

Mental Health in Higher Education: A Discussion of Students' Rights, Colleges' Responsibilities, and Landmark Litigation

NARPA CONFERENCE

SEPTEMBER 7, 2023

Presented by

Anashua Dutta, Bazelon Center for Mental Health Law

Harrison “Harry” Fowler

Maia Goodell, Vladeck, Raskin & Clark, P.C.

Monica Porter Gilbert, Bazelon Center for Mental Health Law

Intro to Campus Mental Health

A note on terminology

- Mental Health Disabilities
- IHEs: Institutions of Higher Education

A note on content

Why we're here

- In 2020-21, over 60% of college students met criteria for one or more mental health disabilities, a nearly 50% increase from 2013.¹
- During the COVID-19 pandemic, 70% of students didn't register for disability accommodations.²

¹ [National Healthy Minds Study \(2013-21\)](#).

² [Mental Health America, Disability and Campus Mental Health \(Oct. 2020\)](#).

Learning Objectives

1. Understanding the rights of students with mental health disabilities on campuses and the responsibilities of institutions of higher education (IHEs)
2. Understanding the components of a claim against an IHE under federal disability laws and the value of federal agency investigations
3. Identifying what is a reasonable accommodation and how to request one
4. Understanding students' medical privacy rights and identifying how much information students have to disclose to the school to enforce their rights under federal and state law
5. Appreciating how far the mental disability rights field has come while advocating for increased and expanded protections

Case Studies

News

Stanford to overhaul leave of absence policies in watershed class-action settlement



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PRESS RELEASE

Justice Department Reaches Agreement with Brown University to Ensure Equal Access for Students with Mental Health Disabilities

Tuesday, August 10, 2021

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Office of Public Affairs

Yale University settles lawsuit alleging it pressured students with mental health issues to withdraw

By Associated Press
August 26, 2023 at 12:09 p.m. EDT



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Legal Overview

LEGAL OBLIGATIONS

STUDENTS' RIGHTS

AFFIRMATIVE DEFENSES

Legal Obligations

AMERICANS WITH DISABILITIES ACT

SECTION 504 OF THE REHABILITATION ACT

PRIVACY LAWS

Legal Obligations: ADA

Title I (42 USC § 12112) – Employment

Title II (42 USC § 12132) – Public schools

Title III (42 USC § 12182) – Private schools

Prohibits discrimination and exclusion on the basis of disability

- Discrimination includes denial of reasonable accommodations or modifications

Legal Obligations: Section 504

29 USC § 794

Applies to any school that receives federal funds

Prohibits discrimination and exclusion “solely by reason of” disability

- Caselaw and regulations interpret to require reasonable accommodations

Legal Obligations: Medical Privacy

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- Applies only to **medical providers**

Family Educational Rights and Privacy Act (FERPA)

- Applies to educational records
- Disclosure often allowed

→ No Private Right of Action – enforceable only in agency

State laws may give more rights

Students' Rights

Right to equal opportunity to benefit from the school's programs, services, and activities

Right to equal participation in school programs, facilities, and activities

How are these rights secured?

Students' Rights: What is a Reasonable Accommodation?

AUXILIARY AIDS & SERVICES	MODIFICATIONS TO ACADEMIC REQUIREMENTS	MODIFICATIONS TO POLICIES & PROCEDURES
Private location/alternate environment	Modified deadlines	Attendance Policies*
Communication Access Real-Time Transcription (CART)	Additional time	Changing roommates / rooms
Screen Reading Technologies	Alternate Work Assignments	Allowing guests or service animals in rooms
Aides	Reduced Course Load	Leaves of Absence and Withdrawal policies**
Translators	Virtual Learning	Disciplinary Policies

Students' Rights: How to Request a Reasonable Accommodation

Disclose + Ask for Accommodations = Duty

There are NO magic words!

Read policies and make specific asks

Document conversations, requests

Ask for decisions to be written

Affirmative Defenses

1. Fundamental Alteration
2. Undue (financial, administrative) Burden
3. Direct Threat

For all: Considered on a case-by-case basis

Affirmative Defenses: Direct Threat

Direct threat to health or safety of others.

Based on actual risk, not speculation or stereotypes.

Individualized assessment, based on medical, objective evidence:

1. Nature, duration, severity of risk;
2. Probability that injury will actually occur; and
3. Whether reasonable modifications would mitigate the risk.

Sources: 28 C.F.R. § 35.139 (public), 28 C.F.R. § 36.208 (private).

