

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: FEBRUARY 5, 2013

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Accommodations Outside the Classroom: New Guidance on Students with Disabilities Under ADA/Section 504

Recently, both the Department of Education and the Department of Justice issued guidance that expands the obligations of universities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act in the realm of non-academic programs and services.

On January 25, 2013, the Office for Civil Rights (OCR) at the U.S. Department of Education issued a “Dear Colleague Letter” regarding obligations of higher-education institutions that received federal student aid to provide adequate extracurricular athletic opportunities to disabled students. Although the letter focuses on students in the K-12 setting, it specifies “students with disabilities at the post-secondary level must also be provided an equal opportunity to participate in athletics, including intercollegiate, club and intramural athletics.” The letter goes on to state that schools should create additional athletic opportunities when necessary in order to fully and effectively meet the interests of disabled students.

OCR’s guidance on athletics follows the highly publicized settlement agreement between the Department of Justice and Lesley University about dining services and students with food allergies. The December 20, 2012, settlement resolved a complaint from students requesting accommodations from a mandatory on-campus dining plan due to celiac disease. The students alleged that the university violated ADA/Section 504 by requiring them to participate in the dining program without providing them with a dining experience equivalent to that of non-disabled students.

Under the terms of the settlement, the university must not only provide gluten-free options to students with celiac disease, it must develop individualized meal plans for students with food allergies, provide dedicated space for the storage and preparation of food to avoid cross-contamination, display notices regarding food allergies, train food service workers and staff regarding allergies and have a preference for vendors that offer food without allergens. In addition, the university must pay damages in the amount of \$50,000 to students who previously complained but were not given accommodations.

These developments reflect a continuing shift in the government's view of disabled students. The key question for deciding whether there is an ADA/Section 504 violation is whether an institution creates an undue hardship for students. Institutions must ensure that their ADA/Section 504 policies provide students with mechanisms to report disabilities as well as to be evaluated for and provided with appropriate accommodations.

What This Means to You

All institutions of higher education should review their ADA/Section 504 policies to ensure compliance and determine that the policies do not place an undue hardship on students. Additionally, institutions should examine their club, intramural and intercollegiate sports to identify and expand if possible the ability of disabled students to participate. Campuses with mandatory dining plans should begin planning ways in which food service can accommodate students with disabilities, particularly those with food allergies.

Contact Information

If you have questions or require more information about the implications of this rapidly developing trend for your institution, please contact your Husch Blackwell attorney or Hayley Hanson at 816.983.8377.

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