“Millennials and Disability Law:
Revisiting Southeastern Community College v. Davis
Emerging Issues for Students with Disabilities
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28th National Conference on Law and Higher Education
Stetson University College of Law
February 19, 2007

Historical Context

In 1979, the Supreme Court, in its first decision addressing any issue under the 1973 Rehabilitation Act, began laying the groundwork for addressing issues of students with disabilities in higher education. The Court addressed when an individual with a disability is “otherwise qualified” in the context of a case involving a student with a significant hearing impairment who sought entry into a program to train registered nurses. The Court established that the individual must be able to carry out the essential requirements of the program with or without reasonable accommodation in spite of the disability. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). This decision also established that fundamental alterations are not required, nor is the institution required to lower standards or provide accommodations that are unduly burdensome.

While in the 1980s, the courts did not decide a large number of disability cases in higher education, there were a number of key concepts that were established. Much of the case law from the Rehabilitation Act was adopted as part of the statutory language in the 1990 Americans with Disabilities Act, which covers both public and private institutions of higher education.

By 2007, the statutory language of the ADA, judicial decisions, and opinion letters from the Office for Civil Rights Department of Education have provided guidance on several issues. These include the requirement of equal opportunity, not just equal treatment; providing education in the most integrated appropriate setting; providing reasonable accommodations; making individualized determinations about accommodations; undue burden as a defense; and further guidance on what it means to be otherwise qualified.

A number of issues have been the focus of substantial recent judicial attention in the higher education context. These issues include whether the individual meets the definition of being disabled, whether the institution is immune from damage actions under different statutes, what accommodations are required, standardized admissions and professional licensing tests and their relationship to the educational program, and behavior and conduct issues in a variety of contexts. Architectural barrier issues, programs abroad, and technology access issues have also begun to receive attention.
The legal approach to resolving these issues has not changed substantially. The enrollment of “millenials” (students who have grown up with technology and the culture that affects their generation), however, has brought new challenges to institutions of higher education. Students who want their companion turtle to accompany them to exams and students who expect instant responses to their emails or cellphone calls requesting unlimited time on exams present interesting new challenges. Combining these behaviors with disability discrimination issues makes life even more interesting.

Knowing the legal requirements is only the beginning of developing a proactive approach to serving this generation of students, each one of whom may truly believe that he or she is “The Time Magazine Person of the Year.”

The conference discussion will provide a broad overview of the legal developments, many of which are outlined below. This overview will be followed by some practical suggestions about applying the legal requirements to the kinds of behaviors and issues that are emerging. Approximately half of the group discussion time will be interactive, with participants invited to share examples of constructive approaches or to ask the group for feedback on how to respond to a troublesome or challenging issue.

**WHO IS PROTECTED**

**Major Relevant Cases**

*Marlon v. Western New England College*, 27 Nat’l Disability L. Rep. P 70 (1st Cir. 2005) Law school did not discriminate against student with learning disability, panic attacks and depression, insufficient evidence as to whether student was regarded as disabled.

*Davis v. University of North Carolina*, 263 F.3d 95 (4th Cir. 2001) Student with multiple personality disorder not disabled; she was not perceived as unable to perform broad range of jobs.

*Swanson v. University of Cincinnati*, 268 F.3d 307 (6th Cir. 2001) Surgical resident with major depression was not substantially limited in ability to perform major life activities; difficulty with concentrating was temporary and alleviated by medication; communications problems were short-term, caused by medication and there were only a few episodes.

*McGuinness v. University of New Mexico School of Medicine*, 170 F.3d 974 (10th Cir. 1998) Test anxiety not a disability for a medical student.

*Bartlett v. New York State Board of Law Examiners*, 226 F.3d 69 (2d Cir. 2000); 2001 WL 930792 (S.D.N.Y. 2001) Bar exam applicant with learning disability who had self accommodated was still substantially limited in major life activity of reading.

For additional case citations, see Disabilities and the Law, Laura Rothstein & Julia Rothstein, Section 3.2 (Thomson/West 2006)
ENFORCEMENT AND REMEDIES

State employees may not bring private damage actions against state under Title I of the ADA and collect money damages; other issues of immunity for the states remain unresolved. Immunity under Section 504 is undecided.

