Auxiliary Aids

Overview

Students who request auxiliary aids must provide colleges and universities with notice of their disabilities and documentation illustrating the need for the aids. Auxiliary aids can include taped textbooks, note-takers, interpreters, readers, etc. However, institutions are not required to provide the most sophisticated aids available. They simply must provide aids that effectively meet the needs of the students requesting accommodations. See how the Office for Civil Rights has ruled in recent cases involving auxiliary aids.

What You Should Know

- Institutions must modify academic requirements when necessary so they are not discriminatory.

- Colleges and universities must take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of an auxiliary aid.

- Institutions should provide simple alternative methods to ensure that disabled students are not adversely affected when their approved auxiliary aids are temporarily unavailable.

- When students are denied auxiliary aids for legitimate, nondiscriminatory reasons, institutions must engage in an interactive process with the students to identify alternative adjustments.

Key Rulings

- A student complained that her institution failed to provide her with magnification software for a course. She self-identified as a student with a disability to the disability services office and was approved to use the software. But the institution did not provide it. Her professor called the DS office to request that the software be installed on her computer. It was not installed. When the student called again, she was told to access the software website and install the software herself. But when she attempted to do so, it did not work. She got a D in the course. The college submitted a resolution agreement to address the student's allegations. Letter to: City University of New York Borough of Manhattan Community College, No. 02-11-2060 (OCR 06/27/11).

- A former student alleged that a college wrongly denied her a sign language interpreter while it provided one to a white student. Before OCR completed the investigation, the college offered to resolve the complaint by promising to revise the process used for making determinations about whether students are entitled to auxiliary aids and academic adjustments. Specifically, the institution agreed to engage in an interactive process with each student requesting accommodations. Letter to: Atlanta Christian College, No. 04-09-2460 (OCR 05/26/11).

- A student claimed that a college discriminated by denying him permission to use a computer to type his responses to an exam. He said that he considered this academic adjustment necessary to benefit from the course. Before OCR completed its investigation, the college submitted a resolution agreement that, when fully implemented, would resolve the issues raised by the complainant's allegations. Letter to: Austin Community College, No. 06-11-2050 (OCR 06/10/11).

- A student was approved to receive various accommodations. But her request for double time on homework was denied because that accommodation was left up to instructors' discretion. The university entered into a resolution agreement, adopting new procedures for requesting and approving that adjustment. The student also said her note-taker was sometimes absent from class. Because the DS office offered substitute note-takers and carbonless notebooks and tape recorders, OCR sided with the institution in that matter. Letter to: North Carolina State University, No. 11-10-2054 (OCR 09/09/10).
Mobility Impairments

Overview
The Americans with Disabilities Act and Section 504 of the Rehabilitation Act mandate that students and others with disabilities receive equal access to programs and services in higher education. When it comes to providing access to individuals with mobility impairments, compliance can be particularly difficult, and often costly. See how the Office for Civil Rights and the courts have ruled in recent cases involving individuals with mobility impairments.

What You Should Know

• Compensatory damages are available for failure to accommodate a plaintiff under the ADA if the defendant acted knowingly, voluntarily and deliberately.

• Section 504 requires that facilities built or altered after Jan. 1, 1991 meet the Uniform Federal Accessibility Standards requirements. Title II regulations require that facilities constructed or altered on or after Jan. 27, 1992, comply with the UFAS or the ADA Accessibility Guidelines.

Key Rulings

• A student with multiple sclerosis and back and heart problems couldn't walk for long distances. Due to construction, the college did not have sufficient accessible parking spaces, and the campus shuttle was not accessible to individuals with mobility impairments. At her request, officials agreed to have college security drive her from her vehicle to classes and back until other accommodations could be identified. But soon after, a security officer told her that no more transportation would be provided. When she was injured while walking back to her car, the student sued. The institution asked the court to dismiss her claim, but a judge sided with the student. Adams v. Montgomery Rock College (Rockville), et al., No. DKC 09-2278 (D. Md. 06/29/11).

• A complaint alleged that a school stadium had inadequate wheelchair-accessible seating, no companion seating, an inaccessible women’s restroom and inadequate accessible parking. After reviewing documentation provided by the district and conducting an on-site visit, OCR determined that the evidence supported some, but not all, of the allegations in the complaint. The district entered into a resolution with OCR to resolve compliance concerns identified during a stadium inspection. Letto: Quinlan Independent School District, No. 06101340 (OCR 10/15/10).

Extra Time for Exams, Assignments

Overview
The accommodation of extra time on texts and assignments is often approved for students with a wide range of disabilities, including learning disabilities, attention disorders and anxiety. Know how the Office for Civil Rights and the courts have ruled in recent cases involving students’ requests for extra time to keep your institution out of legal trouble.

