Welcome to Today's PaperClip Communications Webinar
ADA: Recent Cases & Implications for Higher Education

December 5, 2013
2:00 – 3:30pm ET
Panelist

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*The opinions expressed during today's event are not necessarily those of PaperClip Communications*
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What Laws Govern the Use of Service or Assistance Animals on College and University Campuses?

- Titles II and III of the Americans with Disabilities Act of 1990 ("ADA"),
- Section 504 of the Rehabilitation Act of 1973,
- Fair Housing Act ("FHA")

...all prohibit discrimination based on disability, and impose various obligations upon colleges and universities to accommodate service or assistance animals for students.
Service Animal

The ADA and Section 504 requires that any public entity or place of public accommodation "shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability."
DOJ Final Rule (9/15/2010) defines service animal

Individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

- The work or task that the dog performs must be directly related to the individual’s disability, and can include a wide variety of services, such as assisting those with low vision, alerting individuals who are deaf or hard of hearing, pulling a wheelchair, and retrieving items such as medicine or the telephone.
- Service dogs may also perform tasks such as recognizing and assisting during seizures.
- For individuals with psychiatric or neurological disabilities, the dog’s tasks could include preventing or interrupting impulsive destructive behavior. For example, for autistic students, service animals can be trained to interrupt inappropriate repetitive behavior with a persistent nudging task.
The DOJ has made a clear distinction between service animals that are trained to respond to an individual’s needs, and untrained (or obedience training only) and “emotional support” animals whose mere presence may positively affect a person’s disability. Support animals are not covered by the ADA.
NOT SERVICE ANIMALS

- Any animals besides dogs (though there is a special provision permitting miniature horses in some cases);

- Animals that serve solely to provide a crime deterrent effect;

- Emotional support, comfort, or companionship animals.

- Pets
Two Possible Questions

If it is not apparent from behavior, you can ask:

- If the animal is required because of a disability?
- What work or task the animal has been trained to perform?

- If the answers indicate a service animal, you are done. No questions about disability or dog’s history. Potential exception: required vaccinations

- Answers that are unclear or do not indicate a service animal may be followed up.
Follow Up

• Can you explain how the animal assists you?
• Can you give some examples of how the animal ____?

If it is clear that it is not a service animal, you can shift to your standard practices for documenting and evaluating accommodation requests. AHEAD’s guidance on documenting requests for accommodation can be found at:

http://www.ahead.org/resources/documentation-guidance
• A covered entity need not accommodate a service animal:
  – if it poses a direct threat to the health or safety of others,
  – the owner cannot effectively control it,
    • Existing codes of conduct are a benchmark for disruption.
  – If the animal is not housebroken.
A college or university “may not impose upon handicapped students other rules, such as the prohibition of . . . dog guides in campus buildings, that have the effect of limiting the participation of the handicapped students in the [institution’s] educational program or activity.” This includes the imposition of surcharges or deposits.
Fair Housing Act

- Requires covered entities to accommodate a much larger universe of "assistance animals," which includes service animals as well as untrained emotional support or therapy animals (not limited to dogs), in housing covered by the Act. HUD maintains that this is because the FHA applies in the unique context of housing.
Test

(1) the person has a disability;
   Use standard approaches to documentation
(2) the animal is necessary to afford the person with a disability an equal opportunity to use and enjoy a dwelling; and
(3) there is an identifiable relationship or nexus between the disability and the assistance the animal provides.

Use standard approaches to documenting accommodation requests.
HUD has stated that “species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FH Act and Section 504.” Courts have likewise held that animals need not be trained, nor do they need to be dogs, to qualify as animals whose presence would constitute a “reasonable accommodation” under the FHA. This accommodation includes public and common use areas associated with the dwelling unit.
Reasonable Accommodations

HUD does not require housing providers to;

• permit animals that pose a direct threat to the health and safety of others;
• would pose an undue financial or administrative burden;
• or would fundamentally alter the nature of the provider’s operations.
The Fair Housing Act

- HUD's FHA regulations – which permit a much broader scope of animals in residential dwellings – permit institutions to verify the existence of the disability and the need for the accommodation by requiring that the student provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability.
Does student housing qualify as a “dwelling” under the Fair Housing Act?

- DOJ and HUD, who enforce the Fair Housing Act, have become increasingly adamant that it does.
- Court in Kearny said it did.
- Beyond FHA HUD administers its Section 504 rules as a cabinet level agency. Their guidance on Assistance Animals reference both FHA & 504.
U.S. v. Univ. Nebraska Kearney
April, 2013

- District Court finds that student housing in this case constitutes a dwelling under FHA.
  - District Court decision, probably will be appealed.

