PROBLEM SCENARIOS

Stetson University College of Law:

17th ANNUAL LAW & HIGHER EDUCATION CONFERENCE
POST CONFERENCE WORKSHOP
Clearwater Beach, Florida
February 14, 1996
Problem One

John Doe has been accepted for admission to your institution. On his admissions application, and throughout his first semester, John made no indication or declaration of disability, or request for accommodation. His first semester grades in required foundation courses include four D’s and one “F” [failing] grade. Your institution’s academic policy requires that John be placed on academic probation, and that he be dismissed at the end of the following semester unless he has a first year cumulative GPA of 1.8.

Upon receiving his grades, John informs the Associate Dean of Academic Affairs that he has arthritis, and that he cannot take notes in class. He states that he had asked each of his professors for permission to tape classes and that each had denied such permission. It is John’s belief that his grades are a result of the refusal to accommodate his disability. He asks that he be awarded grades of “I” in each of his first semester courses, and that he be allowed to repeat those courses with permission to tape all classes.

You interview each professor. Three of the professors confirm that John asked to tape classes, but insist that he never mentioned his disability. Two of the professors do not recall any request to tape their classes.
Problem Two

Sally Moore self-disclosed during the admissions process, and provided appropriate documentation that she has a diagnosed neuro-biological disorder requiring the administration of Prozac, Clozaryl and Depakote. Sally’s disability causes her to fall asleep in classes, and faculty have reported that she is frequently absent or late to class, and fails to respond to questions in class.

Sally’s reports her difficulties to her parents, who contact your university’s ADA administrator requesting that a student housing RA (resident assistant) wake their daughter in the mornings in time for classes. They also seek tutoring services, and ask that a nurse be provided to meet frequently with Sally as to the proper use of her medication.
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Special Workshop on the Application of the
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to Admissions and Employment Scenarios
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Each of these problem scenarios is fictional or hypothetical.
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description to actual persons or incidents is purely coincidental.

Problem Three

A first year student with attention deficit and learning disabilities
(documented) is asked by a member of your faculty to leave a class
(permanently) because the student is “disruptive, argumentative, and
disrespectful”. The student approaches the Assistant Vice-President for
Academic Affairs (or ADA administrator) and requests that he be
immediately readmitted to the class.
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Problem Four

Jane Doe is a profoundly deaf student (documented) who is being
provided with interpreters, and notetakers, for each of her classes. During
the sixth week of classes, she indicates to your ADA administrator that she
is dissatisfied with one of her interpreters. She states that the interpreter
is both inadequate (not able to deal with the “vocabulary” of the course,
which is technical and scientific) and not personally committed to Jane’s
success. Jane says she has complained to the interpreter about problems,
but that the interpreter responds that Jane “should study more.” Jane also
states that, on occasion, one of her two interpreters has been ill, and
unable to “cover” a class. On those occasions, a substitute has been
furnished, or Jane has had to attend the class without an interpreter.

Your ADA administrator informs you that the deaf services agencies
in your area are totally subscribed, and are not able to supply you with
different or additional interpreters. Your institution is not large, and has
no permanent staff trained to interpret for the deaf. The institution is
currently spending $25,000.00 per semester for interpreters for four deaf
students. The State’s Division of Vocational Rehabilitation has refused to
reimburse the students, or your institution for the costs of interpreters
because the four students in question are candidates for graduate degrees.

Note: In addition to discussion of solutions to this problem, the
group should address the role of legal counsel in this situation.
Problem Five

John Wilson is a campus security officer at Whatsamatta University. While Officer Wilson is operating his police car, he experiences a sudden diabetic reaction, which causes him to drive the car erratically at high speed through a campus residential area. When the University hired Wilson, it knew of his disability, and it was thought at the time that he could monitor it (That is, it was believed that Wilson’s disability could be accommodated, and would not therefore be an insurmountable barrier to his performance of essential job functions).

Fortunately, no one was hurt as a result of Wilson’s erratic driving, but several students walking through the residential area were in the zone of danger, and narrowly escaped injury. The University is worried about liability if Wilson should injure someone, and therefore dismisses him for cause.
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Problem Six

John Doe is a recovering alcoholic, enrolled in a treatment program. He is employed by State University as an assistant professor of Philosophy. The university is unaware of his disability, or treatment, until Doe is arrested for sexually assaulting one of his female students at his apartment, where he had invited his class for a party (The assault occurred after other students had left the premises).

Doe explains that the assault occurred while he was intoxicated, and that he will seek more intensive counseling regarding his alcoholism. The victim insists that Doe be terminated from his position as a member of the faculty, and she threatens a lawsuit if he is not fired.
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Problem Seven

Whatsamatta University is experiencing a significant number of reports of back injury by employees in all areas of university employment. Investigation shows that only a few of these injuries have occurred on the job. Employees are requesting extended rest periods, more frequent days off, special chairs (e.g., in faculty offices) or desks, and other accommodations.

The University is concerned about setting bad precedent if it responds to all of these requests (which number approximately 25% of its ADA experiences), but it is also worried about the consequences of not responding favorably to these requests.
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Problem Eight

Jane M. Ploie has been hired by State University as a
counselor in the University’s counseling center, and to teach a
course in the College of Education. Jane has serious permanent
allergies to dust and mold. During the first few weeks of her
employment, Jane’s reactions to her environment, at both the
counseling center and her classroom, were serious. She sought
treatment, and was informed by a specialist that she was at risk
if she continued to work in her assigned environments.