Affirmative Defenses: A Note on *Threat to Self*

Text: Only threat to others

Reality: Grey area

What is clear: The determination must be based on an individualized assessment based on current medical knowledge

Federal Agency Investigations

U.S. DEPARTMENT OF JUSTICE

U.S. DEPARTMENT OF EDUCATION

The Value of Federal Agency Investigations

Department of Justice and Department of Education have regulatory authority over ADA and Section 504 claims brought against an IHE

Regulatory Authority = Power to Enforce, Power to Investigate or Mediate, Power to Reach a Settlement Agreement

As enforcers and interpreters of federal disability laws, agencies hold great power in keeping IHEs accountable

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Mental Health & Wellness Coalition, et al. v. Stanford University (N.D. Cal.)

Issues Raised: Leave of Absence policies & practices

Claims Brought Under: ADA, Section 504, Fair Housing Act,
CA Unruh Civil Rights Act, CA Gov't Code § 11135, CA Fair Employment &
Housing Act

Filed: May 2018

Amended Complaint + Motion for Class Cert: July 2018

Reached Settlement: October 2019

Leaves of Absence: Voluntary

- Visits & communications with students in hospitals
- Revocation period
- Process resource for students

Source: https://dralegal.org/wp-content/uploads/2018/05/Stanford_Settlement_Accessible.pdf

Leaves of Absence: Involuntary

- Involuntary leave is rare + first considers reasonable accommodations
- Significant weight to student's treating provider
- Increased notice, process
- Implications of leave
- Reduced reenrollment requirements

Source: https://dralegal.org/wp-content/uploads/2018/05/Stanford_Settlement_Accessible.pdf

Stanford's Disabled Community: Empowerment and Disembodied Fear

Personal Reflections: The Development of a Revolutionary Praxis

Elis for Rachael, et al. v. Yale University (D. Conn.)

Issues Raised:

- Discriminatory Medical Withdrawal Policies: confusing, punitive, and rigid
- Lack of Reasonable Accommodations: “Yale is a full time school”

Claims Brought Under: ADA, Section 504, Fair Housing Act, Affordable Care Act

Filed: November 2022

Reached Settlement: August 2023 (!)

Yale committed to:

- Supportive medical leaves of absence
- Part time and other reasonable accommodations

Medical Leaves of Absence

- Campus access in most instances
- Reinstatement streamlined and clarified
- Time Away Resource
- Pro-rated refunds
- Written denials, appeals

Part-Time & Other Reasonable Accommodations

- Reduced courseload when required for urgent medical needs
- Extension of time to graduate
- Robust system for reasonable accommodations, centralized review and appeal
- For students in the hospital: options discussed include accommodations as well as leave

Jane Doe v. Brown University

Issues Raised: Discriminatory Codes of Conduct & Reasonable Accommodations

Claims Brought Under: Title III of the ADA; Section 504; Rhode Island Civil Rights Act (RICRA); Intentional Infliction of Emotional Distress (IIED); Breach of Contract; Breach of Implied Covenant of Good Faith and Fair Dealing

Filed: February 2019 → Motion to Dismiss: April 2019 →

Order Denying Motion to Dismiss: March 2020 →

Motion for Summary Judgment: November 2022*

*Parties are currently in mediation

Discriminatory Code of Conduct Violations

Manifestations of a disability → Violations of Student Code of Conduct/Professionalism Policies

- Examples: appearing “distracted”, having a messy bun, biting nails, being disorganized, responding to emails late

To dismiss someone from school because of manifestations of their disability = disability discrimination

Lessons Learned for Reasonable Accommodations

Common issues:

- Judicial deference to decisions of academic institutions
- Student code of conduct/professionalism policies are vague & broad
- Unsettled law about whether a student can ask for accommodation related to past misconduct. Schools should be willing to take in new information to reconsider past decisions.
- Ensuring equal access could require modifications to policies & procedures.

Reasonable accommodations look different for every person!

Questions & Discussion

Resources

<https://www.bazelon.org/our-work/education/campus-mental-health/>

- Campus Mental Health: Know Your Rights Guide
- Campus Mental Health: Frequently Asked Questions
- Sample OCR Letters

To file a complaint with DOJ's Civil Rights Division: <https://civilrights.justice.gov/>

To file a complaint with DOE's Office of Civil Rights: <https://ocrcas.ed.gov/>

To file a complaint with HUD's Office of Fair Housing & Equal Opportunity:
<https://www.hud.gov/fairhousing>

Contact Information

Anashua Dutta: anashuad@bazelon.org

Monica Porter Gilbert: monicag@bazelon.org

Maia Goodell: mgoodell@vladeck.com

Harry Fowler: harrymantras@gmail.com

Thank You