Courts have reached a variety of results on immunity under Title II in the context of public higher education. The following are some recent circuit court decisions.

Law student with intractable migraine syndrome requesting additional time on exam could pursue claim; no 11th Amendment immunity.

Bennett-Nelson v. Louisiana Board of Regents, 431 F.3d 448 (5th Cir. 2005) No immunity under 504; ADA issue need not be decided.

B. Remedies

Emerson v. Thiel College, 296 F.3d 184 (3d Cir. 2002) Former president, vice president of academic affairs, faculty and staff members and outside legal counsel not liable to student under Title III.

Coddington v. Adelphia University, 45 F. Supp. 2d 211 (E.D.N.Y. 1999) Employees not personally liability under ADA in suit by former nursing school student who sued university, employees, and trustees.

MAJOR ISSUES IN HIGHER EDUCATION

A. Learning Disabilities

1. Admission issues

Colleges must be sure that they do not discriminate in admissions in the recruiting, application, testing, interviewing, and decision making processes. - 29 U.S.C. Section 794; 34 C.F.R. Section 104.42; 42 U.S.C. Sections 12101 et seq.

Law school that did an individualized review of all applicants did not have to modify the application process.

Use of standardized tests and other eligibility criteria that tend to screen out individuals with disabilities may not violate ADA/504

a. The number of LD students in higher education is increasing significantly.

b. Can they be required to take standardized admissions tests? Probably in most cases.

c. How can it be determined that they are LD? It is acceptable to require appropriate documentation and make student pay in cases such as learning disabilities and health impairments where disability is at issue.

d. Applicant must be otherwise qualified. OCR has been quite deferential to institutional standards.

e. Is flagging of test scores permissible? Still not definitively resolved by courts.

f. Major cases on testing

Doe v. National Board of Medical Examiners, 199 F.3d 146 (3d Cir. 1999) Suspended lower court ruling that stopped flagging tests given under nonstandard conditions.


Gent v. Radford University, 976 F. Supp. 391 (W.D. Va. 1997), aff'd 122 F.3d 1061 (4th Cir. 1997) Student denied admission to graduate school did not have grade point average.

University of Minnesota, 6 Nat'l Disability L. Rep. P 295 (OCR 1995) Law student was not denied admission in violation of ADA/504. Learning disabled applicant had GPA and LSAT score considerably lower than other applicants. No applicant with both GPA and LSAT comparable to complainant was admitted. No violation to refuse to waive LSAT requirement or to refuse to upwardly adjust applicant’s GPA.

Letter to Houston Community College (TX), 25 Nat'l Disability L. Rep. P 228 (CRVI, Dallas (TX) 2002) (standardized test scores were low and were basis of denial of admission; accommodations were made to such scores, but applicant must complete required paperwork to pursue accommodations)

2. Documentation issues

If disability is at issue, can documentation be required? Yes. Who pays? Usually the student.

Procedure for accommodating the enrolled LD student. Campus policies should make clear the process for requesting accommodations and resolving disputes. Expert documentation should clarify what accommodations are appropriate.
Guckenberger v. Boston University, 974 F. Supp. 106 (D. Mass. 1997) University's policy of requiring re-evaluations by certified experts every three years was impermissible.

Ware v. Wyoming Board of Law Examiners, 1997 U.S. Dist. LEXIS 12155 (D. Wyo. 1997) Summary judgment granted for defendants who had denied requested accommodations for applicant with multiple sclerosis. The fact that accommodations had been granted in law school did not mean that they should be granted for the bar exam.

3. Otherwise Qualified

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.

McGuinness v. University of New Mexico School of Medicine, 170 F.3d 974 (10th Cir. 1998) Medical school not required to advance student with marginal grades; this would be a substantial alteration.

Kaltenberger v. Ohio College of Podiatric Medicine, 162 F.3d 432 (6th Cir. 1998) Graduate student with ADHD did not meet academic standards.

Childress v. Clement, 5 F. Supp. 2d 384 (E.D. Va. 1998) Student who had plagiarized was not otherwise qualified for position as graduate student in criminal justice program; his learning disability had been taken into account in evaluating violations of the honor code; inquiry was individualized.

