Why We Do What We Do: A bit of background for a Disability Services Office

AHEAD in Texas Spring 2023

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Collin College

Marilyn-Bio

- Licensed Social Worker, Certified Special Education Teacher, and MS in Disability Services in Higher Education
- BUT…

- NOTE: **I am not an attorney and this is not legal advice, just interesting information.**

Outline

Evolution of Disability Discrimination

Sources of Disability Law

Case Law

Otherwise Qualified

Employment Law (Sutton Trilogy and Toyota)

The Amendment Act 2008

Documentation

FERPA

Cases of Interest to Disability Office

Salome Heyward-General Issues

Grievance and OCR

Other issues

Evolution of disability discrimination and rights seen in about 140 years:

1883-Eugenics-means “well born” Sir Francis Galton (half cousin of Charles Darwin) coined the term which many Americans adopted and then led to rise of the Nazi party in Germany.

1927- Buck v. Bell, 274 U.S. 200 (1927)-Compulsory Sterilization. Led to over 70,000 forced sterilizations. In 1938, 30,000 lobotomies were performed. The last state eugenics laws were repealed in 1968.

Although Texas did not have a forced sterilization law pass, the growth of institutions for those who were deemed mentally ill grew rapidly in early to mid-1900s.

Evolution of disability discrimination and rights (continued):

- 1972- Senator Hubert Humphrey proposed an amendment to the Civil Rights Act of 1964 that would have added “disability” as a protected class. No support. Humphrey’s interest- grandchild with Down’s syndrome. In his final public speech Humphrey stated that the, “Moral test of our nation includes how we care for those who are in the shadows of life: the sick, the needy, and the handicapped”.

- -1972-1973-Legislation to benefit individuals with disabilities was enacted with Section 504 of the Rehabilitation Act. Nixon used pocket veto in 1972. Passed by Congress in 1973.

Then the changes since 1990 and the ebb and flow of disability discrimination and law.

Photo Break-Panda

Sources of Disability Law

-The main source of laws that govern how colleges deal with persons with disabilities is the federal statute, **the Americans with Disabilities Act (1988)** introduced in 1986 by National Council on Disability. The final version of the bill was signed into law on July 26, 1990, by President George H. W. Bush.

Since this is a federal statute, most complaints of disability discrimination will be heard in federal courts.

-**Section 504 of The Rehabilitation Act of 1973**

Sources of Disability Law-pg. 2

- Not our job, but…

-Section 508 of the Rehabilitation Act of 1973-

Anything posted online must be accessible.

We (DSOs) pay attention to this, but this is a requirement of the institutions.

Section 504 and ADA

-Section 504 of the Rehabilitation Act of 1973, prohibited discrimination against, “handicapped people” in

a. Any federal program or activity

b. Any program or activity receiving federal funds

-Both the Rehabilitation Act of 1973, amended in 1992 and 1998, and the ADA of 1990 are civil rights laws that protect individuals with disabilities from discrimination.

-The Rehabilitation Act goes beyond providing legal protections. It provides for direct services to people with disabilities which help them to become qualified for employment.

Source: ADA Q&A: The REHABILITATION ACT AND ADA CONNECTION, http://www.pacer.org/publications/adaqa.asp

ADA Titles I-III

Title I: Employment

Title II: Public Entities (Colleges and Universities)

Title III: Private Entities

Title I: Employment

Title I of the ADA prohibits discrimination in all phases of employment hiring, advancement, termination, compensation or other terms of employment.

Title I ADA definition of disability includes:

A. Otherwise Qualified

B. Able to perform the essential functions of the job with or without reasonable accommodations.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

Title II: Public Entities

-Title II- all programs, activities, and services of public entities; this includes public elementary and secondary education systems and institutions, institutions of higher education and vocational education and public libraries.

-The Department of Justice (DOJ) is responsible for oversight of Title II. It has rules and regulations which can be found at 28 C.F.R. 36 (Code of Federal Regulations). The Office of Civil Rights is the entity under the DOJ that investigates complaints under Title II.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

Title II: Public Entities Pg. 2

ADA Obligations of Public Entities

-Cannot use eligibility criteria which screen out or tend to screen out individuals with disabilities unless based on actual safety risks.

-Cannot set discriminatory requirements for participation.

-Modifications in Policies, Practices and Procedures -28 CFR 36.302

-Auxiliary Aids and Services, 28 CFR 36.303

a. Requires public entities provide auxiliary aids and services to the disabled to allow them to participate. Applies particularly to communication with disabled persons and includes: 1) aids for hearing impaired like interpreters, amplifiers for telephones, TDD's open and closed captioning, 2) aids for visually impaired like readers, taped texts, braille materials, large print, and 3) use of the most advanced equipment is not required so long as effective communication is insured.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

