Oklahoma, Miami University, UNC, UMD.

Disciplinary Records That Can Be Disclosed

The final results of a disciplinary proceeding where a student **is found guilty** of a violent crime or a non-forcible sex offense.

Can release only the student's name, the violation committed, the sanction imposed, and the names of and other students (e.g., the victim or witnesses) but only with their prior written consent).

All records can be disclosed to the victim of an alleged crime of violence or a non-forcible sex offense even if no violation was proven.

Disclosure okay if...

To a parent of a student under 21 if the institution has determined that the student committed a disciplinary violation governing the use or possession of alcohol or controlled substances.

College must log each request and release of personally identifiable information except when the request is received from an institution official, a parent or eligible student, a person with written consent, or for directory information.

Not Considered Education Records:

- (1) Educ'l instit's law enforcement-only records if kept separate from education records and disclosed only to law enforcement officials of the same jurisdiction.
- (2) Employment records, not graduate assistants or work-study records.
- (3) Records about an individual who is no longer a student at the institution.
- (4) Medical records of students over 18 disclosed to medical professionals.

Can Disclose Without Student Consent

- (1) Records requested by an internal university official with a *legitimate educational interest* to fulfill professional responsibilities (univ. c'ee members, attorneys)
- (2) “Directory information” student/parent names, contact info, student birth date, course of study, previous schools attended, and photo, unless asked not to.
- (3) Another college where the student seeks to enroll.

Can Disclose Covered Records if...

- (4) Specific federal, state, local educ officials doing audit, evaluation, or compliance, and org's studying tests and programs for them.
- (5) Accrediting agencies, financial aid verification.
- (6) Subpoenaed.
- (7) If requested by parents or guardians of a dependent student.
- (8) Emergency if needed to protect the health or safety of the student or others.
- (9) To parent of student under 18 unless that student has matriculated at a college.

FERPA: Student Right to Inspect



- Must allow students to inspect records w/i 45 days of request.
- Must explain and interpret, if reasonable.
- No need to allow review of:
- Parental Financial records;

Need not permit review of

- Confidential letters of recommendation for admission, employment, or honors IF:
- (1) the letters are not a condition of admission or receiving a benefit, AND
- (2) the waiver is in writing and signed by the student.
- Students can be told names of people who provided recommendations.
- College can use documents only for original purpose.
- Student can revoke waiver prospectively.

Student Correction of Records

- Student can request correction of inaccurate or misleading information.
- Can have hearing if request is denied.
- FERPA is enforceable by the U.S. Dept. of Education.
- U.S. Sup. Court: No private right of action to enforce FERPA.
- FERPA audit – be sure not to mix multiple students' records into one document (e.g., five students separately violate academic standards but Dean writes one memo to the file naming all).

VIII. DISABILITY DISCRIMINATION: GENERALLY

- Protection began with Section 504 of the Rehabilitation Act in 1973.
- Americans with Disabilities Act of 1990 to remedy continuing discrimination, particularly in education.
- ‘No otherwise qualified individual with a disability... shall solely by reason of her or his disability, be excluded from participation in or denied the benefit of any program or activity receiving Federal financial assistance.’ © Peter C. Wolk, 2006



Americans with Disabilities Act: Gen'y,

- “Disability” - a physical or mental impairment, or a record or perception of having one, that substantially limits one or more of a person’s major life activities.
- Requires reasonable modifications in policies, practices, or procedures to accommod. Disabled persons.
- Minn State ADA as well.
- ADA applies to public and private institutions (Titles II, III)
- “Major life activities” caring for one's self, manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”

ADA: Impairments

- Impairment – defined broadly: physiological, mental, psychological disorder; anatomical loss or disfigurement.
- Physical char's – height, eye color in normal range not impairments.
- Behavioral char's not impairments.
- Individ. not disabled unless impairment affects one or more life activities.
- Not temporary problems (broken bones, flu).
- U.S. Sup. Ct: no impairment if 'measures can mitigate the individual's impairment (eyeglasses). Sutton v. United Airlines.

ADA: “Qualified Individual”

Leading Case – U.S. Sup.

Court: hearing-impaired nursing applicant needed "fundamental alteration" to program (close, individual attention by a nursing instructor) to ensure patient safety in clinical phase of nursing program, so applicant not qualified. Southeastern Community College v. Davis.

ADMISSIONS: (1)

Rule. Applicant with a disability must be capable of fulfilling the essential functions or requirements of the program, with or without the provision of reasonable accommodations.

ADA: Student Admissions

- (2) Application - can not ask applicants about disabilities- unless
 - narrow exception - the institution is remedying past discrimination and instit. must say so.
- (3) Admissions Tests and Criteria – cannot be used if they have a disproportionate, adverse effect on applicants with disabilities.
 - exception – if the test or criterion has been validated as a predictor of success in the program and alternative tests or criteria that have a less disproportionate adverse effect are not available.

Student Disabilities: Admissions: Testing

(4) Testing – of an applicant who has impaired sensory, manual or speaking skills, must not reflect those impaired skills, but actually measure the applicant's aptitude or achievement level.

(5) Tests by Other Entities – used for admission (e.g., SAT, GRE, LSAT, MCAT) must comply.

- **Trap** – other testing org's may “flag” when accommodations are given; institution may not inquire why accommodations were made.

Disabilities: Admissions: Cases

- 6. Case (a): Dismissed alcoholic student sought readmittance saying his GPA was below the school's required average because of his drinking.
- Court - Readmission denied. Law does not forbid decisions based on the actual attributes of the handicap; different if student abated the source of the academic problem.
- Case (b): Students with learning disabilities and lower GPA's and test scores denied admission to law schools (Emory; Wash and Lee).
- Courts – Admission denials upheld. Colleges are not required to lower admissions standards for applicants with disabilities.

