

# **Salome Heyward & Associates Conference Services**

**ADA Compliance**

**In**

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**Presented by**

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# Access to Technology

South Carolina Technical College  
System, Louisiana Tech University,  
and the University of Montana

# The Compliance Challenge

- An institution wide focus rather than an individual accommodation request approach is most effective.
- Institutions are obligated to provide equal access to all technology based services, activities and information. This includes: informational websites, course management systems, student portals providing access to e-mail systems, registration services, grades, calendar events, etc...
- Individuals with disabilities should have “the same ease of use, ready access, completeness of information, functionality and timeliness of response” with respect to technology based programs, services and activities.

# Student Issues

- Offering students with disabilities the option to take traditional classes on campus as an alternative is not considered providing the individual other accessible means because such an option does not provide equivalent access (i.e., it lacks the convenience and flexibility of online education).
- Students should not be placed in the position of exploring available academic adjustments, aids and services and determining how to access the course themselves. The fact that it is an online program does not make the student solely responsible for solving the problem. Institutions must assign individuals with appropriate expertise and authority to address access concerns and questions in a timely manner.

# Student Issues (cont.)

- If the student's need and difficulty is clearly apparent, he or she does not need to make a specific request for assistance to obligate the institution to explore an effective way to meet the need.
- A faculty member's refusal or assertion of impossibility is not sufficient absence full exploration of the availability of academic adjustments and/or auxiliary aids and/or alternatives for providing access. Debates about the feasibility of accommodations and/or who is responsible for providing them should not leave students caught in the middle.

# Student Issues (cont.)

- Student preference does not solely control. The obligation is to provide “equally effective” and “necessary” adjustments, aids and services.
- An effective accommodation may require the student to use means or measures different or in addition to those used by nondisabled students or to work with or consult with others
- The key is whether the student has an equal opportunity to obtain the same benefit, result and/or level of achievement...

# The lessons of Kindle, LSAC, Goggle Mail, et al...

- **Standard:** “[‘M]ay not, directly or through contractual, licensing, or other arrangements... provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided others.”
- Their products and services are designed for the average, unexceptional user and generally compliance and access is way down the list.

# The lessons of Kindle, LSAC, Goggle Mail, et al... (cont.)

- The question of access is always on the table. Institutions are obligated to fully and comprehensively explore the issue of access for users with disabilities prior to entering into contracts or arrangements for which access is critical to participation.
- Those knowledgeable about disabilities and fashioning accommodations should be a part of the decision-making process.
- If insurmountable barriers to access exist, alternative means of providing access must be identified that afford individuals with disabilities “an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as [users] without disabilities.”



# **Penn State, Louisiana Tech, South Carolina, et.al.**

Adopt a policy addressing the use of electronic and information technology (EIT) institution-wide that establishes the institution's commitment to accessibility. The standard should provide that individuals with disabilities must be afforded "an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as [users] without disabilities.

# **Penn State, Louisiana Tech, South Carolina, et.al. (cont.)**

Conduct an audit of all electronic and information technology (EIT) to determine accessibility and usability. The audit should include: websites, documents posted on websites, application processes, library services, learning management systems, access to classroom podiums, distance learning – online programs, registration systems, personal response systems, videos, banking websites and ATM access.

# **Penn State, Louisiana Tech, South Carolina, et.al. (cont.)**

Develop and implement a policy and procedures regarding procurement that requires the institution to purchase or recommend only EITs that will provide “the same programs, benefits, and services as they do to individuals without disabilities, except when it would fundamentally alter a program or when it is not technically feasible to do so, in which case the procedures will require the [institution] to provide accessible alternate EITs.

# **Penn State, Louisiana Tech, South Carolina, et.al. (cont.)**

- Make course management systems, learning platforms and library database a priority.
- Identify barriers to access, develop a plan for attacking the deficiencies, and provide meaningful funding for the initiative
- Make faculty a part of the solution by providing training, guidance and direct support for course development
- Once insurmountable barriers are identified adopt alternative methods to providing access.

# **Penn State, Louisiana Tech, South Carolina, et.al. (cont.)**

- If you don't have an ADA/504 Coordinator or an administrator to coordinate the implementation of the Technology Accessibility Policy - Get one!
- Make it an IT issue and responsibility and expand the expertise of the IT staff, if necessary.
- Use available website accessibility evaluation software to identify barriers regarding images, graphics and audio presentations.

