2.6: Individualization, The Interactive Process and Fundamental Alteration
We ask you to join us in creating a culture that reflects…

**Access and Inclusion**

and

**Civility and Respect**

…this week and in all aspects of our organization.
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A): A Big Deal
“I mean, I Want Everyone in the Class to Understand that Process is a Big Deal! The Key is Knowing, with a Given Set of Facts, Which Process to Apply, How, and When.”

Jamie Axelrod, AHEAD President (May 1, 2017)
A Big Deal: 
The Process for Attaining Deference to Your Decisions

• Academic institutions, making academic decisions within their areas of expertise, have received substantial deference from the courts and OCR

• We learned from the last module, in a comparison of three cases, that deference will vary depending on whether accommodations that were authorized were provided, were authorized but were not fully provided, were requested but were denied.

• But what if there is a dispute and the accommodation the student requests you conclude, or a faculty member concludes, is a “fundamental alteration” in the nature of the program. Then what?
B): “Fundamental Alteration”
What the Heck is a Fundamental Alteration? (1)

- A "fundamental alteration" is a change that is so significant that it alters the essential nature of a course or a program of instruction.

- From *Southeastern Community College v. Davis* (S.Ct. 1979), we can infer that a fundamental alteration *may be*:
  - Removing or waiving acquisition of a skill that is considered essential
  - Removing or Waiving acquisition of a skill that is directly related to the health and safety of others
  - Lowering an academic standard

- From *Southeastern Community College v. Davis* we can infer that a fundamental alteration *is not*:
  - Mere reliance upon tradition or existing rules may not be a sufficient justification for refusing to implement a requested accommodation. *(See PGA v. Martin, S.Ct. 2001)*
  - A pretext (excuse) for discrimination
  - The absence of diligent consideration of the question including consulting with other faculty, teaching institutions or licensing agencies
  - A failure to consider the impact of technological advances (e.g., changes in stethoscopes)
What is a Fundamental Alteration? (2)

• From OCR Section 504 regulation 104.44(a & b) we know that in licensing programs, a fundamental alteration includes excusing or waiving requirements directly related to licensing requirements.

• From the same OCR regulation, we know that generally a fundamental alteration will not entail accommodation of completion to degree requirements or “adaptation of the manner in which specific courses are conducted.”
  • I think this means:
    • School doesn’t have to waive any core or essential course or skill acquisition requirements e.g., acquiring a second language in an international business degree program.
    • School doesn’t have to convert a brick and mortar class to an online class; or an interactive class or a team class to a passive lecture class; or a traditional college-level class to one for persons with impaired intellectual skills e.g., substituting didactic credits for clinical credits in an MSW program.
Are these Fundamental Alterations? (3)

- A student in a class who has very limited use of his/her hands asks to take a written test rather than demonstrate the ability to properly insert a needle into a vein.

- A student with severe anxiety disorder wants to tape his/her presentations for a speech class with no audience during the presentation.

- A student with an intellectual disability wants to bring a “conduct monitor” with him/her to class to ensure his/her good behavior.

- A student with PTSD that clearly impairs short term memory wants to take all tests open-note, although other students are not given that choice.

- A student with severe AD/HD wants to record all classes in counselling incest survivors, including presentations by several survivors.
How Do You Decide, What is a Fundamental Alteration? (4)

• The correct answer to each of these proposed questions is, “it depends.”
  • We need to know more
  • To be honest, in many instances, there is a large element of subjectivity

• So, what are we to do with difficult/complex fundamental alteration questions?
  • Let’s start with *Wynne v. Tufts Medical Center* and *Guckenburger v. Boston University*
C): The Seminal Cases

Wynne v. Tufts

Guckenburger v. Boston University
Wynne v. Tufts University Medical Center I & II

- Respectively, 932 F.2d 19 (1st Cir. 1991); 976 F.2d 791 (1st Cir. 1992)
- About Mr. Wynne
  - A very spotty academic record
  - Difficulty with multiple choice exams
    - Good in analysis
    - Good in practicum
    - Weak in retrieval
- Wynne discovers that he has a learning disability which may explain his difficulties on multiple choice exams
- Tufts denies his request to take all exams in an essay format
The Dilemma for the Court

• Tufts argued, based on First Amendment precedents, that it is the practice of courts to defer to academic decision-making.

• Wynne argues that the court must not accept the assertions of Tufts as conclusive truths, as that would render the requirements of Section 504 meaningless.
The Key Solution

“[D]ereference is earned through adherence to a ‘diligent’ consideration of the request and ‘alternative means’ to achieving the fundamental program objective, resulting in a “rationally justifiable conclusion.”

