

SATURDAY, NOVEMBER 7, 2009

ROCCO IACULLO

GETTING ACCOMODATIONS/A.T. IN COLLEGE

FT. WASHINGTON, HOLIDAY INN

UPPER DUBLIN ROOM

CART SERVICES BY ARCHIVE REPORTING

CAPTIONER: LORRAINE HERMAN, RPR

>> Rocco: I want to get started to stay
on time.

This work top is getting accommodations
and assistive technology in college and
training programs.

If you want to turn to Tab 5 which has
my biography there.

I am Rocco Iacullo. I am a staff
attorney with the Disability Rights Network.

If you read my bio it explains I focus
-- my work primarily on enforcement of the
Americans With Disabilities Act. Section
504 of -- protecting the rights of
individuals with disabilities against
employment discrimination, discrimination

state and local government services, in transportation and public accommodations just to name a few.

If you were at other workshops you may have heard these announcements; participants should have received alternative formats requested before the conference.

If you need those alternative format materials today, you can ask any DRN staff for those, which will be produced and provided after the conference.

The workshop is being audio recorded today. Please fill out the survey, especially the part indicating where whether you are a recipient of social security.

The social security administration which is funding this conference is asking for information.

Please hand this in at the end of the conference.

Fill it out as much as possible.

You don't need to provide your name on that, if you don't want to.

For today, we will have some interaction, if there's any questions, please, we have a microphone available and you can use that for any questions you might have.

This workshop is called getting assistive technology in college, Universities and train programs.

What I wanted to try to go over, we have about a half hour to go over this and there is a lot of information to go over.

I wanted to try to start by explaining the laws that protect individuals with disabilities who are applying to colleges, universities or any type of training program, try to go over those requirements first and then talk a little bit about practically how should you go about requesting accommodations or whatever other changes you might need to be able to participate fully in a college or other type of program.

And then, the third thing, is to talk a

little bit about what to do if things go wrong, where you can turn to to try to get the school to do what it is supposed to do when they are not.

So to get started, I am going to get started with the federal laws we have on the books to protect students with disabilities.

Again, this analysis is going to be a little bit different than what some of you are used to with regard to high school because, again, a lot of where you are dealing with colleges and training programs it is informal and things have to be initiated by the student or its family and apply for the things that the laws say that the schools have to do.

The two main laws that we have that protect students with disabilities is, again, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act.

There are three main sections of the ADA. We refer to them as Title 1, Title and Title.

Title 1 deals with employment discrimination which we will not talk about at this workshop.

ADA Title applies to public colleges and universities.

ADA Title applies to private colleges and Universities.

I will go over some of the requirements -- for the most part, the requirements under both of those titles are fairly similar so there's not a lot of differences. There's a couple differences I will highlight.

The second law is Section 504 of Rehabilitation Act which applies to any recipient of federal funding.

In the context of colleges, universities and training programs, likely, all such institutions are going to be covered by section 504, regardless of whether they are public or private because they all receive federal funding in some format, whether it be through grant moneys or otherwise.

These laws provide protection to

qualified individuals with disabilities.

Leaving aside any accommodations that you might need, you still have to be able to meet the essential eligibility requirements for the school to be able to be admitted to those programs.

So the schools can still rely on some legitimate requirements but they may have to provide accommodations.

Both of these laws, in the law itself, have a general statement against discrimination. We all know that now, after these laws, these schools or training programs cannot discriminate against you on the basis of disability.

They can't say, oh, we just do you want want someone with a disability in our program. To everyone in this room it's clear it's illegal.

The statutes provide these very general statements, again, explaining that an individual cannot be -- for instance, Under Title, no qualified individual with a

disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services of the schools or be subject to discrimination by any such entity.

So that is just one example. They are very, very broad.

Now, in Title of the ADA there are more specific requirements and prohibitions. They are not set forth in statutes but regulations.

