

DISABILITY COMPLIANCE FOR HIGHER EDUCATION

Route to:	

Successful Strategies for Accommodating Students and Staff with Disabilities

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MARCH 2006

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Less dependency on discrepancy model = changes in documentation from K-12

The 2004 reauthorization of the **Individuals with Disabilities Education Improvement Act** is bringing many changes to the way students' disabilities are documented and accommodated in the K-12 system.

IDEA generates "a lot of rich data there that the school systems use," said **Scott Lissner**. He's **Ohio State University's** Americans with Disabilities Act coordinator.

The problem is that the data is in a format that those in the postsecondary setting are unfamiliar with, said Lissner, who

is also a fellow at the John Glenn Institute of Public Policy and Public Service and an adjunct instructor. He was the featured speaker at a recent audioconference on IDEA hosted by **LRP Publications**.

Unless DS offices are willing to modify their documentation requirements and policies, only students who have the financial means to acquire the independent assessment data traditionally required by colleges will be granted accommodations, Lissner said.

Knowing how IDEA requires disabilities to be documented and accommodated in the secondary setting can help you decide how to achieve proper access to students affected by the act once they arrive on your doorstep.

(See **IDEA** on page 4)

MORE ON PAGE 4

- Best practices for evaluating documentation.

Promote disclosure, create connections to help nursing students with disabilities

More students with disabilities are attempting college — and succeeding. But students with disabilities who want to pursue nursing and other medical degrees face special challenges.

They have to work extensively in labs and complete lengthy clinical rotations.

MORE ON PAGE 8

- Inform students, parents, profs. to increase chances of success.

And they have to prove they can be effective caregivers despite any physical, mental or psychiatric limitations.

Donna Maheady, a pediatric nurse and **Florida Atlantic University** instructor, believes students with disabilities in nursing programs probably withhold disclosing their conditions much more than students in other kinds of programs.

As potential caregivers, they may fear being seen as not capable of holding careers in nursing. That means that many students may not get the accommodations that would help them succeed academically.

(See **NURSING** on page 8)

Students with LD need understanding as much as typical supports

H. Lee Swanson is a professor of education at the **University of California-Riverside**. In 2004, he received the **American Educational Research Association's** Special Education Distinguished Researcher award for two decades of research on learning disabilities. He has authored or coauthored more than 250 published works and served as editor of *Learning Disability Quarterly* for 10 years.

Q Do you think colleges do a sufficiently good job helping students with learning disabilities succeed academically?

A In the last 15 years, institutions have become much more sensitive to the needs of students with LD — especially at the junior college level — because that is where so many individuals with LD begin. They're a little more understanding about things like extra time and tutoring and alternative ways of administering tests.

Q What, if anything, still needs to change or improve?

A There are still some individuals who are not terribly informed or have erroneous notions about students with learning disabilities. You encounter some of that, particularly with instructors who simply have not had much experience dealing with disabilities. These people need to understand that students with LD are not lazy or unmotivated. Students can be under the best instructional conditions and still struggle. Instructors need to be made aware of that, because good instruction — good content presentation — is the most important thing for these students.

Q What strategies have you found work best for students with LD in higher education?

A From my synthesis of the published literature on learning disabilities, I've been able to identify some

key ingredients that increase the chances for students with LD for academic success. Among them are:

A well-developed system of feedback gathering between the student and the disability service provider.

A drill repetition component to instructors' teaching methods, as well as sequential exposure to class material.

Pair or small group work, where students aren't having to absorb everything being taught via lecture format.

Strategy development. That is, students should be taught how to approach certain academic tasks, how to manage their time, etc.

A BRIEF CONVERSATION WITH ...

Each month, this regular feature provides you with a brief, yet in-depth, conversation with the leaders in the field of disability services.

Q What about students with LD who have never been diagnosed? Is there anything institutions can do to support these unidentified students?

A There is definitely a segment of students out there that may have gotten by grammar school with decent grades because the demands on them were low. They just sort of passed unnoticed from one grade to the next, but suddenly in college they find that they can't do the work. UC is somewhat sensitive to that. We send out flyers letting students know about the various support services available to them. We also let them know that there is someone they can talk to if they think they may have a learning disability. The key here is information dissemination.

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Learn to crack case law and get the most out of legal decisions

By Ellen Swain, Esq.

Unless you're a lawyer or have had legal training, you might find it difficult to read through book-length legal decisions and filter out what those decisions mean. But as a disability service provider, staying abreast of case law is vital to make sure your institution is in compliance with disability laws. So what are you to do, short of heading off to law school or turning to your institution's general counsel for advice each time an important new legal decision comes out?

Part of my job as a law professor is to help students become proficient legal readers and thinkers. Beginning law students are in the same boat as you — in need of a strategy to attack the dense text and to maximize comprehension. The tips below make up my own toolbox for reading legal decisions. Use them to get the most out of the next one that crosses your desk.

1. Understanding the task: Who is the author and who is the audience?

It takes three branches of government to make law. For instance, while **Congress** passed the Americans with Disabilities Act, the president signed it into law and now the courts and administrative bodies operating under the executive branch interpret the statute. When agencies and courts of varying authority and geographical jurisdiction interpret the law and apply it to the parties' circumstances, lawyers use those written decisions to predict how to apply those principles in future situations.

Judges write their decisions for a specific audience: other lawyers or other judges. The judges assume prior knowledge of the law in question and related laws. As you expand your knowledge of the relevant law, you start to understand the framework of the disability law canon and find that reading cases becomes easier.

2. Identifying elements of a case: All cases possess these building blocks.

Facts: Cases typically start with a recitation of facts. This is the story of the dispute between the parties. As you read, use your imagination to see the picture of what led the parties to this point. Imagine the first conversation between the student who sued and the DS provider. If the case is about the denial of education accommodations, I often make a graphic depiction of the dispute to help me to grasp what happened. I might draw a box and write the word "exam" on it to illustrate a dispute about the denial of a testing accommodation.

Rules of Law: A court will spell out the rule of law upon which it relies. For example, the court will cite a section of the ADA before it interprets the use of the law in the parties' dispute.