Title III: Private Entities

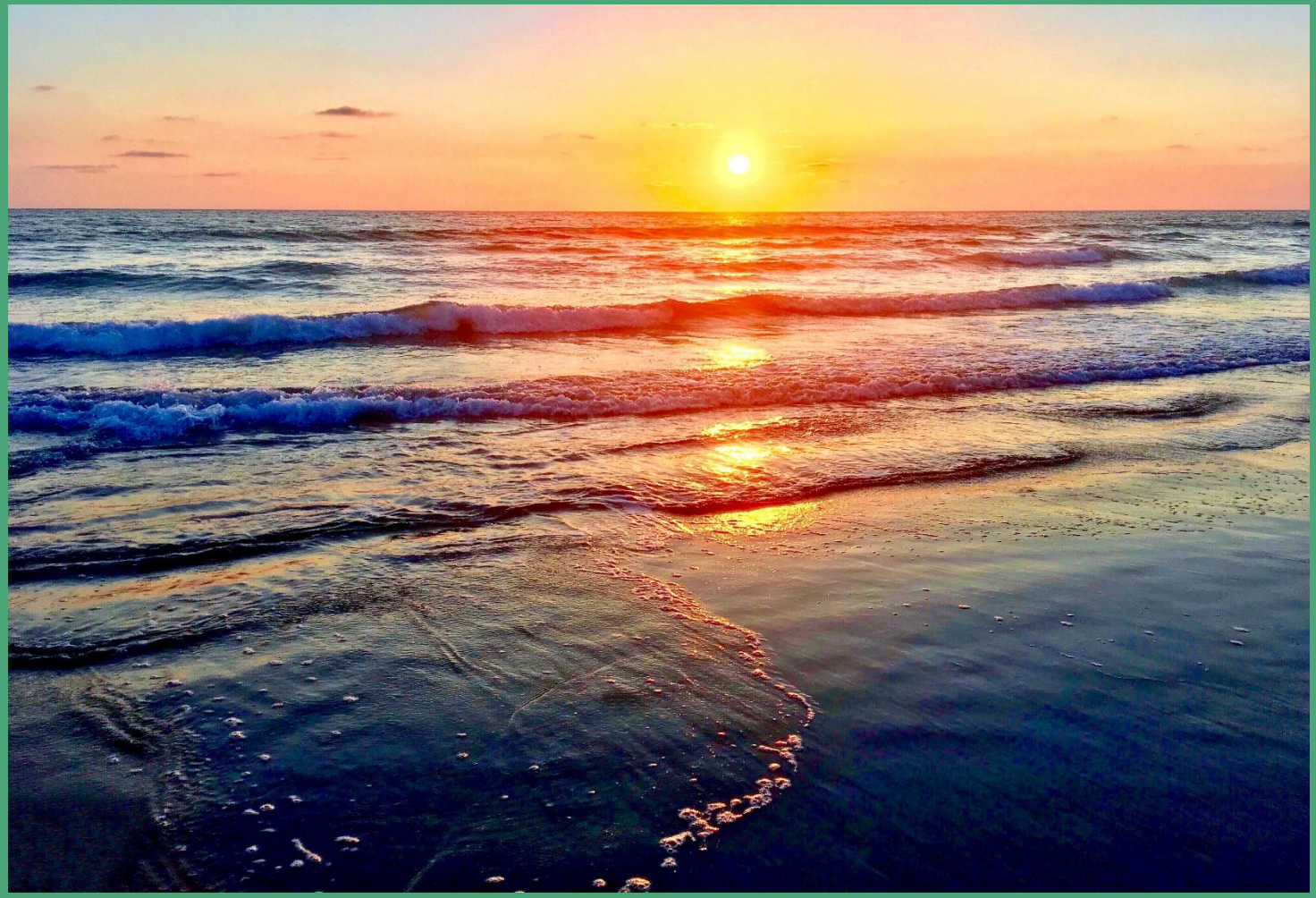
Applies civil rights protections for people with disabilities to the private sector. Under the ADA, private businesses and nonprofits cannot discriminate against people with disabilities in how they provide their goods and services and must make themselves accessible when they can afford to do so;

Interestingly:

House Bill 620, "ADA Education and Reform Act of 2017", *was introduced in 2017 by Representative Ted Poe (Texas) and passed the House and moved into the Senate in 2018. It stated that a disabled person in a private entity, had to request that the establishment be accessible and the business or entity had 180 days to comply. (No movement found in the Senate)*

Sources:Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017; AHEAD statement 2018.

Photo Break-Sunset on the beach



Case Law

Let's move into some case law that might be of assistance.

The first case is probably one you have heard of:

Southeastern Community College v. Davis

Decided- Jun 11, 1979

Southeastern Community College v. Davis
Decided- Jun 11, 1979

Still considered “Granddaddy” case regarding discrimination under 504 Rehabilitation Act in terms of “otherwise qualified” status.

An otherwise qualified person is one who is able to meet all of a program's requirements in spite of “his handicap”.

Southeastern Community College v. Davis

Question

Did Southeastern Community College violate Section 504 of the Rehabilitation Act of 1973 in denying Davis admission to its nursing program?

No.

Justice Lewis F. Powell, Jr. wrote for a unanimous court that an "otherwise qualified handicapped individual" specified by the Act meant one who meets all the program's requirements "in spite of his handicap" as opposed to "in every respect except as to limitations imposed by their handicap." Even with an improved hearing aid, Davis still required lip-reading to understand speech, and therefore was not "otherwise qualified." Since Davis could not be admitted to Southeastern's program without substantial changes to admission requirements, Davis' rejection did not constitute unlawful discrimination.

Southeastern (Continued)

-“Legitimate physical qualifications may be essential to participation in particular programs.” “Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person”. Southeastern Community College v. Davis, 442 US 397 (1979).

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017.

Otherwise Qualified Status #1

-The otherwise qualified status extends beyond academic requirements and includes behavioral, professional, health and safety and other technical standards. California State University, 27 NDLR 95 (May 2003).

- Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017.

Otherwise Qualified Status #2

"To qualify for postsecondary educational program or maintain good standing, an individual with a disability must be capable of fulfilling the essential requirements of a program, with or without reasonable accommodations. A disability does not entitle a student to waive an essential program requirement" (Colker and Grossman, p. 171).

Sources: Colker and Grossman; Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017.

Employment law

What does employment law have to do with what is provided in a disability office?

The following employment cases were the impetus to the Amendments Act to the ADA.

Why the Amendments Act 2008? (ADAAA)

Since the enactment of the ADA (1990), decisions of the U.S. Supreme Court in four cases had a major impact on ADA enforcement.

These cases are known as “the Sutton Trilogy” and Toyota.

Cases:

Sutton v. United Airlines, Inc. 527 U.S. 471 (1999)

Murphy v. United Parcel Serv., Inc., 527 U.S. 516 (1999)

Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999)

Toyota Motor Mfg. v. Williams, 534 U.S. 184 (2002)

Source: ADA Amendments Act of 2008: An Overview

Sutton v. United Airlines, Inc. 527 U.S. 471 (1999)

"Karen Sutton and Kimberly Hinton (the Suttons) were identical twins who had acute visual myopia. They filed suit against United Airlines under the ADA, after United failed to hire them as pilots because their uncorrected vision was worse than 20/100.

Sutton (Continued)

"Questions:

(1) Should the determination of disability be made without reference to corrective measures that mitigate the impairment?

(2) Is poor vision regarded as an impairment that substantially limits the Suttons in a major life activity?

Supreme Court answered in a 7-2 decision: No and No".

Source: Sutton v. United Air Lines, Inc. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/1998/97-1943

Murphy v. United Parcel Serv., Inc., 527 U.S. 516 (1999)

“When Vaughn Murphy was hired by United Parcel Service (UPS) to a mechanics position that required him to drive commercial trucks, Murphy was misdiagnosed as meeting Department of Transportation (DOT) health guidelines.