So I will go through those right now. To start with, again, you know, some pretty basic things that -- again, the schools, training programs cannot refuse to allow a student with a disability the opportunity to participate. They cannot exclude them on the basis of disability. They cannot afford an opportunity that is not equal to non-disabled students.

They must provide their programs and services in an integrated setting unless, for some reason, the only way to provide an

equal opportunity, would be to provide some separate, you know, service or benefit.

Again, that's -- they are similar under both ADA and Section 504.

You can also -- schools cannot place surcharges -- meaning, they can't charge the student with a disability for the cost of measures that are necessary to ensure that they are not discriminated against and are given an equal opportunity to participate in the school.

Another general prohibition is that they cannot impose eligibility criteria that screen out or tend to screen out individuals with disabilities.

Again, there are some general prohibitions that both laws set out.

I am now going to talk about a couple of specific requirements and the one first requirement is the requirement that schools have to provide reasonable modifications at different times to, again, afford an equal opportunity to individuals with a

disability.

The second requirement is dealing with physical accessibility requirements; so that would be requirements for facilities to either be accessibility or make accessibility improvements.

Another big area I will go over is in the area of communication. What schools have to do to ensure effective communications with students with visual or hearing impairments.

Another topic that I will go over is examinations and courses and then I am also going to touch on some additional specific requirements that this Section 504 regulations talk about.

The first concept is pretty straightforward. What the laws say is that these schools have to make, you know, certain changes or may have to make certain changes if they are necessary to afford an equal opportunity to a student with a disability.

So, this could be any change in the way things that are typically done at a school, any change in policies, one big area that always comes up is, again, the area of allowing service animals on school grounds for a student with a disability who has a service animal that is sifts them in doing certain things and performing certain tasks for the student; that's one area.

But there's all kind of different examples that could come up. Again, we are talking about any change in the way things are typically done, these laws require a school to do those.

The only limitation on this requirement -- and I might touch on it a little bit more later -- is if something is going to cause an undue burden or fundamental alteration in the school's program, services or activities.

Undue burden you are looking at financial burdens or otherwise.

In the context of post-secondary

educational institutions, I think it's going to be a pretty high standard because they are receiving a lot of federal funding.

In most cases, they are probably not going to have a legitimate argument for them to say something is too expensive for them to do.

Fundamental alteration means that whatever you are asking them to do would, you know, so change the design and object of that specific course or program that it would just be burden some for them to do it and interfere with their operations.

Again, that's really rarely going to come up in these cases because most of the things that people are going to be asking for are going to be reasonable.

So that's sort of a general statement.

We will get into more specific requirements, especially in regards to the area of communications.

The second big area is the requirements for physical accessibility.

Now, ADA Title and 3 deal with physical accessibility in different ways with regard to existing facilities.

When I say existing facilities, for purpose of the ADA, that means any school buildings for facilities that were built prior to the effective date of the ADA, which was 19-- January of 1992.

If we have older colleges, there is a difference. Under ADA Title public colleges and universities Congress allowed -- I'm sorry the Department of Justice in its regulations developed a concept of program accessibility.

What that means is the schools cannot deny a student with a disability access to their services, programs or activities because their facilities are not accessible.

We have a general statement, again, but then it also says that it doesn't mean that that existing school has to make physical accessibility improvements at all of its facilities, as long as the program as a

whole is accessible to the student with a disability.

So rather than -- let's say there is a building on campus not accessible to a student with disability or a student who uses a wheelchair, let's say that -- I mean, we would hope that their library is would be accessible.

Let's say it is a library.

Potentially under ADA Title if it's a public University or college they may not be required to make that building accessible but make an arrangement with that student that they could order books online and then someone -- another student, maybe, could deliver those books to their room or dorm room or meet them outside for delivery of those books.

Obviously because of the integrated environment -- maybe you should make changes to the library to make it physically accessible. It's not clear that they have to always make them as long as there's an

effective alternative.

Sure.

>> AUDIENCE MEMBER: The class is on the third floor and you use a chair and there's no elevator, does the college have to make the accommodation for you to get to that third floor.