Letter to University of Houston, 32 Nat’l Disability L. Rep. P 74 (OCR 2005) Graduate School of Social Work could dismiss student with bipolar disorder who failed exam; student was not treated differently than other students.

4. Accommodations

Institutions should engage in interactive process to determine reasonable accommodations. Cutrera v. Board of Supervisors of LSU, F.3d (5th Cir. 2006)

Accommodations can include the following:

- additional time for exams;
- other exam modifications (separate room; extra rest time);
- reduction, waiver, substitution, or adaptation of course work;
- extensions on assignments;
- extension of time for degree completion;
- preference in registration;
- permission to tape record classes
KEY CASE FOR SETTING STANDARD:

_Wynne v. Tufts University School of Medicine_, 932 F.2d 19, 26 (1st Cir. 1991). In cases involving modifications and accommodations 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.


_Bennett-Nelson v. Louisiana Board of Regents_, 431 F.3d 448 (5th Cir. 2005) University not immune from suit alleging denial of sign language interpreters and notetakers; 504 action; ADA issue not decided.

_Stern v. University of Osteopathic Medicine and Health Sciences_, 220 F.3d 906 (8th Cir. 2000) Dyslexic medical school student not provided requested accommodations; program did not have to supplement multiple choice test answers with oral or essay responses.

_Kaminsky v. St. Louis University School of Medicine_, 33 Nat’l Disability L. Rep. 54 (E.D. Mo. 2006) University reasonably relied on false website listing about medical license suspension on other states’ websites in not admitting him to pathology residency training program.


_Guckenberger v. Boston University_, 974 F. Supp. 106 (D. Mass. 1997). Course substitution for foreign language may be a reasonable accommodation; course substitution in math was not; $30,000 in damages awarded to the students.

_Bartlett v. New York State of Bar Examiners_, 970 F. Supp. 1094 (S.D.N.Y. 1997) Bar applicant with dyslexia was substantially impaired; court ordered that she be given test over four days; extra time; computer; $25,000 in damages awarded; see reference above for appellate court decision.

_In re Kimmer_, 896 A.2d 1006 (Md. 2006 Bar applicant had been accommodated in law school, denial of similar accommodations by Maryland bar on basis that he had not demonstrated a disability and had demonstrated above-average performance.

_Ferris State University_, No. 15002052 (OCR 2000) Student with dyslexia and test anxiety had absences that affected class grade; insufficient evidence that any denial of accommodations affected grade.
Title II (ADA) & Section 504 violated when college instructor (in good faith) went overboard in ensuring LD student understood classroom instructions. No violation in asking student to confirm in writing a decision to decline accommodations; violation by repeatedly and publicly asking student for reassurance of understanding of instructions.

Companion animals as accommodations – Kelly Field, *These Student Requests Are a Different Animal*, Chronicle of Higher Education pp. A30-31 (October 13, 2006). This article discusses the confused state of law regarding animals providing comfort and companionship.

5. Readmission

What about a student who "flunks out", then discovers a learning disability? Or does not make learning disability known? No clear judicial guidance. May depend on whether student knew of disability, failed to request accommodation?

_Zukle v. Regents of University of California_, 166 F.3d 1041 (9th Cir. 1999) Learning disabled medical student did not meet academic standards.

_Haight v. Hawaii Pacific University_, 116 F.3d 484 (9th Cir. 1997) Where an institution was aware of behavior or performance deficiencies or where reasonable questions are raised after dismissal, institutions may have discretion to make readmission subject to conditions not applied to students in the initial admission process.

_Garcia v. State University of New York Health Sciences Center_, 2000 WL 1469551 (E.D.N.Y. 2000) Student dismissed from medical school because of unsatisfactory academic performance; dismissal occurred before diagnosis was known.

_Leacock v. Temple University School of Medicine_, 14 Nat’l Disability L. Rep. P 30 (E.D. Pa. 1998) Medical student with learning disability did not meet academic standards to continue; student had not made known the disability during first year or before dismissal.

_Tips v. Regents of Texas Tech University_, 921 F. Supp. 1515 (N.D. Tex. 1996). Learning disabled graduate psychology student did not make her learning disability known nor request accommodations; no violation of ADA or Rehabilitation Act in the dismissal.