# Faculty Participation

A discussion of the proper role of  
faculty in the accommodation  
process

# Key Compliance Issues

- Balancing Competing Principles
- The Deliberative Process
- It's about “Meaningful Access”
- The Role of Faculty
- Legitimate Concerns
- Compliance Mistakes

# You Must Remember This...

- Basic Misunderstandings
  - Two Equally Important Principles
  - Asking the Right Question
  - Striking the Balance
- The Deliberative Process
  - The Role of Disability Service Providers
  - Determining Essential Requirements
  - Exercise Due Diligence



# The Goal of Accommodation

Provide “meaningful access” through:

- Equally effective access to programs, benefits and services
- Offering the same range of services and options/choices
- “The most integrated setting appropriate”
- “Effective communication”

# The Role of Faculty

- Articulate legitimate academic standards and requirements;
- Control and manage the classroom environment;
- Facilitate the accommodation process;
- Adhere to the institution's process and procedures; and
- Respect the expertise of disability specialists

# Legitimate Concerns & Issues

Academic principles that are entitled to protection include:

- The qualified status of students,
- Academic or program integrity,
- The provision of extra instructional services;
- The health and safety of third parties in a clinical environment; and
- Undue financial and administrative burdens.

# Compliance Mistakes

- Permitting faculty members to unilaterally determine whether a student has a disability and/or should be accommodated.
- Ignoring the fact that students have been denied approved accommodations by faculty.
- Categorical denials: pop quizzes, make-up exams, rigid attendance policies, et. al.

# Compliance Mistakes (cont.)

- Permitting faculty members to impose additional requirements for receipt of academic adjustments, auxiliary aids and services, or to modify the conditions under which they will be provided once they have been designed and approved by the office designated to make such determinations.
- Provision of accommodations in a manner that results in students being denied equal educational opportunities

# Compliance Mistakes (cont.)

- Employing methods of administrations that render the accommodations ineffective.
- Rendering disability based decisions without the involvement of disability experts;
- Designing and offering instructional materials without regard to lack of access to emerging technology; and
- Failure to resolve disagreements concerning the provision of accommodations.

# Ongoing Controversies

- Accommodation objections: tape recording; incapability with the clinical environment; access to professors' instructional materials, attendance issues, etc...
- Complaints of negative and/or offensive faculty behavior... does it equal harassment, interfere with or adversely impact the participation of students and/or does it create a culture of discrimination
- Parental encroachment

# Policy and Procedures

Service/Comfort Animals,  
Documentation, Grievance  
Procedures and Food Allergies



# Service Animals

- Ensure that access is granted to handlers with service animals in all areas of facilities where members of the public, participants in services, programs or activities and/or visitors are allowed to go.
- Identify the office or administrator responsible for verifying that the animal is a service animal and making exclusion decisions. Instruct that all questions or concerns be referred to that office or individual.

# Service Animals (cont.)

Adopt verification procedures that provide that:

- It is presumed that the individual and the animal are entitled to be onsite.
- The inquiry process will not be invoked under circumstances where it is observable and obvious what work or task the animal is performing for the handler.
- Absent extraordinary circumstances, all contact with the handler will be limited to the statutorily approved inquiries. Further inquiry will not be made unless there is credible, objective evidence reflecting that the animal is not performing as a service animal.

# Service Animals (cont.)

- The policy should prohibit any additional restrictions, charges or fees imposed solely on the basis of the presence of a service. (include comfort animals)
- The responsibilities of handlers should be clearly spelled out in the policy. They include:
  1. To maintain control of the service animal by lease, tether, voice control, signals or other effective means.
  2. The proper care, feeding, maintenance and overall supervision of the animal
  3. To provide evidence of vaccinations or immunizations and compliance with local health ordinances

# Service Animals (cont.)

- Adopt a process requiring an individualized determination prior to excluding a service animal. There should be no general or categorical exclusions (e.g., no animals permitted in labs). The reasons for exclusion should be strictly limited to those provided in the ADA.
- The exclusion procedure should a) require a full analysis of all pertinent facts and that there be actual evidence that supports the exclusion; b) provide the individual an opportunity to resolve or address the issues that would warrant exclusion; and c) ensure that a proper determination is conducted prior to excluding an animal judged to be a “direct threat.”