• **Holding:** At the end, the court will make a decision, or holding. This is where it tells the parties the outcome of the case. In essence, it applies the facts to the rule. You could graph it as: $F + R = H$.

Reasoning: To reach a holding, the court will wind its way through the application of the rules to the facts. This comprises the reasoning portion. By following the path of the reasoning, lawyers make predictions for how

the law would be applied in a new situation. For example, when you hear from your college's legal counsel that a certain action would not be legal, you're hearing the end product of a process where the lawyer applied a court's prior reasoning to the request of the student in your office.

Dicta: Courts may make comments that exceed the bounds of the actual legal question presented and are not binding law. These comments can give you insight into how the court may make decisions in the future. Think of them as the comments a narrator may make in a work of fiction.

Dissent: Judges do not always agree. When a panel of judges disagrees, the point of view that had the least number of votes becomes the minority viewpoint. The written opinion memorializing that is the dissent. You may find it helpful to read the dissent first. Dissenting justices point to the flaws in the reasoning of the majority, or controlling, opinion.

3. Getting what you need: Employ strategies to maximize comprehension.

Test the logic of the case. Courts make mistakes, and minority viewpoints over time may become the majority viewpoint, or controlling law. As you follow the reasoning, you may encounter steps of logic that may seem forced.

Engage with the text. When you finish a paragraph, paraphrase the meaning. Write notes in the margin or on a separate piece of paper. Avoid the first-year law student mistake of endlessly highlighting each line of text. I affectionately describe this practice as "coloring."

Establish context. It can be helpful to read a synopsis of the case before you read the longer version. This will help you to stay focused as you wind your way through the court's reasoning. The excerpts in this publication or in other training materials can be a good starting point. n

About the Author

A former journalist, **Ellen Swain** is an assistant professor of law at **Vermont Law School**, where she also directs the Academic Success Program, provides disability support services, and teaches law.

A former trial lawyer and judicial law clerk, Swain is licensed to practice law in Vermont and New Hampshire. Her passion for disability law began with her first mentor, mother **Joan Swain**, a polio survivor.

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IDEA (continued from page 1)

The Individualized Education Programs required by IDEA must include, among other things, present levels of performance and a statement of any accommodations necessary to measure academic achievement and functional performance on state and districtwide assessments.

Learn more!

If some of your staff members missed this audioconference, don't fret. *Determining Appropriate Accommodations with IDEA's New Documentation Standards* is available on CD.

To order, call LRP Publications at (800) 341-7874. n

The IEPs will focus less on a concrete diagnosis of disability and more on accommodations that helped mitigate the effects of the substantial limitations caused by those disabilities, Lissner said.

In the past, regulations required a severe discrepancy between intelligence quotient and achievement for a student to be categorized as learning disabled. With the 2004 reauthorization of IDEA,

Congress eliminated the discrepancy model as a requirement of identifying learning disabilities.

While states may still opt to rely on the old model, the new IDEA offers as an alternative a process called Response to Intervention. RTI is the practice of providing high-quality instruction matched to students' needs and using data regarding student learning over time to make instructional decisions.

"This process does not call for a detailed description of what the actual condition is," Lissner said. "With RTI, it's 'We know that we made this change and it helped.'"

As part of the IEPs, students must receive a transition plan by the age of 16, outlining appropriate measurable

postsecondary goals and a summary of transition services needed to assist the student in reaching those goals.

Through a Summary of Performance, high schools must now also provide a summary of students' achievement, including recommendations on how to assist them in meeting their postsecondary goals.

IDEA leaves it up to the states and districts to decide what this document looks like. So colleges will see "tremendous variation in what students go forth with," Lissner said. The DS providers should understand that while the amount and format of documentation provided in the SOPs might be inconsistent from one student to the next, it is still a valid and valuable tool.

DS providers may request documentation addressing the current level of functioning, the criteria used to reach the diagnosis, recommended accommodations and how those accommodations would address the impact of disability. But they must also be careful not to place undue proof-of-burden criteria on students seeking accommodations.

Case-by-case analysis can help you ensure maximum access for students arriving with IDEA documentation, Lissner said. It should include more than looking at medical documentation.

"Look at more than what's on paper, talk to students and be able to say, 'Here's what I don't have that I need to know more about,'" he said.

Lissner stresses the importance of the intake interview and student narrative in making decisions.

"The weight given to the individual's description will be influenced by its clarity, internal consistency, observed behaviors, congruency with formal documentation results and clinical narrative," he said.

Contact Scott Lissner at Lissner.2@osu.edu. n

What must you know to make the best accommodation decisions?

The **Individuals with Disabilities Education Improvement Act** focuses more on accommodating the impact of disabilities than naming the disabilities themselves.

That means that many more students will soon begin arriving with less concrete documentation than you are used to receiving.

In many cases, asking students to present further documentation of disability may place an undue burden on them.

"You need to ask yourself what level of evidence you need to warrant an accommodation," said **Scott Lissner, Ohio State University's** Americans with Disabilities Act coordinator.

The key is not to devalue documentation simply because it does not provide a concrete diagnosis of disability, he said.

Lissner suggests using the **Association on Higher Education and Disability's** best practices for documentation. The seven principles detailed in the document are summarized here:

- All documentation should be reviewed on an individual, case-by-case basis.
- Determination of a disability doesn't require the use of any specific language.
- Presented documentation can be augmented through an interview.
- Determination of accommodations should be an interactive process.
- Documentation of a specific disability does not translate directly into specific accommodations.
- Disability documentation should be treated in a confidential manner and shared only on a need-to-know basis.
- Information on the individual's disability is only one component of providing access.

For more information, go to www.ahead.org/resources/bestpracticesdoc.htm. n

AHEAD replaces LD guidelines with best-practices document

By Lydia Block

The **Association on Higher Education and Disability** has taken its LD Guidelines off its Web site and instead posted a document titled *Best Practices: Disability Documentation in Higher Education*. The new document looks considerably different. What does that mean?

Two AHEAD board members and an attorney explain the change and what it means for disability service providers.

"The guidelines were, in some respects, more restrictive than the Americans with Disabilities and Rehabilitation Acts," says **Jo Anne Simon**, an attorney and expert on disability law.

