

The Current State of Disability Law

A Preventive
Law and Policy Approach
To Managing Student Disability Issues

What's a “Physical or Mental Impairment”?

- A physiological disorder or condition, cosmetic disfigurement or anatomical loss (e.g., epilepsy, paralysis, AIDS, vision or hearing impairment) or
- A mental or psychological disorder (e.g., mental retardation, emotional or mental illness, specific learning disabilities)
- NOT short-term, non-chronic conditions

Some Chronic Diseases and Medical Conditions

- Diabetes
- Recurrent cancer
- Autoimmune disorders (e.g., lupus)
- Respiratory conditions (asthma)
- Blood disorders
- Lyme's disease
- Krohn's disease
- Pain syndromes
- Cardiac disorders
- Seizure disorders
- Multiple sclerosis
- Muscular dystrophy

What is “Substantially Limited in a Major Life Activity”?

- A significant restriction on the duration, manner or condition under which an individual can perform a Major Life Activity when compared to the average person’s ability to perform that same activity
- Major life activities generally include caring for self, performing manual tasks, walking, sitting, standing, lifting, reaching, seeing, hearing, speaking, breathing, learning and working

Toyota Motor v. Williams

- Individualized assessment
- Whether a claimant's impairments substantially interfere with tasks that most people consider central to daily life, not simply whether the claimant is unable to perform specific tasks associated with his workplace or the workplace in general

Wong v. Regents of U. of Cal.

- So in a student case, someone who had achieved great academic success without previous accommodations, even though disabled, was not substantially limited
- Question is not whether impairment makes med school impossible but whether the impairment substantially limited his ability to learn as a whole, for purposes of daily living, as compared to most people

What's a "Fundamental Program Requirement"?

- If a school is required to fundamentally alter its programs, then that is not a reasonable accommodation and thus the claimant is not "otherwise qualified"
- School must consider alternative means, feasibility, cost and effect on academic program and rationally conclude that the alternative results in lower standards or would require substantial program alteration

Accommodating disability without fundamental program alterations

- Extended time on tests
- Access to assistive technology
- Separate test administration
- Extended due dates
- Reduced course loads
- Transcription and interpreters
- Early registration
- Note takers
- Flexible attendance
- Special seating
- More frequent tests over less materials
- Distance learning

What's an "Undue Burden"?

- "significant difficulty or expense"
- Pretty clearly now means looking at the resources of the whole institution, not just one program
- Still must ensure to maximum extent possible that alternatives are offered to allow person to receive services

What's a "Direct Threat"?

- A significant risk to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures, or by auxiliary aids or services.
- Must be an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

Policy & Prevention in Practice

- Policy Issue: what kind of documentation do you want to require? Who evaluates? Where is it kept?
- Prevention: audit confidentiality of records
- *****
- Policy: what level of inclusion do you want to support even if not required by law?
- Prevention: Deliver what you promise

More prevention...

- Deal with conduct, not labels
- Have technical standards in academic programs so you can define what's part of the “unalterable” fundamental requirements
- Have behavioral standards clearly apply to academic programs

Some ideas on team-building

- At CUA, we engage in many things to build a preventive compliance team.
- Academic program ADA audits
- Joint training programs
- Sponsorship of Disability Awareness reception
- ADA brochure for faculty and students
- Pie Day; General Counsel lunches