What You Should Know

• Institutions must modify academic requirements as necessary to ensure that they do not discriminate, or have the effect of discriminating, on the basis of disability against qualified applicants or students with disabilities.

• Instructors can’t deny students the use of accommodations they’ve been approved to receive.

Key Rulings

• A law school student claimed that her grade on an exam was affected because a professor at the law school denied her extra time to take a test. The student had been approved for time and a half on all exams. College officials explained that she did not get extended time because the class instructor gave all students five hours to answer a three-hour exam. OCR found that the institution violated her rights by requiring that she complete a final exam in the same amount of time as her nondisabled peers. Letto: Lewis and Clark College, No. 10092092 (OCR 01/08/10).

• A compliant claimed that a college discriminated against him on the basis of his disability by denying him extra time to complete his assignments for one course after he notified the instructor of his disability. The college entered into a resolution agreement that resolved the complaint before OCR completed its investigation. Based on the college’s willingness to resolve the complaint, OCR closed its investigation. Letto: John A. Gupton College, No. 04-10-2183 (OCR 01/07/11).
Bipolar Disorder

Overview

Bipolar disorder can cause extreme shifts in mood that impact behavior. Students often need accommodations to offset the effects of the disorder and the medications used to treat it. As more students with bipolar disorder enroll in college, it's increasingly important to know how the Office for Civil Rights and the courts have ruled in cases involving students with this condition.

What You Should Know

- Documentation that a student has a disability does not exempt that student from disciplinary action for conduct related to his disability.
- Colleges and universities cannot summarily dismiss students simply because they exhibit bipolar behavior.

Key Rulings

- A student with bipolar disorder and post-traumatic stress disorder who was registered with the disability services office began experiencing hallucinations and delusions, manifested in feelings of love toward a female professor. The student was hospitalized and treated before being cleared to return to the institution. However, the university asked that she sign an agreement stating that she understood her actions constituted sexual discrimination. As a result of signing the agreement, she was barred from the department in which the professor taught. She sued, but the court ruled in favor of the institution. Olson v. Oregon University System, et al., No. CV 09-167-MO (D. Ore. 05/05/09).
- A student in an internship program signed up for a semester-long government internship in Washington, D.C. The director informed the student's mother that her daughter had been expelled due to "erratic conduct." The student was found wandering aimlessly through the streets, wearing shorts and a T-shirt when the temperature was below freezing. She was later diagnosed with bipolar disorder. Her mother sued, saying that no reasonable accommodations were offered prior to the dismissal. A court denied the plaintiff's motions to dismiss her claims. Rivera-Concepcion v. Commonwealth of Puerto Rico, et al., No. 05-2378 (D.P.R. 01/20/10).

Dismissal

Overview

Institutions have a right to dismiss students who fail to meet the requirements of an academic program. However, they must first provide students with disabilities appropriate auxiliary aids and accommodations, as long as they do not alter the essential makeup of a program. See how the courts and the Office for Civil Rights have ruled in recent cases involving dismissal.

What You Should Know

- Students with disabilities must follow their institutions' established procedures for documenting their disabilities and requesting auxiliary aids and accommodations.

Key Rulings

- A student who suffered from depression informed a dean that she might need to exceed the permitted number of class absences. But she did not seek accommodations. She was placed on academic probation and sued when she was later dismissed. A judge dismissed her claims because, despite her not proving that she had a disability, the institution consistently allowed her to take exams even after exceeding the allowed number of absences. And she was allowed to reschedule exams when she was unable to show up. Meisenhelder v. Florida Coastal School of Law, No. 3:09-cv-0074-HES-TEM (M.D.Fla. 02/19/10).
DISABILITY COMPLIANCE FOR HIGHER EDUCATION

QUICK STUDY

An overview of the key topics faced by disability services providers with citations to noteworthy cases, statutes, regulations and additional sources.

Attention Deficit Hyperactivity Disorder

Overview

Students with attention deficit hyperactivity disorder may be found eligible for many types of accommodations, including quiet testing rooms, extended time and note-takers. However, it is students’ responsibility to provide their institutions with the appropriate documentation to support their accommodation requests. See how the Office for Civil Rights and the courts have ruled in recent cases involving students with ADHD.

What You Should Know

- Institutions of higher education have a duty to investigate allegations of discrimination on the basis of disability promptly and equitably.
- College and university officials are not required to modify their institutions’ academic or professional standards to accommodate students with disabilities.
- A student claiming disability discrimination must produce evidence that the alleged discriminatory action was directly linked to his disability.