"They were not working well for many people," she says.

She believes the previous guidelines were misused and misunderstood. They were often treated more as standards, and they were not.

Another problem was that the old guidelines made an effort to quantify things that, in her opinion, cannot always be quantified.

"You cannot quantify how a person learns by numbers," Simon says, explaining that it takes information beyond test scores to make a good diagnosis and ultimately determine eligibility for services.

She uses the example of the discrepancy model, which uses a cutoff score. Educators have acknowledged this, building in the option of an "override" that allows them

to look beyond the scores to make a diagnosis.

The idea of reasonable accommodation is only written in Title I of the ADA and is a reference to the work place, according to **Scott Lissner**, **Ohio State University's** ADA coordinator and secretary of the AHEAD board.

He wants DS providers to understand that "the ADA is not a strict standard. It is a civil rights act and is not that restrictive."

The disability services field has been put in the position of interpreting the law to meet higher education's needs. Lissner believes that the field does not need guidelines, but rather a framework so that consistency can be applied to each student's record on a case by case basis.

When the **Individuals with Disabilities Education Improvement Act** was written — and even its predecessor, Special Law 94-142 — many rules were set in place for the K-12 world.

But "we don't have to accept the K-12 laws as our [postsecondary] reality. We have to decide what we need," he says, adding that he believes "policy around disability issues should be written in broad, flexible language."

That's something the new document achieves, he said. Lissner urges readers to review the document on AHEAD's Web site and consider the seven elements around which the document has been crafted.

To read the document, go to www.ahead.org. n

Lydia Block, an educational consultant with 25 years experience in higher education, provides training and consultation to colleges. You can reach her at LSBlock@aol.com.

New document is an effort to get away from medical model in documentation

Carol Funckes, associate director of the **University of Arizona's** disability resource center and president elect of the **Association on Higher Education and Disability**, knows the challenges that documentation has presented to the field. She's in the trenches herself.

AHEAD's best-practices document was created in an effort to get away from the medical model in documentation. By employing the practices detailed in the document, you can better serve your students.

While researching what should go in the document, Funckes was stricken by the vast differences in how the United States and other countries view disability.

She observed that "other countries seem to be more open and accessible societies than the U.S."

Determination of a reasonable accommodation, in part, should be based on the question, "Does this accommodation compromise a course requirement or infringe on an essential piece of the curriculum?" she says.

The new document encourages use of professional judgment over rigid standards. Further, it asks people to think about how faculty members might be involved as part of this process.

"We don't want to necessarily force faculty members to do something simply because it is legal," she explains. "We want them to think through whether the accommodation infringes on something essential in their goals for the course."

"Sometimes, we have to tell faculty members, 'Can you help me understand why you don't feel that you can provide the accommodation that is being asked for?'" she said.

The new information on AHEAD's Web site is there to make people think and make decisions about what they really need on their own campuses.

The creators of this document agree that this alternative approach may lead to a new, well thought-out rigor for the field, as people move away from relying on guidelines to relying on their own professional judgment. n

Start relationship with new president right to make him an ally

These days, it seems like institutions are always getting new presidents. While it's a president's job to lead his university forward, some fail to recognize the importance of disability services units in achieving that goal.

MANAGING YOUR OFFICE
This regular feature provides you with guidance to help you sharpen your management skills.

Getting off on the right foot with a new president can turn him into an ally for your unit. When you need more staffing or financial resources, he may be more than willing to come through.

The key to building a strong relationship with a new president lies in your ability to be flexible and open-minded, rather than fearing that he will change how things are done.

Here are a few tips from the **International Association of Administrative Professionals** to help get your relationship with your new president off to a great start:

1. Do your homework. Even before your new president walks onto campus, you should do what you can to find out about his leadership style and organizational preferences. Talk to other administrators on campus who have already met him. Ask about his background and what he brings to the university. If he has published any articles or books — particularly on college leadership — look those up as well.

Being prepared before you meet him will help you anticipate his needs and vision for your unit.

2. Assess your unit from top to bottom. Have you kept up with emerging office technologies to help your unit run as smoothly as possible? Do you do a good job training new staff members?

Your new president will be quick to assess whether you are doing the best possible job or simply leading a mediocre unit.

3. Get him background material. Coming into a brand-new situation is difficult when everyone else is already up to speed.

Help your new president by providing him with all the files and information he needs to catch up. He will appreciate it and will view you as a colleague who takes initiative.

4. Give your image a touch-up. The new president's first impression of you will be based on how professional you appear, so make sure that your work space reflects a commitment to your position. Eliminate unnecessary clutter

Know your CEO's priorities

Establishing a good relationship with your new president right away requires that you learn his leadership style and priorities quickly.

You may want to set an appointment with him early on to clarify his expectations, allow him to ask questions about your unit, and determine how the two of you can work together to better serve your students.

During your first meeting, take time to give him a tour of your unit or office. Make sure to introduce him to staff and notable individuals in your unit.

Pay attention to his verbal and nonverbal cues. That's a great opportunity to assess where his interests and priorities lie.

It can give you the encouragement you need to make certain requests, like allocating more office space for your expanding unit.

Also try to assess his communication preferences. Discern if he is more comfortable discussing touchy issues face-to-face or via e-mail.

This will help the two of you create channels of communication.

As important as knowing his communication preferences is understanding his problem-solving style. Determine if he is methodical and pragmatic or intuitive when making choices.

Then cater to that style by presenting information in the manner that allows him to look at the bottom line quickly and think about exactly how students feel about a new program or initiative. ▢

ter from your office. Dress sharply, even if your unit is typically a pretty casual place. The new president's immediate impression of you will go a long way in setting the tone for the rest of your working relationship.

5. Call and introduce yourself. Extend your assistance before the new president ever meets you face-to-face. Take the opportunity to welcome him and set up a meeting between the two of you.

Ask if there's anything in particular he would like you to prepare in advance, such as number of students registered with your unit.

6. Be optimistic. Perhaps your relationship with your past president was rocky. Maybe he downplayed your unit's contributions.

Don't transfer those feelings onto your new president to avoid creating an adversarial feeling. Rather, realize that this is an opportunity to start fresh.