Wynne v. Tufts University; Guckenberger v. Boston University; Zukle v. Regents of Univ. of Cal.; Wong v. Regents of Univ. of Cal.; and more court decisions and many more OCR letters

See also, Southeastern v. Davis
“[T]hus far Tufts obligation [is to demonstrate] that no reasonable way existed to accommodate Wynne’s inability to perform adequately on written multiple-choice examinations was a reasoned, professional academic judgment, not a mere *ipse dixit.*”

[an arbitrary and unsupported assertion; the only evidence is the statement itself; maybe something often said but not inherently or necessary true]

A three paragraph affidavit from the Dean to support dismissal of Wynne’s claims did not cut it.

- Conclusory
- No evidence of consideration of alternatives
- The rationale did not address the specific circumstances that the school should have considered as to Wynne’s particular situation
  - Not interactive or individualized [*my words*]
The court denies a motion for summary judgement and directs Tufts to go back and reconsider Wynne’s request through a specific process.

Factors for the process the court wants:
- Relevant officials
- Identify the objective of the requirement
- Consider the requested accommodation in light of those objectives
- Consider alternative means
  - Cost
  - Effect on the academic program
  - Lowers or fundamentally alters academic standards?

Do the above and get “qualified immunity”
- In other words, a rational explanation resulting from the above process, free from pretext, will then be accepted as enough to get a dismissal.
Wynne v. Tufts University [round] II

• Second time before the court, Tufts gets academic deference and its motion to dismiss prevails
  • Tufts has now demonstrated that it reached “a rationally justifiable conclusion” that granting the requested accommodation would lower academic standards, and that there is no evidence from the plaintiff that this reasoning was a pretext from discrimination, or asserted in bad faith.
  • Tufts has demystified its rationale.
  • Its rationale is now “plausible,” but “not necessarily ironclad.”
  • The court is not requiring Tufts to make an overwhelmingly convincing case; this is the advantage that comes from having earned the deference of the court to Tuft’s decision-making
Wynne v. Tufts University II

• Things the court took into account in granting Tufts its dismissal:
  • Tufts did a lot to try to help Wynne, and there was no evidence of disability animus. Wynne didn’t even identify his disability until he was in a dismissal process.
  • Tufts, the second time around, produced a factual record “documenting its scrupulous attention to this obligation. …. [T]he effort requires more than lip service; it must be sincerely conceived and conscientiously implemented.”
Guckenburger v. Boston University II

- A very different outcome from Guckenburger I case concerning unnecessarily rigorous documentation of disability requirements
  - BU had brought in a new President, Jon Westling, in part in response to fears that BU was being overrun with high functioning LD students
  - That President was very hostile to the LD community, falsely giving speeches about “somnolent Samantha” and making it nearly impossible to qualify as an individual with a disability entitled to exam accommodations
  - The district court was very critical of BU, found violations, and did the process did not put Westling in a good or credible light
- BU II, was part of the same litigation, same students and law firm and it concerned Westling’s discontinuation of course substitution for foreign languages
- Like Tufts, sought a dismissal on the highly academic nature of this decision, maybe because of all the court had learned earlier it sent BU back for a Wynne-like process
- The second time before the court on this issue, 976 F.2d 791 (1st Cir. 1992), as directed by the court, BU had followed the Wynne v Tufts process, and consequently, despite all that had gone wrong on the earlier issue, it earned enough discretion to prevail
  - The court concluded that the contrary practices of the other Ivy League schools did not prove animus or pretext by BU
How Boston University Did It Right

• Kept the discredited, Jon Westling, out of the process
• Used a multi-disciplinary committee
• Articulated the objective of a foreign language requirement
  • Identified alternatives to learning foreign language
  • Articulated why alternatives would not meet objective: unduplicatable intimacy with another culture
• Found new ways to teach foreign language!
• Presented court with a win/win, committing to teach foreign language in multiple ways
“Due Diligence”

Some courts have applied the *Wynne v. Tufts* process, or at least its standard of a *due diligence process* to a wide range of qualification-related questions, including in a series of complex medical school cases as well as fundamental alteration questions.