Key Rulings

- A former nursing student with ADHD complained that a college discriminated by (1) allowing an instructor to continue harassing him after he reported the harassment and (2) dismissing him because he had ADHD. The college entered into a resolution agreement with OCR, agreeing to reimburse all expenses incurred and expunge the student’s records of any failing grades for the spring 2010 semester. It also agreed to provide training to all administrators, faculty, staff members and students regarding discrimination based on disability and adopt grievance procedures for discrimination complaints. Letter to: Midland Lutheran College, No. 07102036 (OCR 09/17/10).
- A dismissed student with ADHD sought an injunction ordering the university to reinstate him. He also sought monetary damages. After his dismissal, he was accepted to another medical school, finished the program, and passed the medical licensing exam. But the court held that he was not a qualified individual with a disability because he could not demonstrate a substantial limitation of a major life activity. Brief v. Albert Einstein College of Medicine, et al., No. 10-2580-cv (2d Cir. 06/01/11).
- A student who had ADHD was dismissed from a law school for failing to maintain the required minimum GPA. She sued, alleging that her dismissal was discriminatory. The District Court granted summary judgment for the university. She appealed, alleging that although the university granted her extra time for exams, a system glitch noted the time she took on each exam. Therefore, she argued that her extra time “stood out like a sore thumb” and effectively negated the accommodation. The 10th Circuit rejected the theory, stating that there was no evidence that her dismissal was discriminatory. Doe v. Oklahoma City University, et al., No. 10-6020 (10th Cir. 12/23/10).
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Hearing Impairments

Overview

Title II of the Americans with Disabilities Act requires colleges and universities to provide students who are deaf or hard of hearing with communication as effective as that provided to students without disabilities. See how the Office for Civil Rights has ruled on some recent cases involving students with hearing impairments.

What You Should Know

- Colleges and universities must ensure that auxiliary aids and services provided to students with disabilities give them the opportunity for meaningful, effective participation in educational programs.

- Students who provide timely notice of their need for adjustments and auxiliary aids must receive adjustments and aids that are of adequate quality and effectiveness.

Key Rulings

- A deaf student alleged that a college discriminated against her by failing to provide her with a sign language interpreter. Instead, she was provided with note-taker services and preferential seating in the front of the classroom. The disability services coordinator explained that the request was denied because in all of the meetings with the student, she had communicated orally without difficulty. OCR determined that the individual's responsible for making the determination did not have expertise in hearing impairments and that the student's audiologist was not consulted. The college resolved the complaint by entering into a resolution agreement with OCR. Letter to: Harcum College, No. 03102079 (OCR 12/17/10).

- A deaf student asserted that the college failed to provide her with American Sign Language interpreters for her classes during the fall semester of 2008. She also claimed that the interpreters assigned to her from mid-November through the end of the semester were of inadequate quality and effectiveness. OCR concluded that the institution failed to provide alternative auxiliary aids when it was unable to provide interpreting services to the student. Letter to: New York City College of Technology, No. 02-09-2042 (OCR 06/17/10).

Definition of 'Disability'

Overview

Under the Americans with Disabilities Act, individuals are considered to have a disability if they have a physical or mental health impairment that limits one or more major life activities, have a record of such an impairment, or are regarded as having such an impairment. Students and employees may have problems getting accommodation requests approved if they can't show that their disabilities affect major life activities.

What You Should Know

- Individuals claiming to have a disability must be able to prove that their conditions impact a major life activity.

Key Rulings

- A nursing instructor with severe shin splints was assigned to co-teach a course in addition to her regular workload. She presented letters from a doctor and chiropractor stating that she couldn't assume extra duties. She was placed on unpaid sick leave and reinstated a month later, but she decided to sue rather than return to work. The court held that she couldn't establish a case of discrimination because she didn't establish how the injury limited a major life activity. Wingfield v. South University of Florida, Inc., No. 8:09-cv-01090-T-24-TBM (M.D. Fla. 06/15/10).
Overview

Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act require institutions to provide adequate auxiliary aids to students with disabilities. This includes qualified interpreters for those who need them. However, the Office for Civil Rights recognizes the shortage of interpreters and allows institutions to substitute temporary alternative aids as they proactively recruit interpreters. See how OCR has ruled in recent cases involving interpreters.

What You Should Know

- Institutions must ensure that auxiliary aids and services provided to students with disabilities give them the opportunity for meaningful, effective participation in educational programs.

- Colleges and universities should not make assumptions regarding particular types of disabilities or the services that students require.

- An institution violates federal disability laws when it fails to provide necessary auxiliary aids to ensure equal participation in its educational programs and activities by individuals with disabilities.