Source: Dartnell Corporation, an LRP Publications company. Call (800) 341-7874 for more information. ▢

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Students with disabilities encourage others to tackle college

An innovative program at the **University of Liverpool** allows students with disabilities and learning difficulties to reach out to their peers so they can educate one another and provide support.

Such a program might help you give your students a level of support that you alone cannot to help them succeed and retain them.

Peer Advocacy Changing Things Together is aimed at helping people with disabilities achieve their goals through education.

The program helps students learn the importance of self-advocacy, independent living and equal opportunities.

Participating students also learn how to teach these skills to others who have similar disabilities to their own.

The program is organized by the Moving on with Learning project, which is part of the university's Department of Sociology, Social Policy and Social Work.

To learn more, go to www.liv.ac.uk/newsroom/press_releases/2005/11/moving_on_with_lear.htm. n

Student group is putting spotlight on disability issues

Some members of a student group called Beyond Compliance Coordinating Committee wants **Syracuse University** to include students with disabilities in its definition of the term "diversity."

Other goals of the organization include reshaping the university's idea of disability, raising awareness, hiring faculty and staff with disabilities and increasing access for students with disabilities.

If you're looking for ways to bring more attention to disability issues on your campus, starting a similar student group might be the key.

The Syracuse organization was founded by a third-year doctoral student in disability studies. Group members meet with the director of disability services biweekly to discuss how those goals can be met.

For more information about the organization and its events, log on to http://soeweb.syr.edu/thechp/beyond_compliance.html. n

More options becoming available for developmentally disabled

Until recently, it was widely assumed that the developmentally disabled had no real hope of attaining a formal education beyond high school. But in recent years, the number of colleges and universities implementing

programs for these students has grown dramatically.

While curriculums vary, most have a dual focus on academics and on independent living skills.

A similar program could help you compete with the more than 90 such programs already in existence throughout the country.

George Mason University's Learning Into

Future Environments program is one example. It is administered by the Helen A. Kellar Institute for Human Disabilities, a part of the university's College of Education and Human Development.

LIFE students are traditional age students. They attend classes on the GMU campus, which provides them with a college environment.

Although the four-year LIFE program does not award academic degrees, students who successfully complete the program receive certificates.

For more information on George Mason's program, go to www.gmu.edu. n

ETC.

A roundup of news of interest to disability service providers. To contribute an item to ETC., you can e-mail Editor Cynthia Gomez at cgomez@lrp.com.

Possible risks of ADHD drugs prompts new study

Reports of sudden deaths, strokes, heart attacks and hypertension in people taking drugs to treat attention deficit hyperactivity disorder are spurring a new government study into the medications' safety.

Spending on ADHD drugs soared from \$759 million in 2000 to \$3.1 billion in 2004, according to **IMS Health**, a pharmaceutical information and consulting firm.

With an increasing number of students with ADHD enrolling in colleges everywhere, these reports may be cause for concern.

The **Food and Drug Administration** said it had received reports of what it called "serious adverse events" — including deaths — in association with use of the drugs, according to media reports. It announced that it will investigate the reports.

Health Canada, the ADA's Canadian counterpart, yanked the ADHD drug Adderall XR from the market for six months last year in response to reports of 20 sudden deaths and 12 strokes in adults and children who have used the drug.

In the United States, reports of college students — with and without ADHD — using the drug and others like it to boost their concentration has been on the rise in recent years.

Letting students know about these possible risks could stem the illegal use of ADHD drugs as a concentration tool. n

NURSING (continued from page 1)

"They don't want to be seen as the bipolar nursing student, or the nursing student in the wheelchair," Maheady said. She is also the founder and president of an online, nonprofit resource network called **ExceptionalNurse.com**. "They fear that they won't be accepted and that their professors won't be as supportive."

So what can you do to help these students? Maheady, whose dissertation on these students eventually grew into a book, *Nursing Students with Disabilities Change the Course*, has some ideas.

"There are literally no resources out there for nursing students with disabilities. So if you're a high school student in say, Iowa, thinking about pursuing nursing in college, you think you're the only one in the world."

This mentality often follows students to college, so they isolate themselves from their classmates and from available resources.

Giving your unit's services proper visibility and advocating for disclosure is key to getting students to disclose, she said. If your institution or your nursing college has a newsletter, consider making frequent contributions.

"Let students know that whatever issues they have as a result of their disabilities are not going to go away. If not this term, perhaps they will cause problems the following semester. Even if they got through college without accommodations, they might need some once they get to work in the field. It's better for them to find out what works and what doesn't in terms of accommodations early on."

They don't have to be lengthy writings, just little notes here and there letting students know you are there if they need your services.

Because students may have gotten used to sitting back and letting resources come to them in high school, this is a way to let them know that if they want accommodations, they have to request them.

You can use the opportunity to highlight accomplishments of other nursing students with disabilities. This gives students encouragement and is also a way to let professors know that students with disabilities are capable of succeeding academically.

Once students have disclosed, it's vital to connect them with others. Maheady said students, parents and disability providers can use her Web site to find other nursing students with disabilities, graduates and working nurses with disabilities to serve as mentors.

These individuals can act as role models and support systems. But they can also provide students with a realistic view of what pursuing their dreams might entail.

"These are people in their corner who will provide encouragement and inspiration, but who will be honest too and won't sugarcoat the kinds of struggles that these students can expect to face."

She also suggests partnering them with someone from their classes — disabled or not — who can provide emotional and academic support.

For more information, go to www.exceptionalnurse.com or e-mail Donna Maheady at exceptionalnurse@aol.com.

Inform students, instructors, parents to give students the best chance at success

Despite the enormous amount of headway students with disabilities have made in proving that they can succeed in higher education and in careers, they still face a number of stigmas. For disability service providers, this presents three major problems.

First is that students may be reluctant to disclose their disabilities, even though they could greatly benefit from accommodations. Secondly, those who disclose may find that some professors are not as supportive of them as they are of other students.

Third is that parents of students with disabilities are used to being their child's voice. So you not only have to help the students, you have to deal with their parents, who inadvertently are obstacles in helping students develop self-advocacy skills.