# Service Animals (cont.)

- Even under circumstances where a decision is made that exclusion is warranted, a determination must be made as to whether there are modifications or accommodations that could be implemented or offered that would permit the individual and his/her service animal to participate prior to actual exclusion.
- If a service animal is legitimately excluded, the individual with the disability should be given the opportunity to continue participating in the program or activity and alternative accommodations should be provided, if necessary.
- The policy should provide that service animals will not be removed solely because individuals assert that they have allergies and/or fear dogs.

# Comfort Animals

- Requests for the use of comfort/assistance/support animals will be treated as accommodation requests.
- The key issue to be addressed is whether sufficient documentation is provided to establish that the animal is necessary to “afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program.” **Nte:** HUD has defined enjoyment of a dwelling to include common areas of a dwelling.

# Comfort Animals (cont.)

- Students will be required to provide documentation establishing a) the existence of a disability and b) a need and/or nexus between the disability and the comfort or assistance the animal provides.
- A proper individualized assessment will be conducted prior to denying the use of animal based upon the fact that it would fundamentally alter the program or service; pose a direct threat; and/or would impose an undue financial or administrative burden.
- Approval of the use of a comfort/assistance/support animal should include clear notice of any limits regarding the use and/or access of the animal.

# Defining Disability

## *What has changed:*

- Decisions must be made based upon the totality of circumstances
- More weight or value afforded a number of factors
- Increased focus on the interactive process
- Greater flexibility regarding the nature and type of documentation deemed acceptable is necessary



# Defining Disability (cont.)

## *What has changed:*

- The questions being answered must be clearly delineated
- The burden of proof has shifted regarding the sufficiency of documentation

# Defining Disability

## *What has not changed:*

- Student self-reporting alone is not sufficient
- There are different questions requiring different levels of scrutiny
- The obligation is to provide “effective” accommodations
- The student must support the need for each and every academic adjustment, auxiliary aid and service
- Properly supported institutional decisions are entitled to deference

# Disability Determinations Today

- Limited demands for data and focused assessments
- The classification of the condition determines the level of scrutiny and factors considered
- “Consistently considered” cases generally little more than a diagnosis and minimal verification of functional limitations
- “Substantially limiting for some...” cases require well reasoned consideration of pertinent assessment factors

# Key Compliance Mandates

- Properly balance the right of individuals with disabilities to be free from unwarranted intrusive inquiries and the institution's need for disability related information to meet its statutory obligations
- Clearly distinguish between disability determinations and reasonable accommodation – qualified status decisions
- Actively engage in the interactive process

# **Key Compliance Mandates (cont.)**

- Ensure that demands on individuals are reasonable and legitimately related to verifying disability and identifying accommodations
- Employ assessment practices that reflect a good faith effort to provide access to qualified individuals

# Grievance Procedures

Louisiana Tech University Settlement Agreement provisions:

- Disability services staff should operate “as a liaison between students and faculty... to promptly and effectively resolve students’ disability related concerns.”
- Faculty and instructors advised or aware of a student’s disability-related complaint must notify disability services staff immediately so that appropriate resolution can be ensured.

# **Grievance Procedures (cont.)**

- University recognized accommodations must be implemented with the supervision of disability services staff.
- The University's grievance policy will be triggered any time disability services staff is unsuccessful in fully resolving a student's complaint.

# Food Service

Policies and procedures to properly accommodate students:

- Adopt a clear process for students to follow who wish to request food service modification plans that includes an interactive process involving the student and a knowledgeable representative of the institution, as well as, the participation of necessary Food Service Provider staff.
- The procedures should include clear guidance to students regarding their participation in the process.



# Food Service (cont.)

- Include information regarding available options for student with food allergies in relevant student handbooks and catalogs and on portions of the internal website linked to Dining/Food Services. The information should also identify a dining services staff person as a designated contact person(s).
- Post notices regarding food allergies in dining halls and food eatery, including the cooking areas and/or food preparation areas in each facility.

# Food Service (cont.)

- Ensure that students are offered the same range of choices regarding where they elect to have lunch and dinner as other students.
- Ensure that contracts with third party Food Service Providers require compliance with the institutional policies and procedures regarding reasonable modifications and outline the responsibility of their staff to take reasonable steps to prepare and provide meals in conformance with modification plans developed for students with food allergies.

# Food Service (cont.)

- Provide necessary training to Food Service staff regarding a) food allergy awareness; b) cross-contamination, proper food storage, preparation and food safety practices; c) handling inquiries regarding allergies; and d) the University's procedures for addressing student requests for meal plan modifications and exemptions.

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