Jane reported her problems to the University, which tested
the rooms in which Jane worked, and found them to be high in
mold and dust counts. Both rooms were in old buildings, not
scheduled for improvements. (partly because of the University’s
“shrinking” budget). Jane asks that the counseling center be
relocated, and that she be reassigned to a different building in
which to teach her class. The University is reluctant to move
education classes to a building other than the College of
Education, and moving the counseling center would require the
relocation of other offices.
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Problem Nine

John Doe has been diagnosed as having "Gehrig's disease. He has worked at the University for one year since the diagnosis and the University is aware of his condition. Doe's responsibilities include the instruction of marine biology students and the operation of a University watercraft which is used for field research at the University's marine experiment station at Sunset Point.

The University is concerned that Doe will inevitably become weaker, and does not wish to be put in the position of searching for an instructor on short notice. It is also concerned about liability in the event of student injury. In light of these concerns, the University informs Doe that it is constrained to relieve him of his teaching and related duties, and place him on medical leave, limiting him to whatever benefits he may have under University benefits policies. Doe protests the University's decision, and produces medical opinion that he is still able to perform his duties.
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Discussion Group Questions About
Admissions, Accommodation of Disability,
Evaluation and Retention of Students

These questions were prepared by Dr. Peter Manheimer,
Attorney at Law and Administrator of Disabled Student Services
at Florida International University,
in consultation with Professor Robert Bickel, following their participation
in a teleconference on the subject of the ADA
at Barry University, in Miami, Florida. Persons interested in obtaining a copy
of the videotape of this teleconference should contact Barry University

1. Who should evaluate or interpret the validity of the disability
of an applicant, or enrolled student? Should/May an institution
require current documentation of a disability if a student has
provided documentation which the institution considers “dated”
and possibly no longer valid?

2. May the institution contest documentation of a disability, or
an expert’s description of a condition? How should an institution
respond to conflicting documentation by medical experts?
3. Is the institution required to pay for documentation if it requires documentation beyond that provided by the student?

4. How should the university treat a student who has a history of disability, or was treated in elementary and secondary schools as having a disability (e.g., placement in a secondary school learning disabled program) when the university has doubt whether a documented disability exists at the present time?

5. Who should make a determination whether a requested service is truly an auxiliary service, or a personal service (legal counsel, ADA administrator, vocational rehabilitation counselor, government agency)?

6. Does a college or university risk liability if it provides aids or services to a student in excess of legal requirements? Does the provision of such services (not required by law) create a contract right enforceable by the student, or other students who might request a similar service?

7. Does the ADA's requirement to provide testing in an accessible format mean that the college must amend any test, including in academic subjects, to accommodate a student's disability?

8. How should a university respond to student requests for course waiver or substitution without unduly compromising the "fundamental alteration rule" announced in the Davis case?

9. How should a university respond when certain faculty award disabled students "sympathy C's" to avoid ADA disputes?
10. To what extent should a college be concerned that accommodations provided in the course of a student’s academic program might compromise essential job skills in the field for which the student is being prepared? Should the college be concerned about essential job functions?

11. May a student be disciplined for disruptive behavior outside the academic setting, when the behavior is disability-related? Must the university show that a disabled student is a direct threat to himself or others in order to discipline him for behavior which injures or violates the rights of other students? Are instances of academic dishonesty to be treated differently from other conduct offenses when the offending student is disabled? Is the ADA a “defense” to charges of misconduct?

12. Some college’s choose to promulgate detailed handbooks for disabled students; some choose to publish only that information required by law. Which is the better choice, and why? Does the college run any undue risk in promulgating detailed policy or handbooks?

13. How important is it to document all action steps in ADA matters affecting students? What steps in ADA administration should be routinely documented?

14. Is it unrealistic to contest “ADA demands” made by students, who threaten to sue, or complain to the Department of Education, Office of Civil Rights, if their demands are not met?
Discussion Group Questions About Current ADA Issues Affecting Employment of Faculty and Staff

1. What is the real definition of essential job functions in the context of the preparation of job descriptions which comply with the ADA? May the university discipline any employee who refuses to accept new job responsibilities resulting from the reassignment of job functions in order to accommodate a disabled applicant or employee?

2. How may the University effectively separate temporary disabilities from permanent disabilities for purposes of determining whether an applicant or employee is protected by the ADA?

3. How does the ADA deal with “mixed motive” cases (i.e., cases in which the employer dismisses an employee because of his disability and for other allegedly legitimate reasons)?

4. What constitutes reasonable accommodation of an employee’s disability? Is it possible to administer a program of reasonable
accommodation without *ad hoc* review of cases by legal counsel? Is such a course of action advisable? If not, how may the university control legal costs if it is without internal counsel in ADA matters? Is there a rule of judicial deference on this issue?

5. What response may the university make to the Department of Education, Office of Civil Rights, if that office "pressures" the university to grant accommodations which the university believes are not required by law?

6. Is the university permitted by law to utilize compulsory mediation to resolve ADA disputes?

7. Is the university flatly prohibited by the ADA from implementing personnel policy which might promote efficiency in the determination of similar cases of disability?

8. How does your institution's budget reflect an expanding responsibility for the provision of reasonable accommodations to disabled students and employees? What is your relationship with your State’s Vocational Rehabilitation Agencies in this regard? Are you seen as the "ultimate" provider of auxiliary aids and services to students and employees? How are ADA matters budgeted at your university?

9. What position has your university taken in the current debate calling for reform of the ADA?