So what are you to do? **Donna Maheady**, a pediatric nurse, **Florida Atlantic University** professor and mother of a teenager with a disability, offers the following advice for dealing with students, professors and parents:

❖ **Explain the necessity of disclosure to students.** Disclosing their disabilities means that students get accom-

modations that can help them succeed. But it's also vital for ensuring patients' safety once students begin clinical rotations and when they eventually enter the workforce. Students may not realize that they are not the only ones they may be hurting by not disclosing a disability.

❖ **Inform instructors about how much students with disabilities can accomplish.** Maheady suggests informing them about how accommodations and new advances in assistive technologies can mitigate the effects of disabilities. It also helps to pass on the occasional newspaper or magazine article highlighting the accomplishments of students and individuals with disabilities.

❖ **Tell parents that being overly intrusive hurts their children.** Consider sending parents of new students a letter at the start of the year. Let them know what's the best way to reach you and when they should contact you — and when not to. Explain that college is a time for students to stop relying on their parents and become their own advocates. Students won't experience the needed growth if they rely solely on their parents to be their champions. n

Use orientation to screen athletes for attention disorders

The perfect opportunity to screen athletes for possible attention deficit hyperactivity disorder is when they first come to campus, according to **Miguel A. Franco**, a staff psychologist at the **University of Notre Dame**.

Franco specializes in the developmental transition and performance enhancement of athletes. He is a certified member of the **National Association of Sport Psychologists**.

It's important to find out right away if athletes have learning disabilities so they can receive the accommodations they need. Given their hectic schedules and the time management challenges they face, such accommodations can make the difference between their being eligible or ineligible to compete in intercollegiate sports.

As you know, incoming freshmen athletes usually meet with team physicians and take physical examinations prior to participating in their chosen sports.

"This process provides a captive audience that can be screened for concentration problems," Franco says.

Quite often, students, especially those from lower-income neighborhoods, have never properly been tested for learning disabilities like ADHD, he says.

Once a disability has been documented, college administrators and coaches can set up structures to accommodate their special needs.

These accommodations may include — but are not limited to — having more time to take exams; having someone to take notes for them; and being able to take exams in environments where they are less likely to become distracted.

The testing doesn't have to be elaborate. In fact, there is no one "test" that identifies ADHD.

Instead, there are a variety of simple questionnaires medical experts have individuals complete. Some focus on past academic performance in the most difficult high school classes.

Given that social factors might discourage some athletes from answering honestly, medical personnel can also administer additional tests to ascertain concentration lapses or concentration fatigue.

Those who self-identify as having had trouble with past

courses can be flagged as at risk for a difficult transition into college.

Then you can let their assigned academic counselors know even though there's no diagnosis at this point.

The counselors can provide the advice and support the athletes need to meet the demands of the academic workload that awaits them in their first semester.

However, if athletes continue to struggle academically at the end of their first month despite using the resources offered to them, they should be referred to a psychologist who can ascertain if there is a psychological problem.

If the medical expert determines that ADHD is in fact present, Franco says the following steps may be warranted:

Notify the coach with the athlete's consent. The coach can ensure that the student is putting academics ahead of athletic obligations.

Consult with a university physician, preferably a psychiatrist, to discuss possible medical treatment options.

Have the athlete trained in the intrapersonal skills

that are most often adversely affected by ADHD by a psychologist from the counseling center or a master's degree level counselor.

Tell the athlete's academic counselors of this process so they can provide informed academic counseling and coordinate tutorial services if needed.

Set up a meeting with the athlete, his coach, a psychological counselor, academic counselor and physician.

"Such a meeting is imperative at the beginning of the accommodation and support process to see that efforts are coordinated, lines of communication are determined, and the boundaries of confidentiality are established," Franco says.

It is important to note that coaches should not be trained or expected to diagnose ADHD in players, he said.

"However, they do need to learn how to coach an athlete diagnosed with ADHD," Franco said.

"A knowledgeable psychologist can provide such a service," he added.

This strategy can increase the likelihood that athletes with ADHD will succeed academically. n

Athletes may try to hide their ADHD

Varsity athletes may try to hide the fact that they have ADHD because they do not want to deal with the stigma of having a psychiatric disorder, says **Miguel A. Franco**, a staff psychologist at the **University of Notre Dame**.

"They do not want to be perceived as either mentally weak or defective," he adds.

Some athletes would rather suffer in silence and struggle mightily rather than run the risk that a coach would think they do not have what it mentally takes to be on the playing field.

The biggest obstacles these athletes have to face is their own egos, Franco says. It is important that they be informed of how precarious their futures can become if they don't inform school administrators that they will need help.

And they need to understand that they not only hurt themselves, but also may hurt their team if they are declared ineligible to compete as a result of poor grades, he says. n

AT A GLANCE

A review of this month's OCR letters

The Department of Education's Office for Civil Rights investigates complaints under Title II of the ADA and Section 504. These letters represent its findings.

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Accessibility

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- A student alleges that a university's fine arts program was physically inaccessible 11

Admissions

- A complainant says a college application discriminated by asking applicants if they have any disabilities 12

Hostile Environment

- A student claimed a professor kept her from participating in class discussions because of her disability 12

Policies & Procedures

University finds shelter in the facts; student didn't follow procedures

Case name: Letter to: University of Notre Dame, No. 05-04-2113 (105 LRP 35290) (OCR 2004).

Ruling: The **Office for Civil Rights** determined there was insufficient evidence to support a student's allegation that the **University of Notre Dame** discriminated against him in violation of Section 504 of the Rehabilitation Act when it denied him the housing accommodation he requested.

What it means: Institutions must make reasonable modifications to their policies and procedures to afford students with disabilities the opportunity to engage in their programs and activities, including housing. Universities may adopt reasonable procedures for students with disabilities to follow when requesting accommodations.

Summary: A student failed to follow the proper procedures when requesting a housing accommodation, so OCR concluded there was not enough evidence to find the university discriminated on the basis of his disability.

The student alleged Notre Dame denied him an accommodation for his disability, anxiety disorder, when it turned down his request for a single room in undergraduate housing.