>> THE SPEAKER: Not necessarily with getting an elevator but maybe move it down to the first floor.

Again, that's under ADA Title, the program accessibility, which is a little more lenient.

I think the intent was, or the understanding was, with regard to public facilities there was probably a lot more public facilities that were much older and there was a compromise there because they understand that there could be extremely high costs in making public entities -- or alter and make physically accessible --

Now, the difference Under ADA Title when dealing with private colleges and

universities is that there is actually what is called the readily achievable barrier removable standard.

Now this applies to existing facilities and was a requirement beginning on the effective date of ADA to the present time, which -- and that standard is that private colleges and universities must remove architectural wall and communication barriers that are structural in nature, in existing facilities in such a facilities where it is readily achievable.

From our standpoint it's been an affirmative obligation that they had to do that regardless of whether they had a student with a disability approach them and say, I need a physical accessibility improvement, they are just supposed to be doing that.

Now, the reality is, both in the context of private colleges and universities and other private establishments is that a lot of places have not done that.

It just ends up that when someone with a disability approaches them, that's when the issue is raised.

They are supposed to be doing that.

Now, the readily achievable standard means that they have to take any action that is easily accomplishable and able to be carried out without much difficulty or expense.

Some examples that the regulations state that are readily achievable are things such as installing ramps and curb cuts, rearranging tables, chairs, vending machines or furniture.

Let's stay in a dorm room or something like that to make it accessible.

Widening doorways, installing accessible door hardware, installing grab bars in rest rooms, creating accessible parking spaces.

Those are just some examples. There are a lots of examples where things are pretty clearly going to be readily achievable.

Again, they are supposed to be doing

those.

Now, where the private college or University can demonstrate that the removal of a barrier is not readily achievable, then they just -- they still have an obligation to, again, make an alternative arrangement.

So, again, in the situation where the classroom being on the third floor, having to install an elevator, likely is not going to be readily achievable, again, depending upon the circumstances, if it's going to cost \$70,000 or \$80,000 to put it in, it may not be readily achievable.

Instead they would have to do something else. I'm sure they could move the class to a first floor room and accommodate the student in that fashion.

It's a little bit different when dealing with private colleges and universities because they were required to take some architect -- or make some architectural improvements.

Now, when we are dealing with.

>> AUDIENCE MEMBER: I have a question.
I was in college at a private University --
oh -- my question is I was in college at a
private University and a good friend of mine
had a physical disability.

All of the buildings were accessible
except for one, which was actually
classified as a historical building and they
wouldn't make any changes.

They did accommodate as far as having
classes she was taking in buildings they she
could get into but she couldn't get into the
burso's office or registrar's office. They
couldn't change the building or put in
elevators or anything because of it being a
historical building.

I am just wondering what are the options
in that case?

>> THE SPEAKER: I think since it's a
private college ADA Title sets forth a
specific regulation because of list toric
property. The building has to be on a list
of, it's the national register of --

>> AUDIENCE MEMBER: It was.

>> THE SPEAKER: In the private colleges and universities the regulations don't speak to that, specifically, it would just be under the standard "readily achievable barrier standard" and I think that's where the analysis would come into play and they may argue it's not readily achievable because to take the actions it would take away from the historic nature of the building.

It's an interesting question because there is not a specific regulation on it so it might fall under the readily achievable.

I am not aware of specific cases in case law dealing with it in the private context.

They may not have to do that but if there's offices that are providing substantial services to students that need to be available to students with disabilities as well, I mean, they need to come up with an alternative either moving those offices to another accessible building and using that building for something else.

I think that you could make a good argument that they need to move those to another accessible location because it's something that needs to be readily available to students with -- to all students and students with disabilities.

It's an unfortunate situation. Did they try to accommodate your friend in any way?

I guess they would talk to them on the phone or whatever or meet them somewhere on campus that was accessible. They never moved the offices. They couldn't get to the registrars, et cetera. Some proffer sore's offices were located in that building on the second or third floor. There was no way you could show up for office hours or anything.