When UPS discovered that Murphy's blood pressure exceeded DOT requirements, they fired him. Murphy challenged his dismissal as a form of discrimination under Title I of the ADA. Following defeat in trial and appellate courts, Murphy appealed to the Supreme Court”.

Murphy (Continued)

“Question: Is high blood pressure a "substantial impairment" that might limit one's life activities to such an extent as to justify their being called "disabled" and, therefore, entitled to protection under the 1990 Americans with Disabilities Act?

Supreme Court ruled “No” in a 7-2 decision.

Source: Murphy v. United Parcel Service, Inc. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/1998/97-1992

Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999)

“Before starting his job as a truck driver for Albertsons Inc., Hallie Kirkingburg underwent an eye examination during which he was erroneously certified as meeting basic Department of Transportation (DOT) visual standards. Two years later, in 1992, the error of Kirkingburg's earlier diagnosis was discovered during a routine physical examination. Kirkingburg was told that he had to obtain a DOT waiver if he wanted to continue driving. Before he could do so, Albertsons fired him for failing to meet minimum visual requirements and refused to rehire him even after he obtained the waiver.

Albertson's (Continued)

"Question:

Are all individuals with vision problems of any degree "disabled" under the Americans with Disabilities Act and, therefore, subject to its protections?

The Court held that not all individuals who suffer some sort of physical difficulty are "disabled" under the ADA. Instead, those who believe they suffer from a disability must prove their claim by showing that their alleged disability substantially impacts a major life activity. Such an impact could be mitigated by the availability of artificial aids, such as medications or technical devices, and the body's own corrective measures. Kirkingburg's visual limitation was not covered under the ADA and so his challenge was inappropriate".

Source: Albertsons Inc. v. Kirkingburg. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/1998/98-591

Photo Break-Basket of Kittens

Toyota Motor Mfg. v. Williams, 534 U.S. 184 (2002)

Ella Williams:

Ella Williams used pneumatic tools at the Toyota plant. Due to the use of the tools, she developed physical impairments. Toyota adjusted her job duties and she was able to inspect car parts manufactured. Then they added another job function of spreading oil on top of the cars. The oil was the consistency of salad oil. She requested to go back to her regular inspection job. She was then fired.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017.

Source: Toyota Manufacturing, Kentucky, Inc. v. Williams. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/2001/00-1089

Toyota (continued)

FACTS of the Case:

-Ella Williams was terminated from her job at Toyota Manufacturing for poor job attendance.

-Ms. Williams claimed that she was disabled and that Toyota had failed to provide her with reasonable accommodations as required by the ADA.

-Ms. Williams claimed her carpal tunnel syndrome and other ailments qualified her as being a person with a disability under ADA.

-The trial court held that Ms. Williams impairment did not qualify as a disability under the ADA definition and therefore Toyota had no obligation to accommodate her.

-Ms. Williams appealed the trial courts decision to the Court of Appeals and the Court of Appeals held that performing manual tasks is a major life activity and the trial court erred in finding that Ms. Williams was not a person with a disability.

-Toyota the appealed the case to the Supreme Court.

Toyota (Cont)

In the Toyota case, the Supreme Court decided that the Sixth Circuit did not apply the correct definition of disability.

The Sixth Circuit determined that an inability to do manual tasks was enough to qualify Ms. Williams as being disabled. The Supreme Court said the Sixth Circuit was wrong and that Ms. Williams could only be considered disabled if her impairments prevented her from performing manual tasks that are of central importance in people's everyday lives, not just at work. For example, brushing her teeth or showering. The impairment's impact must also be permanent or long-term.

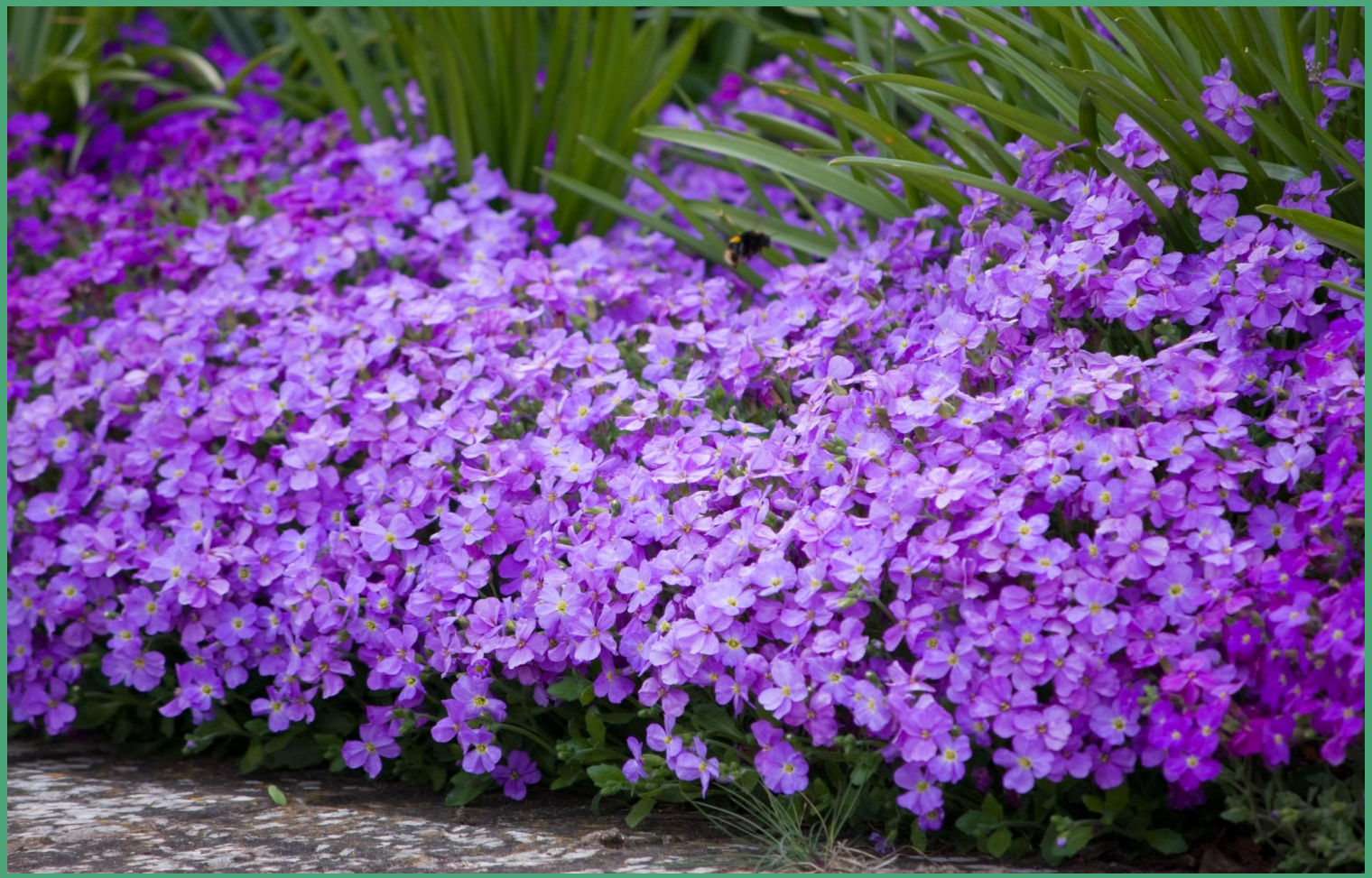
Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017.