Although there were inconsistencies in the evidence, it became clear to OCR that the student or his father con-

tacted various personnel at the university about the student's desire for a single-room housing arrangement.

In some instances, the student or his father stated the request was based on disability. However, university officials consistently directed the student and his father to bring their housing-related request to the housing office personnel. OCR observed Notre Dame procedures specifically require requests for housing accommodations be in writing and be accompanied by supporting documentation.

The housing director and associate director evaluate the disability-related housing requests.

In this case, they stated that the housing office never received a written or oral request for a housing accommodation from or on behalf of the student. Nor did he receive the required supporting documentation. Nevertheless, OCR learned that the student was offered a private bedroom in a townhouse but refused the offer.

The student did not follow appropriate procedures to request a housing-related accommodation. The evidence did not support his claim the university subjected him to discrimination in violation of Section 504. n

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*Accessibility***University promises to address accessibility issues on campus**

Case name: *Letter to: University of Massachusetts-Amherst*, No. 01-04-2048 (105 LRP 35298) (OCR 2005).

Ruling: Based on the **Office for Civil Rights'** review of the accessible parking and routes to certain buildings on the **University of Massachusetts-Amherst** campus, it identified a number of compliance issues. In response to OCR's review, the university signed a Voluntary Resolution Agreement.

The agreement provided assurances that the university would address OCR's accessibility concerns no later than Oct. 31, 2006.

What it means: The regulations under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act provide generally that no qualified individual with a disability shall be 1) excluded from participation in or denied the benefits and services of, programs or activities; or 2) otherwise subjected to discrimination because a university's facilities are inaccessible.

Summary: The university agreed to address OCR's disability compliance concerns no later than Oct. 31, 2006.

Accordingly, OCR closed the investigative portion of the complaint.

But the office stated that it would continue to monitor the university's implementation of the resolution agreement.

The student alleged the university discriminated against her on the basis of her disability, multiple sclerosis. She claimed that it failed to provide her with adequate physical access to its programs and activities. Her complaint included allegations that there was no parking accessible to persons with mobility impairments.

OCR's review of the accessible parking and accessible routes to the DuBois Library and to Machmer Hall identified a number of compliance concerns.

For example, some accessible routes had slopes that were too steep and, therefore, did not comply with federal standards.

OCR also noticed ramps that lacked handrails and an accessible route that lacked the proper signage.

In a voluntary resolution agreement, the university promised to remedy the compliance issues.

Based on the signed agreement, OCR determined the university was meeting its obligations under Section 504 and Title II. n

*Accessibility***Quick response to concerns close accessibility case**

Case name: *Letter to: Western Illinois University*, No. 05-05-2037 (105 LRP 35272) (OCR 2005).

Ruling: The **Office for Civil Rights** closed a disability discrimination matter against **Western Illinois University**. A student withdrew his complaint after WIU took immediate action in response to his allegations.

What it means: By responding quickly to student concerns, institutions can avoid OCR investigations, as well as costly litigation.

Summary: OCR closed a complaint against WIU when the student informed the office that the university had remedied his accessibility concerns.

The student complained the university was denying him access to the fine arts program in violation of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

There were a number of accessibility barriers to the program. Classes were held on the second floor of Brown Hall, which required students with disabilities to use a freight elevator. There were also obstructions to maneuverability in the hallway, among other things.

On March 9, 2005, the student informed the OCR staff that the university had resolved his accessibility concerns.

It removed the accessibility barriers to the fine arts program at Brown Hall by relocating the two classes he was enrolled in to accessible locations.

The student indicated that based on that development he wished to withdraw his complaint against WIU. Accordingly, OCR closed its files on the matter. n

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Source Code: LR0607-44

*Admissions***College agrees to omit 'special needs' inquiry from admission materials**

Case name: *Letter to: Manchester College*, No. 05-05-2032 (105 LRP 35274) (OCR 2005).

Ruling: An individual complained to the **Office of Civil Rights** that **Manchester College** discriminated against applicants with disabilities. The college immediately entered into an agreement with the complainant. OCR found that the agreement, if implemented, would resolve the issue raised in the complaint.

What it means: By responding quickly to complaints of disability discrimination, institutions can avoid OCR investigations, as well as costly litigation.

Summary: OCR concluded that the agreement between the college and the complainant resolved the allegation of disability discrimination. It closed the complaint.

The complainant alleged the college discriminated against applicants with disabilities because its undergraduate application materials contained a preadmission inquiry about whether the applicant has a disability.

As part of the application process, applicants were required to have their high school guidance counselor com-

plete a Guidance Counselor Reference Form and send it to the college's Office of Admissions. Item five on the form asked the counselor to identify the applicant's "special needs."

The college entered into an agreement with the complainant.

It promised to immediately omit language from its admissions materials that solicited information regarding an applicant's special needs. OCR determined the agreement with the complainant resolved the allegation of disability discrimination.

Since OCR was not a party to the agreement, it stated that it would not monitor its implementation. It explained that if the terms of the agreement were not implemented, the complainant had the right to file a new complaint.

"Consistent with our procedures, however, we would not investigate the failure to implement the agreement, rather we would evaluate the new allegation(s) of discrimination to determine the appropriateness of further efforts by OCR." n

*Hostile Environment***OCR investigates student's hostile learning environment claim**

Case name: *Letter to: Regis College*, No. 01-04-2044 (105 LRP 35296) (OCR 2005).

Ruling: The **Office for Civil Rights** determined there was insufficient evidence to support a student's claim that **Regis College** violated Section 504 of the Rehabilitation Act by creating a hostile learning environment.

What it means: A hostile environment is created by harassing conduct that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual with a disability to participate in or benefit from a college's program.

Summary: A student alleged, among other things, that her professor created a hostile learning environment based on her disability, Marfan syndrome. OCR found no evidence to support the student's allegation.

The student claimed her professor made "dismissive remarks" and "cut me f" during course discussions because the professor knew her disability made her slow to respond to questions.

The student explained to OCR that symptoms associated with Marfan syndrome include fatigue and an increased susceptibility to stress, both of which may affect response time.

She further asserted that the professor was aware of her disability and the symptoms associated with it.

The student informed OCR she shared her concerns with the professor, but the professor did not respond adequately to them.