B. Auxiliary Aids and Services

1. Cost Issues Related to Auxiliary Services

   a. Who pays? School pays or facilitates unless it can show undue burden. Recent developments relating to state voc rehab and graduate school may be helpful.
b. What procedure for evaluating eligibility? Whatever procedure is used, it should be communicated to the student.

c. State voc rehab and other resources -- recent litigation may provide support for state voc rehab funding

d. Can cost be a defense? Probably, the real question is whether a college wants to have its discretionary budget examined by the courts and opposing counsel (and the media and the public)

*United States v. Board of Trustees*, 908 F.2d 740 (11th Cir. 1990) While university may require student to seek state vocational rehabilitation funding or private funding, if these sources are unavailable, the university must provide the service unless it is unduly burdensome to do so. The university may not charge for these services.

C. 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). This case provides a detailed discussion of mental health history questions and a review of the status in other jurisdictions.


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). Importance of confidentiality.

3. Conduct and behavior issues

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

*Mershon v. St. Louis University*, 442 F.3d 1069 (8th Cir. 2006) (student with disability banned from campus because of threat of violence against a professor)

*Letter to Marietta College*, 31 Nat’l Disability L. Rep. P 23 (OCRXII, Cleveland 2005) (dismissal of student threatening suicide violated Section 504 because decision was not sufficiently based on a high probability to substantial harm)
4. Cases on Mental Impairments

*Judice v. Hospital Service District No. 1*, 919 F. Supp. 978 (E.D. La. 1996) Physician who had had relapses after treatment for alcoholism was not otherwise qualified for staff privilege reinstatement.

*Bolstein v. Reich*, 3 AD Cases (BNA) 1761 (D.D.C. 1995) Rehabilitation Act not violated by downgrading staff attorney to GS-13 because of disability of mental depression. His disability made it impossible for him to perform the higher level analytical skills in the GS-14 position.

*St. Thomas University, School of Law*, 23 Nat’l Disability L. Rep. P 160 (2001) (No. 01-4151) Law student with bipolar disorder was dismissed because of threats to “blow up the legal writing department”; dismissal upheld.

*Northern Michigan University*, 7 Nat’l Disability L. Rep. P 244 (OCR 1995) No Section 504 or ADA violation to place observers in classroom of student with Tourette’s Syndrome to evaluate whether placement was for benefit of student.

*Dixie College (UT)* 8 Nat’l Disability L. Rev. P 31 (OCR 1995) No ADA/Section 504 violation in expelling a student because of stalking and harassing a professor. Expulsion was not because of perceived mental disability but because she posed a threat.

4. Second chances


*Amir v. St. Louis University*, 12 Nat’l DLR Paragraph 151 (E.D. Mo. 1998) Medical student with obsessive compulsive disorder was dismissed because of academic deficiencies; unreasonable to grant request to change supervisors, which would be fundamental alteration; appeal recognized basis for claim of retaliation. 184 F.3d 1017 (8th Cir. 1999))

*Michael M. v. Millikin University*, No. 98-2082 (C.D. Ill. 1998) Student with obsessive compulsive disorder reinstated after settlement agreement; student was withdrawn after a panic attack episode; reenrollment conditioned on receiving weekly therapy and compliance with medication regimes prescribed by psychiatrist.


*Esmail v. SUNY Health Science Center*, 633 N.Y.S.2d 117 (AD 1st 1995) Student's dismissal
premature for failure to comply with administrative procedures; dismissal was because of drug addiction.

_Gill v. Franklin Pierce Law Center_, 899 F. Supp. 850 (D.N.H. 1995) Law student was not otherwise qualified under Section 504. Student had not requested any accommodations. Claim that law school should have known he needed accommodations because of post-traumatic stress syndrome resulting from being the child of alcoholic parents.

**D. Programs abroad, off campus programs and noncredit courses**


Rubin, _Students with Disabilities Press Colleges to Help Them Take Part in Foreign Study_, Chronicle of Higher Education A47 (Sept. 27, 1996)

_Bird v. Lewis & Clark College_, 303 F.3d 1015, 2002 WL 2004435 (9th Cir. 2002) College did not violate Section 504 or Title III of ADA by failing to provide certain accommodations in overseas program; although wheelchair access was not provided in some instances, a number of other accommodations were provided. 104 F. Supp. 2d (D. Or. 2000) Denying summary judgment for college; fact issues remain as to whether reasonable accommodations had been provided to paraplegic student in an overseas program.