How employment cases impact us…

As seen with the Sutton Trilogy and Toyota, decisions from the court narrowly defined disability and employees lost in court…

Congress stepped in.

Photo break: Purple Ground flowers



Why the Amendments Act 2008? (ADAAA)

When the ADA was passed in 1990, Congress appeared to see it as broadly construed, but the Supreme Court decisions interpreted the ADA narrowly, reducing the number of people protected from discrimination.

With the 1999 court decisions, cases were regularly dismissed because the complainant lacked standing as a person with a disability.

The passage of the Amendments Act in 2008, effective in 2009, and then clarified by the EEOC regulations effective in 2011, greatly expanded who is protected by the laws.

In 2010, the U.S. Department of Justice (DOJ) published regulations implementing Title II (28 C.F.R. 35) and Title III (28 C.F.R. Part 35) of the ADA.

Sources: Rothstein, Laura; Texas Journal on Civil Liberties & Rights (2008); Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

ADAAA Effects-Slide 1

-Rejected the Supreme Court's interpretations of the definitions of "Disability".

-Overruled the U.S. Supreme Court cases that unduly restricted the definition of who is a person with a disability in Toyota and Sutton Trilogy.

-Amendments will make it easier for an individual to:

a. meet the definition of disability

b. be protected from discrimination

c. be entitled to reasonable accommodations.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

ADAAA Effects-Slide 2

Broad interpretation of “disability”

Expansive definition of “major life activity”

Limited role of mitigating factors

Lower standard for “regarded as” disabled

Congress explicitly directed that the definition of disability is to be construed broadly. The language: “The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”.

The expanded definition and list of “major life activities” is non-exhaustive.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

ADAAA Effects-Slide 3

The expanded definition and list of “major life activities” is non-exhaustive. Here are a few noted:

Caring for oneself, working, sitting, sleeping,

Standing, walking, lifting, reaching, eating,

Bending, breathing, interacting with others,

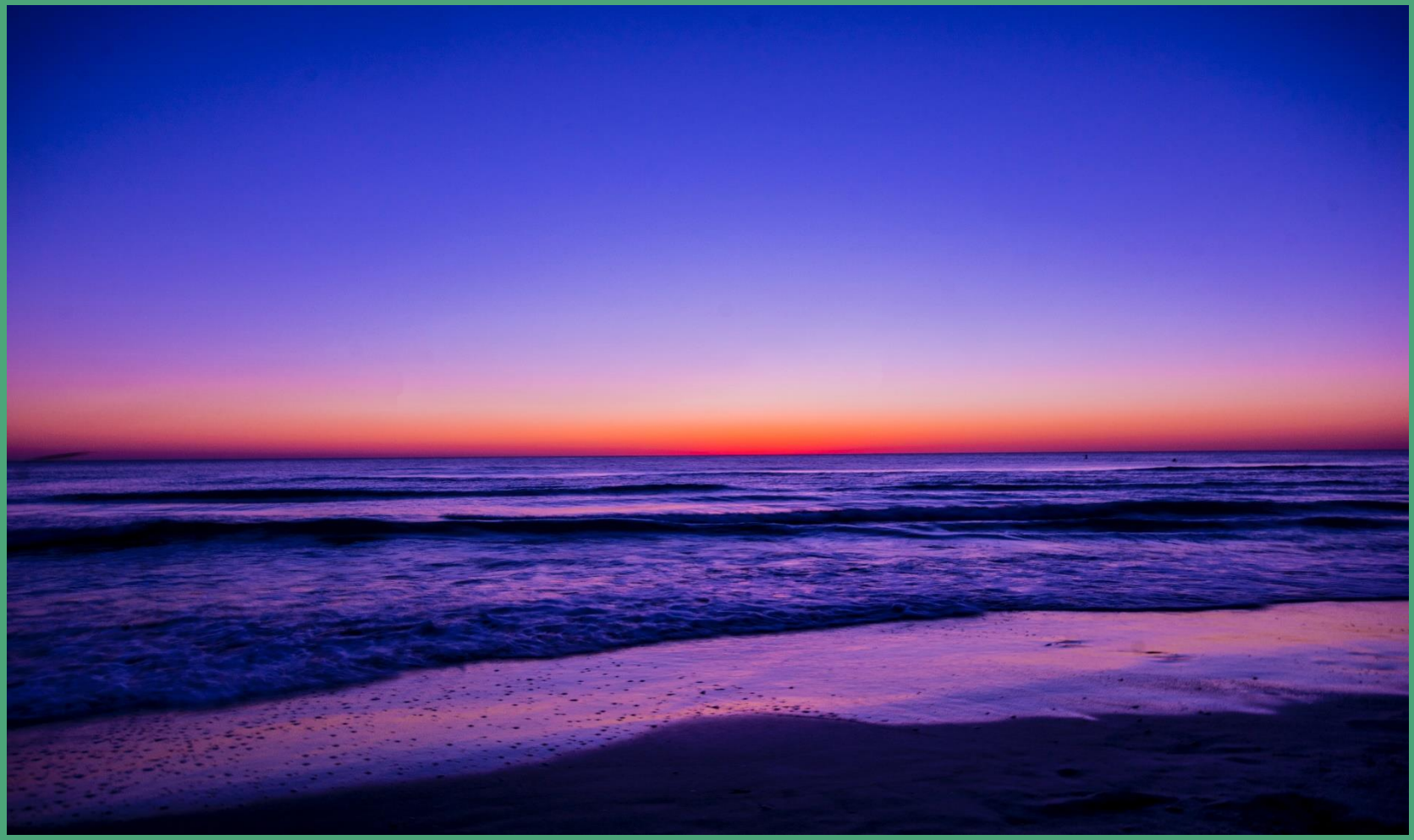
Seeing, hearing, speaking,

Learning, concentrating, thinking, communicating*

***This is a non-exhaustive list.**

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

Photo Break-Ocean view



Sources of Documentation

Primary-student is the vital source regarding how he/she is limited by impairment. A structured interview or questionnaire interpreted through professional judgment may be sufficient for establishing disability and need for accommodation.