- Substantive Issues of case being pursued scheduled for January
US v. University of Nebraska Kearney
940 F.Supp.2d 974, D.Neb 2013

- A federal judge in Nebraska has ruled that a university-owned apartment complex is subject to the Fair Housing Act, upholding the claim of a former student who said the university was legally bound to allow her “therapy dog” to live there with her. The case hinged on whether university housing was a “dwelling.” The university argued that it wasn’t, and that students are assigned there and have to follow restrictions, as in a jail. The judge, in deciding that the housing was indeed covered by federal housing rules, said that meant the university had to follow anti-discrimination policies, and that Brittany Hamilton, the former student, should have been able to keep her dog, Butch, to calm her anxieties.
Accommodations

- The interplay of the ADA, Section 504, and the FHA has created confusion among students, administrators, and even agency officials regarding the process for accommodating requests for animals on campus – especially where the student’s need for the animal may not be obvious

- The conflict between these new regulations and longstanding college and university accommodation practices is already causing litigation. In one recent case, a student sued Palm Beach State College under the ADA and Section 504, alleging that the college required what the student characterized as “voluminous documentation” describing her need for the dog.
The shift in documenting disability and needed accommodations prescribed by the ADA as amended and reflected in the AHEAD Guidance are congruent with the technical assistance from HUD, DOJ & the Dept. of Education’s OCR, as well as the available case law on documenting the need for assistance and support animals.
Documentation
Changes in the ADA as Amended Emphasizes

• Student self report is a significant component
• History of accommodation
• Range of documentation sources considerably wider than diagnostic & medical exams
• Includes disability professionals observations
• Should not be burdensome
• AHEAD Guidance:
  http://www.ahead.org/resources/documentation-guidance
Testing

Enyart: How much deference to student requests?

- Effective, Equally Effective & Best Ensures standards.
  - Accommodation History
  - Accommodation involving communications

Technology: LA Tech Settlement

"...the University must implement a policy that requires the deployment of accessible technology and course content in the University setting. To that end, the University shall conduct a review of the accessibility of its technology and instructional materials and shall ensure that, from the effective date of and consistent with the Settlement Agreement, all technology, including websites, instructional materials and online courses, and other electronic and information technology for use by students or prospective students, is accessible." (Paragraph 13(a), [emphasis added]).
More Technology
South Carolina Technical College System

'Accessible' means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability.
Have a Plan for Technology

- Develop a strategic plan for access that is integrated with your institution's overall technology plan and includes time frames for replacing inaccessible technology and opportunities to reprioritize based on ongoing feedback from students with print disabilities.
- Identify workarounds, accommodations, and supports, including the use of readers/scribes when no alternative will work to address short run.
- Identify a technical standard for access (Section 508 of the Rehabilitation Act or Web Content Accessibility Guidelines provide good benchmarks).
- Develop purchasing requirements
- Train
Technology References

• Louisiana Tech University (Department of Justice)
  http://www.ada.gov/louisiana-tech.htm

• South Carolina Technical College System
  (Department of Education's Office for Civil Rights)
  http://www2.ed.gov/about/offices/list/ocr/docs/investigations/11116002-a.doc
  http://www2.ed.gov/about/offices/list/ocr/docs/investigations/11116002-b.pdf
• University of California, Berkeley (Disability Rights Advocates) Settlement:

• Joint Dear Colleague Letter: Electronic Book Readers (Departments of Justice & Education)
  http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html
  Q&A:
  http://www2.ed.gov/about/offices/list/ocr/docs/504-qa-20100629.pdf

• Accessible Instructional Materials Commission Report:
  http://www2.ed.gov/about/bdscomm/list/aim/publications.html
Undue Burden

• Dietary restrictions and Dining Services
  – Overall size of operation & resources
  – Social integration verses isolation
  – Non-university practices

• Lesley University
  http://www.ada.gov/lesley_university_sa.htm
Interactive Process & Deference

• How is academic deference given?
  – Clear Policy and Process
  – Interactive Process
  – Appropriate Participants
  – Cost and logistics are not academic.

Argenyi v. Creighton University 703 F.3d 441 (8th Cir. 2013).
Direct Threat

• Significant threat to the safety and well-being of others.
  – Duration of risk
  – Nature and severity of potential harm
  – Imminence of potential harm

• Suicide attempts, anorexia and eating disorders - mental health issues but not “direct threat.”
Disaster Planning

- Fire,
- Weather,
- Active Shooter
- Other

- [http://www.redcross.org/images/MEDIA_CustomProductCatalog/m4240199_A4497.pdf](http://www.redcross.org/images/MEDIA_CustomProductCatalog/m4240199_A4497.pdf)
- Recent Decision in New York City
Q/A

How Do I Call-in with a Question?
If you would like to ask a question of our panelist(s) please press *1 and you will be put in a call queue until it is your turn to ask your question.

OR
You can write in a question or comment anytime during the event by clicking on the “Chat” Bubble in the left hand corner of your screen.

For Questions that Arise After the Conference
If you have a question that you were unable to ask of our presenter(s), please feel free to email us at:

info@paper-clip.com

...and we will be happy to forward it to our panelists!
Feedback

We want your feedback on today’s event!

If you would like to provide suggestions for improvement and/or ideas for future event topics, please email Laura Betti at: laura@paper-clip.com and she will send you the link to our brief online survey.

Thank you for your participation,

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- Gainful Employment: Update 2014 – 1/21/14
- Assessment: Accountability, Transparency & Closing the Loop – 1/29/14
- International Students: Strategies for Maximizing Their Academic Success – 2/5/14