Disabilities: Admission: Learning Disabilities

(7) Applicant-Disclosed

Learning Disabilities – has a learning disability prevented an applicant from performing up to potential (consult other evidence – e.g., GPA, tests, employment, community experiences, recommendations).

Can the applicant perform well when appropriate accommodations are provided?

Case (c): Student diagnosed with learning disability met essential eligibility req'ts when afforded double time on exams; school required to disregard poor performance during first term when not accommodated. Ruled otherwise qualified. **University of Virginia**, (4th Cir. 1999).

ADA Accommodations; Undue Hardship

- Student must disclose disability and request accommod.
- College to talk to student.
- Goal is to provide effective access to the programs; equal opport'y.
- Academic Accommod. – not req'd to fundamentally alter academic requir't.
- Private institu'ts need not accomm. if “undue hardship” (re instit's resources, cost of accomm., effect of accomm. on operations) (e.g, ramps).
- Public institutions must make all services avail. without regard to undue hardship (e.g., change classroom instead of building phys. access).

ADA: Safety Concerns

(8) Safety concerns can justify denial of accomm. IF the indiv poses a direct threat to own/others' safety.

Must be significant risk of substantial harm (train dispatcher, heart ailment; AIDS of hospital personnel).

An applicant to nursing school whose learning disability caused him to transpose numbers, or a veterinary school applicant whose learning disability prevented him from performing important mathematical computations.

Three Types: (1) Academic Accommodations

1. Academic Adjustments
 - if course requirements discriminate against a qualified disabled applicant or student.
 - Not req'd to waive req'd courses.

Change length of time permitted for degree completion, change courses if preserves academic integrity, and adapt how/ where courses are conducted.

(2) Course Accommodations

2. Modification or alteration of course examinations - must be done to accurately reflect the individual's aptitude or achievement, rather than the individual's impaired sensory, manual, or speaking skills (except where those are the skills that the examination purports to measure).
- Extra time, alt format (oral v. written), alt location.
 - Student's notice to dean late in the semester of clinical depression sufficient to trigger right to accomm. of incomplete; failure to register with disability services office no bar to relief). SUNY (1997).

Accommodation (3): Academic, Aux. Aids and Services

- 3. Provision of Auxiliary Aids. Must achieve non-discriminatory situation:
- If discriminatory, institution must provide auxiliary aids and services (e.g, interpreters, note-takers) necessary to provide non- discriminatory class treatment for persons with disabilities.
- Not required for personal use or study.

“Auxiliary aids and services -
interpreters, notetakers,
amplifiers, TDD’s readers,
large print,...” are most
frequently requested.

* Does not include
individually prescribed
devices, readers for personal
use or study, or other
devices or services of a
personal nature. (readers in
class > readers for study).

Tutoring – not req’d unless
offered to gen stu. popul.

Psychiatric Disorders: Threats to Safety

Even students with disabilities must meet behavioral standards (bipolar disorder); barring school from regular discipline process = undue hardship.

- Student may not be ‘otherwise qualified.’
- * NYU not req’d to readmit stu w serious psych mental disorders b/c risk to fac, stu’s, patients; key – likelihood of recurrence.

Dixie College okay to expel student claiming mental disability who stalked and harassed professor.

South Suburban College – okay to suspend student w perceived disability who had altercations, in approp. language w staff

Psychiatric Disorders: Violations of Policy

- School may discipline disabled student if it treats non-disabled students similarly.
- Must provide: (1) notice of policy; (2) alleged non-compliance; and (3) reas. Opport'y to modify behavior or get counseling. (U.S. ED Off. Of Civil Rights).
- Learning disabled student expelled for cheating / plagiarism.
- No elem ed degree for stu who failed math multiple times despite 7 accomm's. (NKy)
- N.Ill refused "D" in math course essential to degree despite # accom, test-taking time, tutoring.

Payment for Reasonable Accommodations

- Postsecondary educational institutions must pay the cost of reasonable accommodations provided for students with disabilities.
- A surcharge may not be imposed on the individual with a disability – even one who can afford it - or others to cover the costs of such accommodations

Off-Campus/Abroad ADA Issues

- Third party services – e.g., web course or internship – are college’s respon’y if college retains control over the service setting or contracts with the provider.
- Contrast – student-chosen internship site.
- ED’s OCR says ADA does not extend overseas.
- Ariz SU not req’d to provide sign lang. Interpreter in Ireland.
- BUT, the U.S. Sup Ct (2005) said a foreign flag cruise ship that p/u passengers in U.S. covered by the ADA.

Off-Campus/Abroad ADA Issues

Conclusion: UNCERTAINTY.

Remember – even if ADA applies, only reasonable accommodations are required.

Bird v. Lewis & Clark vol'y providing paraplegic access to Australia program okay (even if not all places were wheelchair accessible).



Non-Academic Programs and Services

- Can not exclude or deny students with disabilities the benefits of:
- Student housing – must be comparable, convenient, and accessible housing at the same cost as to others.
- Athletics – equal opportunity for intercollegiate, club, or intramural athletics.
- Personal, academic, or vocational counseling, guidance, or placement services must be to the same extent that such services are provided to non-disabled students.

Summary; What's Next?

- Regard this as educational information, not specific legal advice.
- Identify any policy review/formulation you want to consider.
- Identify any campus educational efforts you want to undertake.
- Thank you for working for the welfare of higher education students.