Secondary-Observation, Interaction, and professional conclusion of all information by disability professional.

Tertiary-Educational records, medical records, psychoeducational evaluations, IEPs, 504 plans, SOP, may be needed if student unable to clearly describe how the disability is connected to a barrier and how the accommodation would provide access.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

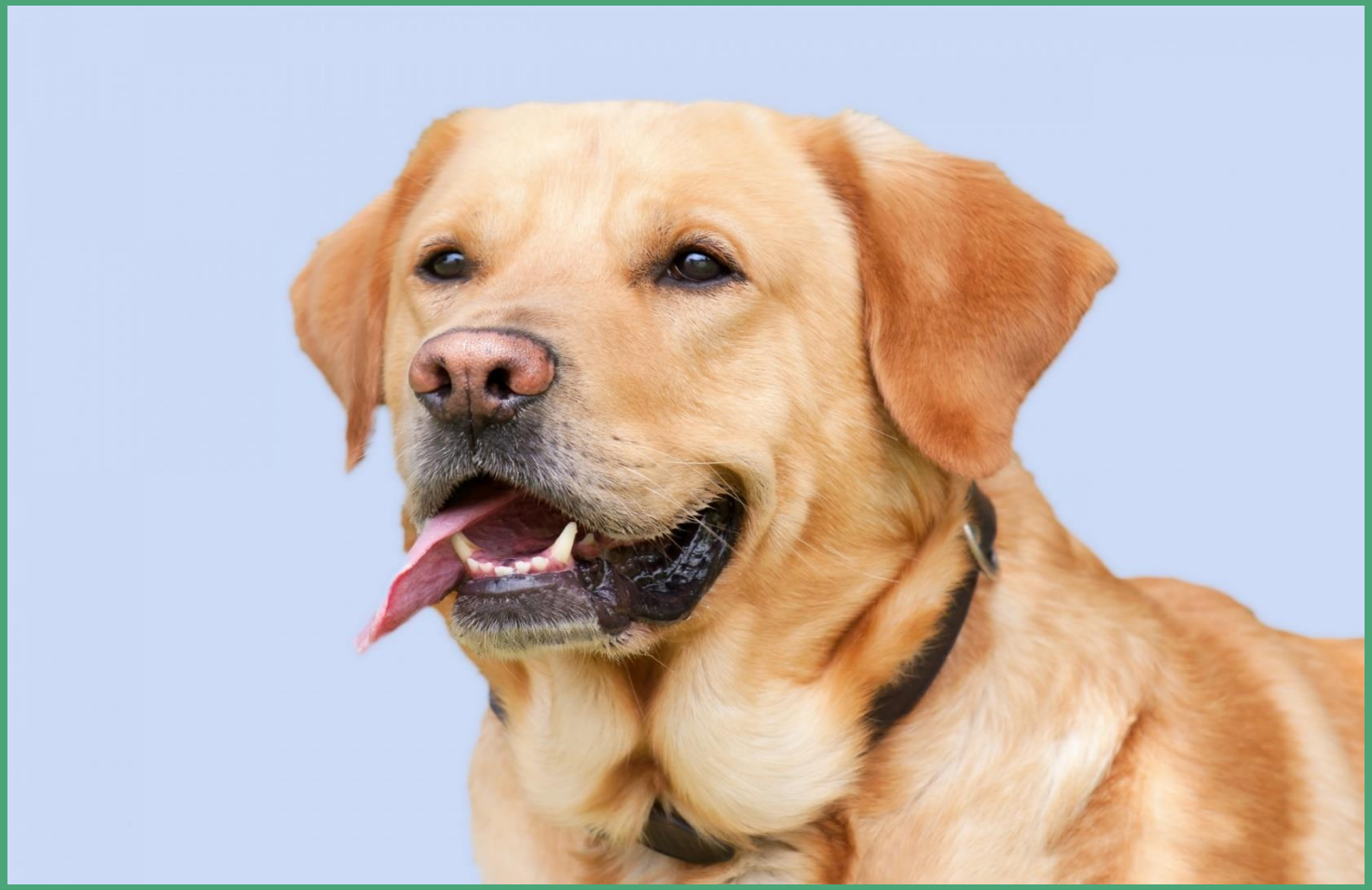
Documentation Continued

Your professional opinion matters and is required in conversations with students, reviewing documentation, and developing accommodations with each individual student.

AHEAD Documentation Guidelines

https://www.ahead.org/professional-resources/accommodations/documentation

Photo Break, Yellow Lab



FERPA-(20 U.S.C. § 1232; 34 CFR Part 99

The offices of disability services will be unable to discuss a specific student circumstances or record with anyone (including parents or guardians) without that student's express permission**.**

FERPA however allows schools to disclose education records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

School officials with legitimate educational interest

Other schools to which a student is transferring

Specified officials for audit or evaluation purposes

Appropriate parties in connection with financial aid to a student,

Organizations conducting certain studies for or on behalf of the school, Accrediting organizations, Parties identified in a judicial order or lawfully issued subpoena, Appropriate officials in cases of health and safety emergencies, State and local authorities, within a juvenile justice system, pursuant to specific State law

Cases of Interest to a Disability Office

Wynne v. Tufts University School of Medicine
932 F.2d 19, 26 (1st Cir. 1991)

Guckenberger v. Boston University
974 F. Supp. 106 (D. Mass. 1997)
8 F. Supp. 2d 82 (D. Mass. 1998)

Cutrera v. Board of Supervisors of LSU, F.3d (5th Cir. 2006)

Gill v. Franklin Pierce Law Center 899 F. Supp. 850 (D.N.H. 1995)

Grabin v. Marymount Manhattan College, No. 12 Civ. 3591 (S.D.N.Y. 6/10/14

Dudley v. Miami University

Wynne v. Tufts University School of Medicine 932 F,2d 19, 26 (1st Cir. 1991)

In cases involving modifications and accommodations the 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.