To the contrary, the professor told OCR she had been unaware of the student's disability. She also said that she always encouraged class participation in her course and never made dismissive remarks to the student. Nor did the professor recall the student expressing concern to her about the alleged remarks.

According to a student witness, the professor "gave [all students] the floor" when speaking and was not dismissive or demeaning to any students.

OCR also reviewed anonymous student evaluations of the professor's performance and found they were uniformly positive.

Based on the record, OCR concluded the evidence did not support a finding that the professor created a hostile learning environment for the student in the classroom.

"There was no indication from the witness provided by the complainant ... that the professor had engaged in verbal conduct in the course that was sufficiently severe, pervasive or persistent so as to interfere with the ability of the complainant to participate in class discussion," OCR stated. n

AT A GLANCE

A review of this month's lawsuits and rulings

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Definition of Disability

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Accommodations

University eliminates mold, accommodates employee

Case name: *Crumel v. Hampton University*, No. 4:05cv31 (105 LRP 62043) (E.D. Va. 2005).

Ruling: A tutor coordinator was unable to show **Hampton University** failed to accommodate his asthma and allergies. The **U.S. District Court, Eastern District of Virginia** granted judgment for the university.

What it means: A college or university is not required to implement the specific accommodation requested by an employee.

Rather, it may provide the accommodation of its choice, so long as the modification allows the employee to perform his essential job functions. A university is not required to tear out walls if a mold problem can be alleviated through other actions.

Summary: A tutor coordinator sued the university, alleging that it failed to accommodate his allergies and asthma when it refused to move him to another work location.

He also claimed that the university failed to fully implement the recommendations presented in an air quality report.

The District Court ruled the university provided the coordinator with reasonable accommodations that allowed

him to perform his job duties. The coordinator complained to the university that mold in the student services center aggravated his conditions.

The university denied his request to be moved to another building, citing his need to be at the center where his supervisor worked and the student records were located.

Evidence showed that the university took all the steps recommended in the report, short of tearing down walls.

The university replaced ceiling tiles, wood surfaces and wall surfaces, controlled humidity and purchased air purifiers.

Repeated tests showed that the student center was not grossly contaminated with mold and indicated that the air quality was within acceptable limits. The coordinator's claim further failed because he was unable to show he suffered from a disability.

He claimed that his allergies and asthma substantially limited his abilities to work and breathe.

However, the manager's request to work in a building other than the student services center showed he was able to work, just not in the center.

The inability to work in one particular location does not evidence an inability to work in a broad class of jobs.

Although he claimed to have breathing difficulties from the allergies and asthma, these were resolved by the use of medication. n

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*Accommodations***Officer was not entitled to permanent light-duty position**

Case name: *Batiste v. Cuyahoga County Sheriff's Department*, No. 85769 (105 LRP 58075) (Ohio Ct. App. 2005).

Ruling: The **Ohio Court of Appeals** upheld judgment for the **Cuyahoga County Sheriff's Department**. A former corrections officer failed to show the department violated state disability discrimination law when it denied her a permanent light-duty position.

What it means: An employer is not required to permanently reassign a worker's essential job functions to accommodate the worker's disability.

If the employee's position prior to her injury required a certain level of physical fitness, the employer is not required to provide her with a permanent light-duty assignment if she is no longer able to perform the physical duties essential to her position.

Summary: A corrections officer sued the department, alleging it improperly discharged her after a doctor determined her on-the-job foot injury was permanent.

The Court of Appeals agreed with the lower court that the officer was unable to perform her essential job functions as a corrections officer.

The corrections officer's job description required physical fitness as a prerequisite for the position. Also, an officer was required to be able to perform the duties of a number of positions.

While the officer admitted she was unable to perform all the essential functions of a corrections officer, she argued she should have been allowed to remain in the access controller position she worked in after her injury.

However, the collective bargaining agreement governing her employment described this position as an alternative work assignment meant for workers who needed light-duty assignments while recovering from on-the-job injuries.

The CBA indicated the position was intended to be a temporary assignment so that it would be available to other officers who were injured.

Therefore, permanent reassignment to this position was not a reasonable accommodation for her foot impairment, the court ruled. n

*Immunity***Acceptance of federal student aid subjects university to Rehab Act**

Case name: *Bennett-Nelson v. Louisiana Board of Regents*, No. 03-31198 (105 LRP 58004) (5th Cir. 2005).

Ruling: The **5th U.S. Circuit Court of Appeals** ruled **Louisiana Tech University** waived its 11th Amendment immunity to **Rehabilitation Act** claims when it accepted funds under the Federal Work Study and Pell Grant programs. The 5th Circuit reversed the lower court's judgment for LTU and allowed two students with hearing impairments to continue with their claims that the university failed to provide educational aids and services.

What it means: Although funds from the Federal Work Study program and Pell Grant program are intended to benefit students, a university's acceptance of such funds constitutes a waiver by the university of its 11th Amendment immunity to the Rehabilitation Act.

Because these funds are distributed through the university, they are used by students for educational purposes, and they benefit the university by supplementing the university's financial aid, they constitute federal financial assistance to the university.

Summary: Two students with hearing impairments sued Louisiana Tech University. They alleged that it violated the Rehabilitation Act and Title II of the Americans with Disabilities Act by failing to provide education aids and services, including sign language interpreters and note takers.

The university argued the students could not maintain their claims because the 11th Amendment shielded it from liability under both acts.

The 5th Circuit reversed the lower court's decision in favor of the university and sent the case back for further consideration of the student's Rehabilitation Act claims.

It ruled the university waived its 11th Amendment immunity when it accepted federal financial assistance in the form of Federal Work Study and Pell Grant funds. The university argued providing such funds to students did not make the university a recipient of federal funding. The 5th Circuit disagreed.

Because these funds were distributed through the university and were earmarked for educational purposes, the university was an intended recipient of federal financial assistance. The funds benefited the university because they enhanced its ability to enroll students with financial needs.