_Hartnett v. Fielding Graduate Institute_, 400 F. Supp. 2d 570 (S.D.N.Y. 2005) Request of accommodation of relocation of cluster group placement to a closer location denied because student did not demonstrate that commuting difference was substantially different between the placements.

_Raffael v. City of New York_, 2004 WL 1969869 (E.D.N.Y. 2004) Difficulty in commuting does not have to be accommodated.

_Letter to Husson College_, 31 Nat’l Disability L. Rep. P 180 (OCR 2005) Complaint closed against nursing school involving summer abroad program in Honduras, where faculty expressed concern about susceptibility of student to illness and remoteness of site presenting risk concerns. Conflicting accounts whether she would not be allowed to go.

_Arizona State University_ OCR case number 08012047, Dec. 2001; 102 LRP 38434 504 & ADA does not require the institution to pay for auxiliary aids and services in study abroad programs.

_University of California, Los Angeles_, 8 Nat’l Disability L. Rep. 314 (OCR 1996) No Section 504/ADA violation when student did not provide adequate notice of need for accommodation of learning disabilities for field placement work in social work program; field supervisor had not been informed of need for accommodations.
Where can activities such as externship placements, social events, athletic events, etc. be scheduled?

It is unlikely that all outside externship placements must be accessible, but those placements should be in compliance with the ADA, and college should ensure reasonable access in program as whole. Colleges are at serious risk of liability if they schedule social and athletic events at inaccessible locations.

E. Architectural Barrier Issues (this section of the outline is adapted from the Bricks & Bytes outline prepared for the ABA program in Seattle, March 2006; Scott Lissner provided information and suggestions for the outline) (See Appendix at end of this outline)

Parker v. Universidad de Puerto Rico, 225 F.3d 1 (1st Cir. 2000) Botanical gardens on campus did not provide at least one accessible route for wheelchair users.

National Coalition for Students with Disabilities v. Allen, 152 F.3d 283 (4th Cir. 1998) Colleges must make voter registration material available to students with disabilities.

Brownscombe v. Department of Campus Parking, 203 F. Supp. 2d 479 (D. Md. 2002) Not a 504 violation to enforce parking code against student with a disability

Panzardi-Santiago v. University of Puerto Rico, 200 F. Supp. 2d 1 (D. Puerto Rico 2002) Prospective student with mobility impairment may have remedy on whether public pathway was accessible; Eleventh Amendment immunity.


Filardi v. Loyola University, 1998 WL 111683 (N.D. Ill. 1998) Denying dismissal of Title III claim by wheelchair user that university did not remove architectural barriers.

Letter to University of Wyoming, 31 Nat’l Disability L. Rep. P 176 (OCR 2005) When viewed in entirety, law school was accessible; classrooms were accessible; university provided notification about request to move to other classrooms and student had not requested to move.

Grand Valley State University (MI), 12 Nat’l Disability L. Rep. P 275 (OCR 1997) New townhouses being built for students must meet access requirements; it does not matter whether there are currently students seeking such housing; the availability of accessible dorm rooms does not exempt the university from making other housing accessible.


F. Hostile Environment and Retaliation Issues

Amir v. St. Louis University, 184 F.3d 1017 (8th Cir. 1999) Although dismissal of medical student with obsessive compulsive disorder was validly based on academic difficulties,
student may have had basis for claim of retaliation.

*Rothman v. Emory University*, 123 F.3d 446 (7th Cir. 1997) Law school did not create hostile environment for student with epilepsy by sending letter to bar examiners, nor did other incidents create a hostile environment, when the law school's actions were not related to student's epilepsy.


G. Other issues

One of most common issues raised by Office for Civil Rights when investigating complaints of discrimination on college campuses is the lack of appropriate policies and procedures to receive accommodations.


The following demonstrate some of the other issues that can arise.