>> THE SPEAKER: Sure. It's a tough call, I think. As long as they were making alternative arrangements to meet the student somewhere else, it was probably okay.

I guess, my point is, if they have a lot of services there that need to be readily available to all students, I think they

should have really made -- taken a long look at that and tried to move that to a more accessible building.

They may not have been required to absolutely do it but I think it would have been a good idea.

We are running short on time so I will try to go through some of these things as quickly as possible.

New construction and alterations, that's pretty high-standard. Anything that is built brand new has to be built readily accessible and useable by individuals with disabilities including students who use wheelchairs. That is pretty straightforward and stringent. They have to be fully accessible.

I want to move on to requirements for communications.

Under both the ADA and section 504, it's pretty clear that these schools have to take any steps that are necessary to ensure that no individual with a disability is excluded,

denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

Related to that, they have to ensure that communication with persons with hearing, vision or speech disabilities are as effective as communication with others.

So when we are talking about auxiliary aids and services, many of you may understand what that term means; that could be providing sign language interpreters to students who are deaf, captioning services, again, to students with either hearing impairments or who are deaf, providing magnification or other assistive technology devices to have access to the school's computer services and things like that.

They also are not allowed to charge the student with a disability who needs those auxiliary aid and services for the costs of providing those services.

As a quick example, I had a recent

in-take where a student at a private, small college, needed captioning services for all of her classrooms because she had a significant hearing impairment.

She met some difficulty with the school in getting those services.

We were able to get involved and the costs that the school thought they were facing when they contacted a private captioning agency was I think the cost was going to be about \$20,000 per semester for six semesters we were talking about a lot of money maybe \$150,000 that's why the school was a little uneasy.

We were luckily able to find the services of a freelance captioner who services were much cheaper than that and we were able to work it out with the school. It was still a significant sum of money to pay her.

In our opinion, you know, we warranted to try to reach a quick resolution for the student that's why we wanted to find

something cheaper, however we could have made a pretty good argument that they would have had to expend the \$150,000 over the course of that program for this student and that that would be required by the law.

We ended up working it out and they provided captioning services.

They have to provide those types of things at no cost to the student.

Now, dealing with specifically with examinations and courses, during these programs, they also have to make reasonable modifications to exams -- say a student with a learning disability needs extra time to take their exams, the law requires them to provide those types of modifications to examinations with regard to courses, they might also be required to make certain modifications.

When I am talking about courses, let's say you are going to school you are majoring in history and you have to meet certain -- take certain classes within a certain time

frame to get your degree in history, they are -- may be required to make modifications such as giving a student more time to complete the degree requirements, maybe substituting certain classes that, for whatever reason, might be more difficult with the student, they might be required to do that, sometimes it gets a little iffy with those types of requests for modifications because, again, it goes up against the thing where the law makes clear that they don't have to waive essential eligibility requirements.

If it's a essential requirement, they may not have to waive that or substitute it.

If it's something where they -- there's no reason why a certain course could be substituted they might have to do something like that.

Again, they also have to provide auxiliary agent services to help students take examinations or for their classes that falls under course requirements as well.

Anything to aid a student with a disability to be able to complete their degree of requirement.

There was a question in the back?

>> AUDIENCE MEMBER: Yeah real briefly.

What if a student has a communication disorder, is on the autism spectrum.

Can you ask the college to provide a life coach or peer mentor? Is that a reasonable accommodation for communication?

>> THE SPEAKER: That is a good question. There's another exemption under the law that I didn't speak about, the regulations are pretty clear, at least within the ADA that private or public colleges and Universities are not required to provide services that are of a personal nature.

It is likely that the things that you're asking about could fall within the definition of eye personal service.

Now, I know that there are a lot of schools, even the college I went to, because

my wife had told me -- I went on to law school, my wife was still at college.