Sources: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017; Rothstein, Laura, Center for Excellence in Higher Education Law and Policy, Feb. 2012; Colker, Ruth & Grossman, Paul"The Law of Disability Discrimination in Higher Education".

Wynne v. Tufts Process

Develop and understand your Wynne v. Tufts Process at your institution. This will assist you to know and understand whether a request for an accommodation is a fundamental alteration.

Issue of class substitution

Guckenberger v. Boston University (I and II)
974 F. Supp. 106 (D. Mass. 1997)
8 F. Supp. 2d 82 (D. Mass. 1998)

President Westling at Boston University, was know for his hostility towards those with learning disabilities who were attending BU. He imposed newer and stricter requirements on documentation. "Students with learning disabilities were fakers who undercut rigor".

Westling instituted multiple requirements on documentation for LD accommodations

Source: Colker, Ruth & Grossman, Paul, "The Law of Disability Discrimination in Higher Education".

Guckenberger Continued-Slide 2

Requirements on documentation for LD accommodations:

1. LD students must be tested for a LD by a physician, licensed clinical psychologist or a person with a doctorate degree in neuropsychology, educational or child psychology, or another appropriate specialty. The evaluator must have at least three year's of experience in diagnosing LDs.
2. Documentation must be current, as it is recognized by BU for only three years after the date of evaluation. If the documentation "expires" during student time at BU, they must be reevaluated (including retesting).

Source: Colker, Ruth & Grossman, Paul, "The Law of Disability Discrimination in Higher Education".

Guckenberger Continued-Slide 3

The students claimed discrimination to deny them certain course substitutions as an accommodation. Procedures regarding issues of documentation caused undue burden on students requesting services for accommodations.

A deliberate procedure for considering whether course substitutions for a foreign language requirement at BU would fundamentally alter the nature of the undergraduate liberal arts degree should have been followed).

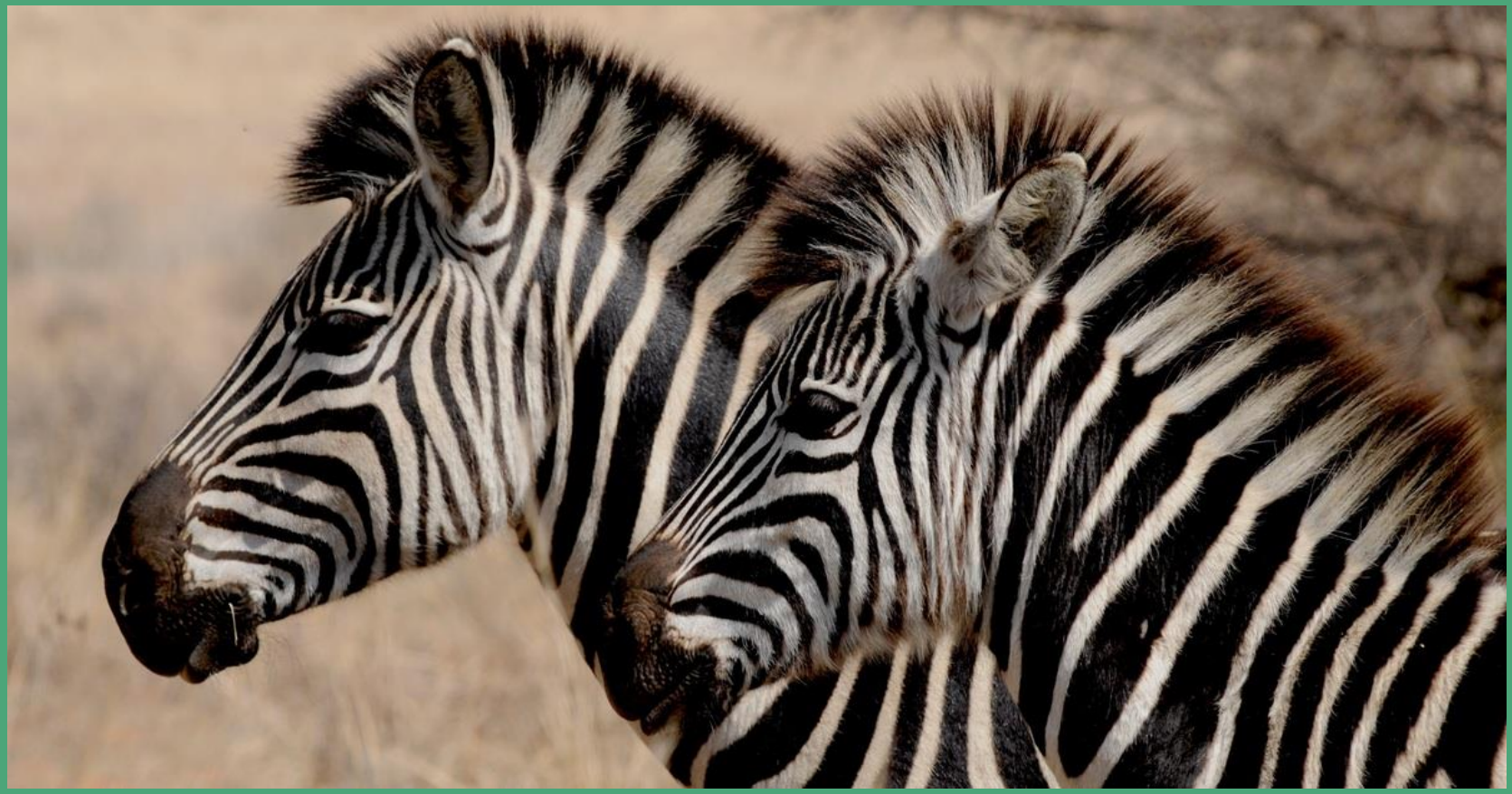
Note: Development of procedures and process could limit liability on the college.