*Whittier College (CA)*, 7 Nat'l Disability L. Rep. P 187 (OCR 1995) No Section 504 violation where college delayed in providing auxiliary aids (notetaker and computer with spell check, etc.) to aspiring law student.

*Wheaton College (MA)*, 7 Nat’l Disability L. Rep. P 330 (OCR 1995) Requests for accommodations in course she had dropped were premature. Student sought course substitution and unlimited time.

*Temple University (PA)*, 8 Nat’l Disability L. Rep. P 125 (OCR 1995) No Section 504/ADA violation when student did not seek academic modifications for economics class until well into the semester.
Appendix

Architectural and Physical Barriers

Key Issues

A. Classrooms

Access for both students and faculty should be considered. Teaching areas requiring use of steps should be avoided.

Large classrooms should provide a choice of wheelchair accessible seating. Federal design standards specify requirements for new construction.

B. Library

Consider access to shelved book areas, computer areas (compatibility of software to Assistive Technology), photocopy machines, card catalogues, and support service areas.

Small rooms or other private spaces for Kurzweil reading machines, video-enlarging machines, tape recording equipment, and private study space for special exams should be considered in planning library space.

Other helpful library equipment includes Braille printers and microfiche machines accessible to wheelchair users and adaptive software for computers (voice output and screen enlargement).

Furniture for libraries should take access into account. Typical table heights are 29”, which is also the minimum knee clearance needed below a table for someone who uses a wheelchair.

C. Administrative Offices

The location and ready access to administrative offices (particularly admissions, financial aid, student services, registrar, and placement) should be carefully considered. These areas should be readily accessible to individuals who use wheelchairs or who have mobility impairments.

D. Assembly Areas

Auditoriums should provide access not only for those in the audience but for speakers, etc. Assembly areas that accommodate numerous public forums may be required to provide FM systems to accommodate hearing impairments. ADA design standards provide guidance on this.
E. Eating and Social Areas

Eating areas and social areas should be located so that they are physically accessible. Not every part of every such room must be able to be used by a wheelchair user, but the general area as a whole should be reasonably accessible. Students in wheelchairs should have reasonable access to cafeteria service if such is provided. Nonstructural items such as vending machines, microwave ovens, check-out aisles, condiment tables and furniture must be accessible.

F. Study Areas

A reasonable number of accessible carrel areas (if these are provided) and other comparable access should be available. Small study rooms for special uses such as exams should be considered in planning new space.

G. Traffic Flow

Thought should be given to how students, faculty, staff, and the public move about space in facilities. Restricted hours on weekends and other times should be considered. If certain entrances and exits are affected for security or other reasons, thought should be given to the impact on access to important areas of the facility, such as the library. Card access control systems or telephone access to secured areas after hours should be accessible to people with vision and learning impairments. These should also address the limits of people with mobility impairments.

H. Support Areas

Keep in mind not only students, but faculty, staff, and the public. Access in faculty offices, staff support areas, and areas used by the public should provide appropriate access. Think about areas such as career service offices and clinic space where others outside the law school community regularly visit.

I. Other Issues

Attention to parking, restrooms, and elevators is essential. Elevators are expensive. Having elevators in good working order is essential for some facilities for reasonable access. Thought should be given to emergency evacuation plans for individuals who cannot use stairs.

Although physical plant access usually involves individuals with mobility impairments, having telephone facilities for individuals with hearing impairments and barriers affecting individuals with visual impairments should be taken into account in planning. The ADA regulations specify TDD requirements.
Keep in mind chemical sensitivities and their affect in planning for transition into new space and in the renovation process. Carpet, paint, and similar odors can be a significant problem. Classes and other programs may need to be moved during some renovation. Some individuals are sensitive to chalk dust, and this should be a consideration in deciding whether to have chalk boards or whiteboards.

J. Housing

Multiunit dwellings constructed after March 1991 must be designed to meet access requirements under the Fair Housing Act. FHA also requires landlord to allow tenants to make barrier removal alterations under specific conditions. ADA covers residence halls as places of public accommodation.

K. New Versus Existing Facilities

ADA and Rehabilitation Act both have requirements relating to new versus existing facilities. The requirements are different, but some retrofitting is contemplated for existing facilities.