They had a student who was on the football team who was injured in a car accident and he was paralyzed. He wanted to come back to school.

They actually set up a program where they had students helping him. He wanted to live on campus. They had students actually helping him in his dorm room with even bathing and things like that and helping him to live independently on campus.

Now, taking a look at that, the ADA is pretty clear that the school probably distribute have to go that far but that school was willing to try to arrange something.

While it may not be legally required, it might be something you would want to talk to the school about if you are in that situation to see what they might be willing to do.

Again, nothing says that they are not

allowed to go above and beyond what the law requires.

>> AUDIENCE MEMBER: I have a follow-up to that question which is, what about services such as note taking? Let's say the issue is more related to handwriting or processing in a way to be able to take notes along those lines?

>> THE SPEAKER: Yes. The school would be required to provide note takers for a student with a disability if that was an effective accommodation for them in the classroom.

A lot of times what the schools will end up doing is trying to find another student that the student with the disability is comfortable with in taking those notes or they could just designate another student to do that.

They would be required to do that; that falls under the guise of auxiliary aids and services.

Another area that comes up, we had a

recent case that is causing a lot of problems for professors and that's what's happening in this case.

The ADA coordinator was fine with the accommodation.

Where the student has a learning disability that causes her to not be able to process auditory -- I'm sorry written information as well as her auditory processing is better.

She wanted to have the ability to tape record all of her classrooms.

Well, the ADA coordinator was okay with it. She started having problems with a particular professor who was concerned about -- I am not really sure what he was concerned about but he was concerned his voice was on the tapes, what was going to happen with the take place? Other students' voices were in the tapes.

The law in Section 504 talks about that, that it's not good enough reason to disallow taping. They have to allow it if it's

necessary for a opportunity with disability.

Now, they can work out reasonable arrangements that -- maybe after a certain period of time after the class is done and the student doesn't need those tape recordings any longer that they need to give them back to the professor or something, that maybe reasonable, but they have to allow an accommodation, even such as that. ; so that would also be reasonable.

>> AUDIENCE MEMBER: Is it true that the student has to have been taking advantage of all of these accommodations for the last two years in high school to be eligible for these to be considered in college?

>> THE SPEAKER: No.

The issue with that is that with regard to colleges and universities, when the disability is not obvious, and the need for the accommodation therefore is not obvious, they are allowed to request document, including medical documentation for the need for the accommodation and limit it to what

the specific disability is.

So where that might come up, a lot of times people try to provide evidence to the college and University -- for instance, for extra time on exams.

They -- it would be helpful if in high school they also received extra time on exams and would make your case much stronger because you could point that evidence to the college and say, look, here is my son or daughter's disability. They receive the same exact accommodations in high school. It was authorized by the school and she can continue -- continues to need that accommodation.

It helps, but, you know, it's not something where that absolutely is needed. It's just if a student has never gotten a certain accommodation ever before, and then they go to the college and say, I need it now, you will just have to come up with very specific documentation that provides evidence that there is a need now for that

accommodation.

It just makes it -- it may make it a little more difficult for you to get the accommodation but that's not an absolute requirement to say, you have to have had certain accommodations within the last two years to now get them in college.

>> AUDIENCE MEMBER: Piggybacking on your question, I believe that in order to get extended time through the college board for SATs that on the application it does say, have you had these kind of accommodations in high school.

It's different because college board is a private organization and they have the right.

You can provide all of your documentation it is a question they ask on the form.

>> THE SPEAKER: We get a lot of calls about that issue as well.

I think it's the same. It's not fool proof saying, if you never had those

accommodations you get them on the SATs but it makes the argument more difficult.

So kind of -- we only have a few minutes here before we really -- I am supposed to give you 10 minutes for the survey, if it's okay with you I will give you 5 minutes so I have 4 more mins --

>> AUDIENCE MEMBER: Can I ask one more question?

>> THE SPEAKER: Sure.

>> AUDIENCE MEMBER: It's regarding this young lady's question, the autistic support programs for autistic children.