Decision by court:

Course substitution for foreign language may be a reasonable accommodation; course substitution in math was not; $30,000 in damages awarded to the students.

Source: Colker, Ruth & Grossman, Paul, “The Law of Disability Discrimination in Higher Education”.

Photo Break-Two Zebras



Interactive Process Required with Students

Cutrera v. Board of Supervisors of LSU, F.3d (5th Cir. 2006)

Institutions should engage in interactive process to determine reasonable accommodations.

An employer may not stymie the interactive process of identifying a reasonable accommodation for an employee's disability by preemptively terminating the employee before an accommodation can be considered or recommended.

Barbara Cutrera began work at the LSU 1998. She was diagnosed with Stargardt's disease, a form of macular degeneration.

Results of the case is that it is requirement to have interactive process in dealing with issues of accommodations.

Source: Rothstein, Laura 2015

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.

Gill was dismissed from law school after his first year due to lack of maintaining satisfactory academic performance.

Gill applied for readmission and was again denied by faculty committee. In his lawsuit, he claimed that he wrote in his personal statement that he was the child of an alcoholic parent and that the law school should have known he had PTSD and would need accommodations.

Results of the lawsuit is the court stated that schools need only accommodate disabilities of those they are aware.

Source: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017

Grabin v. Marymount Manhattan College
No. 12 Civ. 3591 (S.D.N.Y. 06/10/14)

Ruling from the U.S. District Court, Southern District of New York denied a motion for summary judgement filed by Marymount Manhattan College.

Grabin had a genetic blood disorder that made her highly susceptible to serious infections. She transferred to Marymount College in 2008, she allegedly wrote on orientation paperwork and to student housing that she had the blood disorder. Marymount's website and student handbook noted the requirement for students to register with the Office of Disability Services and provide documentation. Grabin did not register with ODS. Failed a course. Grabin sued claiming a violation of the Rehabilitation Act. The college filed a motion for a summary judgement, arguing that they were not on notice of the disability because Grabin did not register with the ODS or follow procedures laid out in the handbook.

Source: Disability Compliance for Higher Education, April 2015.

Grabin Continued

The district judge noted that Grabin wrote about her blood disorder on her forms and she also told the instructors of her disability.

In spite of written disclaimers to the contrary, a student's oral request for disability accommodations may have to be honored.

A best practice:

Recommend that if students inform faculty or staff, train them to refer to the disability office, as in the past but also follow up with an email to the disability office of the student self-reporting. Then DSO can contact the student twice and document follow-up.

Source: Disability Compliance for Higher Education, April 2015.

Dudley v. Miami University-Dudley Decree (Issue of "Best Practice")

Dudley v. Miami University-DOJ joined in the litigation on behalf of the National Federal of the Blind.

Dudley Consent Decree-decree covers but is not limited to students and includes: prospective students, applicants, accepted but not yet attending students and former students. Electronic Information Technology (EIT) coverage is broad: website content, LMS, instructional support systems, student organization information and "third party content" that is critical or important (i.e., housing and dining information).

Disability Services must meet with every student with a vision or hearing impairment and offer to meet with every student who requires assistive technologies or curricular materials in alternate formats, and their instructors, to develop an "accessibility plan". Accessibility Plan looks like an IEP and covers:

-Curricular materials in alternate formats

-What assistive technologies the student uses or needs

-What formats will work with the student's assistive technology

Dudley Continued

For each course in which vision or hearing-impaired students are registered, DSS will consult with each teacher to:

-Review syllabus to determine alternate media needs

-Identify all materials, including multimedia items

-Identify adaptive technology that needs to be placed in the classroom or lab

-Determine in what format the student prefers textual and graphical material for effective communication, including electronic format, hard copy Braille, described images, tactile images, etc.

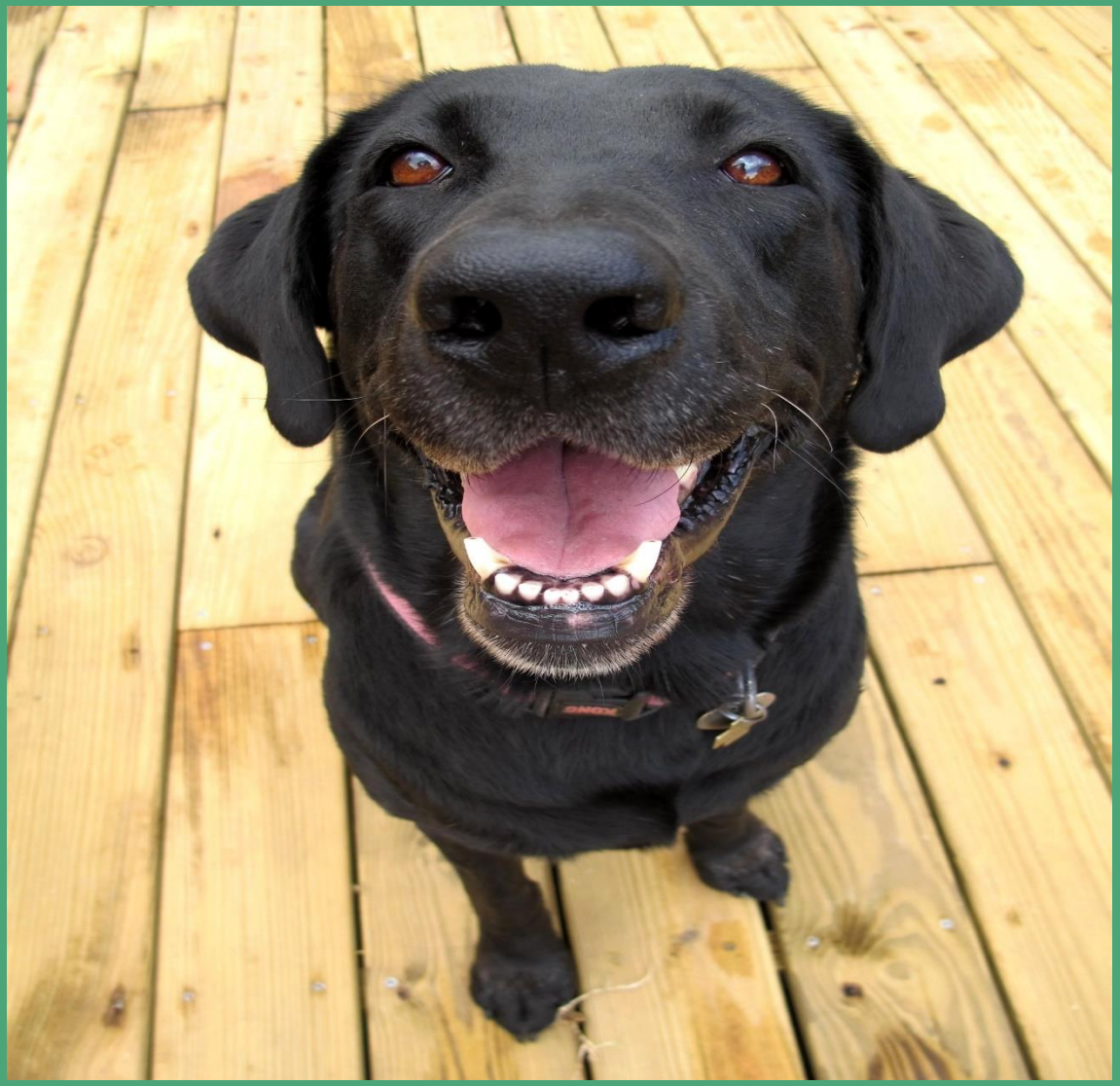
-Confirm with the student that the format will be usable