Key Rulings

- A student alleged that a college discriminated against her by failing to provide her with a sign language interpreter. She was instead provided with note-taker services and preferential seating in the front of the classroom. The disability services coordinator explained that the request was denied because in all of the meetings with the student, she had communicated orally without difficulty. OCR determined that the individuals responsible for making the determination did not have expertise in hearing impairments and that the student’s audiologist was not consulted. The college resolved the complaint by entering into a resolution agreement with OCR. Letter to: Harcum College, No. 03102079 (OCR 12/17/10).

- A woman claimed that an institution failed to provide her with a qualified sign language interpreter when she and her son attended an advising and registration session for new students. Before OCR completed its investigation, the university agreed to adopt internal procedures for responding to requests for sign language interpreter services at events sponsored by the Admissions Office. Letter re: Bemidji State University, No. 05-10-2037 (OCR 06/11/10).

- A student complained that a college wrongly denied her interpreter services for all her classes and for an awards ceremony in April 2009. The college resolved the complaint by voluntarily entering into a resolution agreement with OCR. The college agreed to secure interpreting services for all of the student’s classes during the spring 2010 semester. It also set up an emergency plan to ensure that the student would not be affected when her regular interpreting services were not available. Letter to: J.F. Drake State Technical College, No. 04-10-2010 (OCR 12/17/09).
Overview

Many students become stressed and worried at some point in their college lives, so it can be confusing as to when the condition is severe enough to be labeled "depression" and warrant accommodations. As with any other disability, especially an invisible one, it's up to the students claiming that they are clinically depressed to provide proper documentation. See how the Office for Civil Rights and the courts have ruled in recent cases involving students with depression.

What You Should Know

- Students with disabilities must follow their institution's established procedures for documenting their disabilities and requesting auxiliary aids and accommodations.

Key Rulings

- A student who suffered from depression informed a dean that she might need to exceed the permitted number of absences. But she did not seek accommodations. She was placed on academic probation and was later dismissed. A judge dismissed her claims because, despite her not proving that she had a disability, the institution consistently allowed her to take exams even after exceeding the allowed number of absences. And she was allowed to reschedule exams when she was unable to show up. Meisenhelder v. Florida Coastal School of Law, No. 3:09-cv-0074-HES-TEM (M.D. Fla. 02/19/10).

Overview

In some cases, leniency in class attendance may be an acceptable accommodation for students with disabilities. However, institutions can opt to not approve absences if attendance is required to maintain academic standards and they don't discriminate against those with disabilities. Students must follow established policies and procedures to apply for such an accommodation, and they must provide proper documentation to support their requests.

What You Should Know

- Students who claim in court that they were not accommodated will be unable to prevail if their institutions can show that they never followed established procedures for seeking accommodations or did not provide proof of the need for accommodations.

Key Rulings

- A student who suffered from migraines and depression informed a dean that she might need to exceed the permitted number of absences. But she did not seek accommodations. She was placed on academic probation and was later dismissed. A judge dismissed her claims because, despite her not proving that she had a disability, the institution consistently allowed her to take exams even after exceeding the allowed number of absences. And she was allowed to reschedule exams when she was unable to show up on scheduled dates. Meisenhelder v. Florida Coastal School of Law, No. 3:09-cv-0074-HES-TEM (M.D. Fla. 02/19/10).
Faculty and Staff

Overview

Students aren't the only ones who may need accommodations in the higher education setting. Faculty and staff members sometimes also need accommodations to do their jobs. And at many institutions, the same person who coordinates students' accommodations is responsible for helping personnel with their disability services needs. Find out how the courts have ruled in recent cases involving college and university faculty and staff.

What You Should Know

• To state a claim for intentional infliction of emotional distress, a plaintiff must establish that the defendant's actions were extreme, with the intention of, or reckless disregard for, causing distress.

• Individuals claiming to have a disability must be able to prove that their conditions impact a major life activity.

Key Rulings

• A professor notified her dean that she was diagnosed with bladder cancer. The dean sent her letters of reprimand, first for missing time from work due to her illness and later for leaving a ceremony early for a medical procedure and arriving late at a meeting. When the professor requested the accommodation of brief absences for treatment, the university refused. She was later fired. The professor sued, alleging intentional infliction of emotional distress and discrimination. The court ruled the dean was acting in her capacity as a university official, and her actions fell short of extreme or outrageous conduct. Welder v. University of Southern Nevada, et al., No. 2:10-CV-01811-LRH-LRL (D. Nev. 06/21/11).

• An instructor with severe shin splints was assigned to co-teach a course in addition to her regular workload. She presented letters from doctors stating that she couldn't assume extra duties. She was placed on unpaid sick leave and reinstated a month later, but she sued rather than returning to work. The court held that she couldn't establish a case of discrimination because she didn't establish how her injury limited a major life activity. Wingfield v. South University of Florida, Inc., No. 8:09-cv-01090-T-24-TBM (M.D. Fla. 06/15/10).