Because the rights and remedies available under Title II are identical to those provided by the Rehabilitation Act, the 5th Circuit declined to decide whether Title II constitutes a valid nullification of the state's 11th Amendment immunity. n

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*Discrimination***Janitor scores trial for alleged termination**

Case name: *Boyd v. Province Healthcare Co., Inc.*, No. 04-0825-WS-D (105 LRP 59669) (S.D. Ala. 2005).

Ruling: The **U.S. District Court, Southern District of Alabama** allowed a janitor to move forward with his claim that a hospital terminated his employment for discriminatory reasons.

What it means: If a college or university claims that it believed in good faith that an employee was not terminated but resigned his employment, evidence of the events surrounding the alleged resignation must support this conclusion. The institution cannot avoid liability by asserting a belief the employee quit without support showing this could be true.

Summary: A hospital janitor sued his former employer, alleging it terminated him for discriminatory reasons in violation of the Americans with Disabilities Act. The District Court ruled there was sufficient evidence to allow a jury to decide the janitor's claim.

The janitor, who lost his lower right arm in a work-related accident, claimed he was instructed to clean patient rooms by himself.

When he protested that he would be physically unable to perform duties such as changing sheets, he alleged his supervisor took him into a meeting where he was terminated.

The hospital claimed the janitor said he would quit before he performed women's work.

It argued the supervisor could not have terminated the janitor for discriminatory reasons because the janitor quit at this meeting.

Because the janitor's evidence showed the hospital demanded his beeper and badge after he stated he was unable to perform the duties, a reasonable jury could find the hospital did not honestly believe the janitor resigned.

Instead, it terminated his employment and created the story that he resigned afterward. n

*Definition of Disability***Worker's compensation rating not enough to show ADA disability**

Case name: *Nickola v. Storage Technology Corp.*, No. 04-1403 (105 LRP 58842) (10th Cir. 2005).

Ruling: A worker failed to show her wrist impairment, arising from an on-the-job injury, met the requirements for an Americans with Disabilities Act disability. The **10th U.S. Circuit Court of Appeals** upheld the lower court's judgment for her former employer.

What it means: A workers' compensation board determination assigning an employee a disability rating will not automatically establish she is disabled for ADA purposes.

While an employee may be entitled to workers' compensation benefits because she is unable to perform her former position, the ADA requires she be unable to perform a class of jobs or a broad range of jobs in various classes to be substantially limited in her major life activity of working.

Summary: A worker sued her former employer, alleging that it discriminated against her wrist impairment, which arose from an on-the-job injury.

In an unpublished decision, the 10th Circuit ruled the worker's wrist injury did not meet the ADA's standard for a disability.

The worker argued that her wrist injury substantially

limited her major life activity of working. She relied on her doctors' notes indicating she could not return to her manufacturing position.

She also argued the workers' compensation board's determination that her injury resulted in an 18 percent permanent partial disability demonstrated she was disabled.

However, neither the doctors' reports nor the board's determination were enough to establish an ADA disability. The worker failed to show her impairment substantially limited her ability to perform a broad class of jobs.

Her evidence spoke to her inability to perform her former manufacturing position. She admitted her wrist injury did not prevent her from performing other activities.

The worker also claimed the employer regarded her as disabled because of her wrist injury. She said the employer failed to provide her with an alternative position after she was released to return to work.

This argument was unsuccessful because evidence showed the employer offered the worker a business analyst position, which she declined. n

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DISABILITY COMPLIANCE FOR HIGHER EDUCATION

QUICK STUDY

An overview of the key topics faced by disability service providers with citations to noteworthy cases, statutes, regulations and additional sources.

Athletics and Disabilities

Overview

More students with disabilities are participating in college and university athletic programs. In addition to the Americans with Disabilities Act and the Rehabilitation Act, administrators must pay attention to **National Collegiate Athletic Association** rules when it comes to students engaging in competitive sports. And they must balance access with safety when it comes to intramural and other noncompetitive athletic programs.

What you should know

- The ADA does not require the NCAA to waive its 75/25 rule indefinitely. Athletes must earn at least 75 percent of the minimum number of required semester hours during the academic year, with no more than 25 percent over the summer.

- To overcome the 11th Amendment immunity hurdle, a claimant must show that his claim involves a fundamental right. Playing collegiate sports and receiving a scholarship for playing sports are not fundamental rights.

- In determining a student's status as qualified to compete under NCAA rules, certain courses designed for students with learning disabilities may be counted toward curriculum requirements.

- Colleges must make an individualized determination that a student with a disability is not qualified to participate in physical education classes because of unsafe behavior.

Key Rulings

- A court denied the request of a student with learning disabilities for an injunction against the National Collegiate Athletic Association, the Pacific-10 Athletic Conference, and **Washington State University** because he had already received two waivers of the 75/25 rule as an accommodation. The student was declared ineligible to play football after failing to earn enough credits during the academic year to comply with the rule, which states that athletes must earn at least 75 percent of the minimum number of required semester hours required during the academic year, with no more than 25 percent of the hours earned over the summer. *Mathews v. NCAA*, No. CS-99-0264-WFN (102 LRP 34459) (E.D. Wash. 1999).

- A court denied a former student's request to amend his complaint to allege Title II claims against the **University of North Carolina at Greensboro**. The court ruled that such an amendment was futile. The 11th Amendment barred the student's claim that the university dismissed him from the school's golf team because of his obsessive-compulsive disorder. *Costello v. University of North Carolina at Greensboro*, No. 1:03CV1050 (105 LRP 32080) (M.D.N.C. 2005).

- A student with a learning disability sued the NCAA to prevent it from declaring him not qualified to compete as a member of the **University of Washington** football team. The NCAA agreed to amend its bylaws to allow certain courses designed for students with learning disabilities to be counted toward the student's core curriculum requirements. *Butler v. NCAA*, No. C96-1656L (102 LRP 34461) (W.D. Wash. 1999).

- A student with autism was denied participation in an aquatics class. Her mother complained that the **Glendale Community College** discriminated against her daughter on the basis of her disability. The **Office for Civil Rights** determined that the college made an individualized, fact-specific determination that the student was not qualified to participate due to significant unsafe behavior exhibited over a two-month period. *Letter to: Glendale Community College*, No. 09-02-2148 (103 LRP 11601) (OCR 2003). n

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