-Students not vision or hearing impaired but who need alternate formats may request the same.

For all vision and hearing-impaired students and all alternate media/assistive technology students who request a consultation, **DSS will check in with student once a month and with instructor twice a semester.**

Source: Paul Grossman, AHEAD National Conference, July 2018, Albuquerque, New Mexico

Photo Break-Black Lab



General issues noted by Salome Heyward #1

Confidentiality:

There is no right to confidentiality conferred to students either under Section 504 or the ADAAA. When a student requests an accommodation, an institution is entitled to disclose information to persons who have a need to know as a part of the accommodation process.

General issues noted by Salome Heyward #2

Timeliness of requests for accommodations:

The standard in the law is reasonableness. The institution is entitled to a reasonable amount of time to review the request and make a determination of whether a what accommodations might be provided. Whenever the student chooses to make the request he/she will have to accept any adverse consequences, if any that the timing of the requests bring into play.

Grievance Procedures

"No otherwise qualified person with a disability in the United States…shall, solely by reason of…disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity sponsored by a public entity."

In addition to the non-discrimination requirement, public entities must adopt and publish a student grievance procedure, which is an internal course of action that provides for timely and equitable resolution of complaints alleging a violation of U. S. Department of Justice regulations related to the implementation of Title II of the Americans with Disabilities Act (1990) or Section 504 of the Rehabilitation Act (1973).

A great resource to review is the Grievance Procedure from Purdue University 2014.

Office for Civil Rights

U. S. Department of Education Office of Civil Rights

Case Processing Manual (CPM) (32 pages)

Updated July 22, 2022

https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf

Other Issues To be Aware Of

Food Services:

A December 2012 agreement with Lesley University requires that the university make reasonable modifications to ensure full and equal enjoyment of meal plan and food services for students with food allergies. Lesley was required to pay $50,000 to individuals affected by its earlier policies and practices.

As noted: A disability as defined by the ADA is a mental or physical impairment that substantially limits a major life activity. Eating is covered.

Reference: U.S. Department of Justice Civil Rights Division. www.ada.gov/q&a Lesley University.htm

Final Thoughts

"The 2008 Amendments Act and the regulatory guidance have proven to make it much less likely that institutions will focus on whether the student or faculty member has a disability. The focus will be on whether the individual is otherwise qualified and whether the requested accommodations are reasonable.

The issue of cost may begin to receive more attention because of shrinking resources".

Source: Rothstein, Laura 2015

References:

-A Guide to Disability Rights Laws. (2016, December 3). Retrieved December 3, 2016, from https://www.ada.gov/cguide.htm

-ADA Q & A: The Rehabilitation Act and ADA Connection - PACER Center. (n.d.). Retrieved March 26, 2018, from http://www.pacer.org/publications/adaqa/adaqa.asp

Albertsons Inc. v. Kirkingburg. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/1998/98-591

-Americans with Disabilities Act Amendments Act of 2008. (n.d.). Retrieved March 26, 2018, from https://www.eeoc.gov/laws/statutes/adaaa.cfm

References Continued Pg. 2

-BUCK v. BELL | FindLaw. (n.d.). Retrieved March 15, 2018, from http://caselaw.findlaw.com/us-supreme-court/274/200.html

-Colker, R., & Grossman, P. D. (2013). *The Law of Disability Discrimination (Eighth edition*). New Providence, NJ: LexisNexis.

-Disability Compliance for Higher Education, April 2015, Volume 20 (9)

-Grossman, Paul, AHEAD National Conference, July 2018, Albuquerque, New Mexico

References Continued Pg. 3

-Heyward, S. (2013). *Best Practice Webinar Series- Salome Heyward* Info. Retrieved March 26, 2018, from http://salomeheyward.info/training/best-practice-webinar-series

-Heyward, Salome (2009) Disability and Higher Education, LPR Publications

-How to File a Discrimination Complaint with the Office for Civil Rights. (2017, November 17). [Pamphlets]. Retrieved March 26, 2018, from https://www2.ed.gov/about/offices/list/ocr/docs/howto.html

-Murphy v. United Parcel Service, Inc. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/1998/97-1992

-Nielson, JD/MSW, K. (City University of New York, MS is Disability Services in Higher Education Spring 2018). *Legal Aspects In Disability Services in Higher Education.*

References Continued Pg. 4

-Rothstein, L. (2003). *Disabilities and Higher Education: A Crystal Ball? Change*, 35(3), 38.

-Rothstein, L. (2008, Spring). *Strategic Advocacy in Fulfilling the Goals of Disability Policy: Is the Only Question How Full the Glass Is?* Texas Journal on Civil Liberties & Civil Rights, pp. 403–412.

-Rothstein, L. (2015). *The Americans with Disabilities Act and Higher Education 25 Years Later: An Update on the History and Current Disability Discrimination Issues for Higher Education*. JC & UL, 41, 531.

Sutton v. United Air Lines, Inc. (n.d.). *Oyez*. Retrieved March 2, 2019, from https://www.oyez.org/cases/1998/97-1943