All new buildings and alterations must meet applicable accessibility standards
- Construction after June 3, 1977 is considered new construction under Section 504 of the Rehabilitation Act
- Construction after January 26, 1992 is considered new under the ADA

New Construction – Specific design standards found in regulations.

Existing Facilities

Title II (public law schools) – program, when viewed in its entirety, must be accessible. – 28 CFR Section 35.150; 56 Fed. Reg. 33708-710 (July 26, 1991).

Title III (private law schools) – barriers must be removed to ensure access to extent it is readily achievable to do so. Readily achievable means easily accomplishable without much difficult or expense. When not readily achievable, alternate methods of providing services must be implemented. 28 CFR Section 35.304; 56 Fed. Reg. 35568-571 (July 26, 1991).

Alterations and Renovations

These are major changes, such as remodeling, renovation, rehabilitation, rearrangement of structural parts or walls or full-height partitions.

Where alterations affect primary function areas, access is required for primary area, and to the maximum extent feasible.
THE FACILITIES REQUIREMENT MOST OVERLOOKED BY ARCHITECTS.

Renovations that change the function or occupancy of a space built prior to those dates must meet the currently applicable standards within the scope of the project (renovated space) along with the supporting amenities and path of travel that serves the renovated space.

L. Signage and Information Communication

The ADA and Rehab Act design standards reference signage. These requirements refer to door numbering location and appearance and tactile requirements. Student handbooks and information provided to the public should include information on access, parking, etc.

Handbooks should include the following regarding physical plant issues:

1) Name of individual to whom to direct accommodations requests
2) Information about accessible parking and how to obtain permits
3) Location of ramped entrances
4) Location of accessible restrooms
5) Location of elevators
6) Classroom access information
7) Advance registration information where access may be an issue (If the student needs to have classes located on an accessible floor, the student may need to obtain early registration permission).
8) Other access information – food service; housing; common areas, that may be unique to the facility.

M. Off Campus Programming

Consideration should be given to access issues for summer abroad programs, social events, CLE programs, and other law school sponsored or supported programs that occur off campus.

Externship placements – Location of externships for students with mobility impairments should be planned for.

N. Consultation

Architects and designers are much more knowledgeable about access requirements than in the past, but they are not always completely aware. Law schools are unique facilities and the special uses need to be discussed with these designers.

Case law is not clear whether architects and designers are directly liable for ADA violations. In planning and contracting for services, indemnification clauses should be a consideration.

Individuals with disabilities should be included in planning stages.
O. Technology Issues

Assistive technology for individuals with hearing and visual impairments should be considered.

Assistive technology for LD/Dyslexics with disabilities impacting ability to use print as well.

Voice input technology for those with disabilities impacting ability to keyboard or write long hand

REFERENCES

Laura Rothstein and Julia Rothstein, Disabilities and the Law (3d edition) chapter 3 (higher education) and 5 (architectural barriers) Thomson/West 2006

Laura Rothstein, Disability Law and Higher Education: A Road Map for Where We’ve Been and Where We May be Heading, 63 Maryland Law Review 122, 143-144, 153, 156-157 (2004)


TECHNICAL ASSISTANCE

Office of the Americans with Disabilities Act
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, D.C.  20036-6118
(202)514-0301; (202)514-0381 (TT); (202)514-0383 (TT)

Architectural and Transportation Barriers Compliance Board
1331 F Street, NW, Suite 1000
Washington, DC  20004-1111
(800)USA-ABLE (Voice/TT)
http://www.access-board.gov

Association on Higher Education and Disability (AHEAD)
P.O. Box 21192
Columbus, Ohio  43221-0192
(614)488-4972 (Voice/TDD)
Http://ahead.org

Job Accommodation Network (JAN)
912 Chestnut Ridge Road, Suite 1
West Virginia University
Morgantown WV 26506
1-800-527-7234
http://janweb.iedi.wvu.edu

Technical Assistance on Technology Access
www.itpolicy.gsa.gov/coca/nni.htm

United Kingdom tests for website accessibility
(UK standards differ from US Section 508 Guidelines)
www.publictechnology.net

“When the ADA Goes Online:  Application of the ADA to the Internet and the Worldwide Web,”
National Council on Disability
http://www.ncd.gov/newsroom/publications/adainternet.html

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