I have been doing my own research and networking trying to find out which -- do you have a list of colleges that has a program already set up for children with disabilities getting ready to go through transition?

I know Blue Bell -- in Blue Bell, Pennsylvania, Montgomery County community college has a program set up.

Are there any other colleges or

community colleges or a lass that more or less is dedicated to or is dealing with the treatment of disabilities?

>> THE SPEAKER: You know, I don't believe that we have a list of schools like that, but I actually really appreciate that comment because I think it's something that we could look into, to try to put together.

>> AUDIENCE MEMBER: Or a rating system, maybe.

>> THE SPEAKER: Rating system is going to be a little bit more work.

>> AUDIENCE MEMBER: It would be a good grant.

>> THE SPEAKER: Just identifying they have an ADA coordinator. It's something we could work on and eventually get in our punkses or websites. We could try to work into that.

>> AUDIENCE MEMBER: If you go to any of the book stores, they -- it's a phone book so to speak which tells you which cools and what -- what kind of programs they have.

You just have to read between the lines and check --

>> AUDIENCE MEMBER: It's a Peterson's Guide.

>> THE SPEAKER: I just want to go through a couple things -- just to let you know I am cutting short the federal requirements there are requirements for them to not discriminate in all aspects of college life, whether it's housing, admissions, physical education, athletics, social organizations, things like that.

There are all kinds of requirements.

I also want to mention that there are some state laws and regulations that also govern this.

Now, historically we have relied on the federal laws more often because they seem to be a little more stringent and have some more specific requirements.

The Pennsylvania human relations act, schools would be covered under public

relations but also the Pennsylvania fair educational opportunities act that, again, has a lot of similar requirements to the ADA and then there are specific regulations, again, that sort of mirror the ADA.

Now, with regard to advocating for your rights, the best thing with Daling with having, you know, yourself going and applying as a student with a disability or family member, helping a student apply is to try to identify whether the school has a specific ADA coordinator or someone who is supposed to handle requests for accommodations.

I would hope that by this point, most colleges and Universities are going to have such a person. It's very good, even early in the application process, yes, there are certain things that says schools are not allowed to ask about disabilities and applications and admissions, however, a lot of times, you know, when you want information up front, so when you are

applying, it's best to try to find out about it way ahead of time.

So that's one key thing.

The other thing is, if you are ever having difficulty with the school, to ask them whether there's an internal grievance process.

Again, that's a legal requirement. They are supposed to have a grievance process where you could -- with the school, where you can file a complaint and have it heard either by a board within the school or something or someone else to review that; so that's also important to take advantage of.

If you are still not getting any cooperation, then you need to contact either the Disability Rights Network or any other disability organization who might be able to provide you assistance with that situation.

Ultimately, if you are still not getting anywhere, you also have the options to file a complaint with the Department of Justice.

Some of the materials I left with you

that are in the book have all of those processes where you can file complaints, how to do that with the Department of Justice, with the U.S. Department of Education office of Civil rights, they cover ADA Title II and Section 504.

Again, which is going to cover most schools. Also filing complaints with the Pennsylvania human relations commission under the state laws; that information is in the binder and ultimately we all hope that it never gets to that point but at the end of the road there is the opportunity to file a federal lawsuit if it gets that bad.

You can get relief through that by making the school provide the accommodation you are requesting or not discriminate against you.

You can only get compensatory damages under Section 504, let's say the law is tuition or things like that, monetary losses, you can recover under Section 504, not the ADA.

But then you can also recover attorneys' fees.

We don't want to get to that point either. It's out there as well.

I cut your survey time short but with that, I appreciate everyone attending. I hope information helpful for everything. Take care.

>> THE SPEAKER: You have the survey sheets in your binders. If you do not, let us know. We have extras up here. Thank you.

>> THE SPEAKER: I need to have everyone fill out the survey before you leave, please. Thank you.

Does anyone need one?

[NO RESPONSE]