- E.g., *Wong v. Regents of Univ. of Cal.* 192 F.3d 807 (9th Cir. 1999) [*Wong I – due diligence not demonstrated*]; compare, *Zukle v. Regents of Univ. of California*, 166 F.3d 1041 (9th Cir. 1999) [*due diligence demonstrated*]; *Featherstone v. Pac. N.W. Univ. of Health Sciences*, D.C.E.D. Wash., No. 1:CV-14-3084-SMJ (2014); unreported, 2014 WL 3640803 [no due diligence by the University results in an order against, case study below, time permitting]

Individualize, Interact, Follow Wynne
Some of the OCR Precedents

• OCR Letters to *Tulsa Community College*, 07-09-2064 (June 2011); *Wright State College*, 15-13-2011 (October 2013); *California State University, Dominciez Hills*, 09-15-2463 (December 2016); *Gateway Community College*, 08-16-2199 (February 2017); *University of North Carolina*, 11-17-2001 (April 2017) *Irvine Valley College*, 09-17-2090 (April 2017); *Rio Salado College*, 08-16-2082 (April 2017); *Central Washington University*, 10-16-2203 (July 2017); *Surry Community College*, 11-16-2165 (December 2017)
D): A Interesting Question

Does the Inability to Demonstrate a Wynne-like or Due Diligence Process Create Some Kind of Independent Violation?
Gati v. WESTERN KENTUCKY UNIVERSITY

• Student with spinal injury wanted graduate counseling classes taught at the satellite campus near him in Elizabethtown or on ITV as his injuries made it impossible for him to sit long enough to commute to Bowling Green.
• Court actually considered his proposed accommodation, not dismissing it out of hand, but found the reasons given by the University for the proposed accommodation being unreasonable based on:
  • the nature of the class
  • a shortage of certificated part time teachers in the subject area
  • and consequently, a threat to its accreditation.
Finally, the court recognized as an independent question the degree to which the University individually considered the request, ala *Wong v. Regents of Univ. of Cal. I*, 192 F.3d 807 (9th Cir. 1999)

The University satisfied the court that it had done a proper consideration process

I note that:

- It was evident that it had collected a lot of pertinent information on this issue
- The University could, in a concrete manner, support its rationale
- It rational was logical and likely did not appear like a pretext
Michaela Bied v. Cty. of Rensselaer, Hudson Valley Community College

- No. 115CV1011 TJMDEP, 2018 WL 1628831 (N.D.N.Y. Mar. 30, 2018)
- Summary introduction:
  - It is undisputed that Ms. Bied is an individual with disability:
    - She has substantial impairments in her ability to communicate, labelled as a “nonverbal learning disability” including “developmental delays in speech development, cognitive functioning and motor skills”
  - Neither the court nor the parents use the term autism, though Ms. Bied may well be an individual with some form of autism
  - Section 504 and ADA claims of disability discrimination, and various other claims, mostly pertaining to her arrest, while a student at Hudson Valley CC, by the campus police for repeatedly “stalking” a faculty member and alleged denial of accommodations
  - College moved for summary judgment on all claims
Bied Background (1)

- College has a practice [method of administration] of requiring students to deliver an accommodation letter and to discuss implementation with each faculty member each semester, failing to do so means no accommodation
  - College supports practice as a way to teach students with disabilities to act like adults and advocate for themselves
  - Bied’s accommodations included double time of quizzes and exams and exams in a distraction free environment
  - Bied’s accommodations were implemented when she delivered the letters
- First semester, Ms. Bied delivered the letters and passed all her courses and got a B in financial accounting taught by Professor Meehan, who was Ms. Bied’s advisor
- Second semester, Ms. Bied registered for another course with Professor Meehan, Principles of Marketing
Bied Background (2)

• Though prompted to do so by a Professor (Meehan), Bied did not pick-up or deliver any of her accommodation letters for the second semester, was consequently given no accommodations in Professor Meehan’s class and fell seriously behind in her work, missing some tests altogether.

• On one occasion, Bied showed up at the testing center [CAAT] expected an accommodated exam but none was provided because she never turned in her accommodation letter.
Behavioral Problems Develop

• Bied followed Prof. Meehan down the hallways, hiding when Professor Meehan turned around
• Bied repeatedly waited outside of Meehan’s office or classroom and did not respond when spoken to
• Bied called Prof. Meehan and remained silent when answered
• Bied communicated with Prof. Meehan through a fictitious email account falsely representing to be from her mother
College Prepares for Discipline

• An individualized and interactive process -- doing it the right way
  • Step by step
  • Notice individualized to Bied was put on notice of consequences of continued stalking:
    • Written notice that she would face discipline (not sent to parents)
    • Shortly thereafter, College convened a meeting to which she came, without a parent
      • Stalking explained
      • Told it must cease
      • Told that she would face arrest if it continued
      • Given an opportunity to respond
      • Given another warning letter at the meeting – not sent to parents
      • Welcomed to still meet with Meehan in her office, by appointment, but not stand outside her office
    • Bied denied any intention to hurt herself or others
Discipline is Imposed

• After Bied’s behavior did not improve
• Public Safety Director authorized her arrest on a charge of stalking
  • About a week later, Bied was spotted by a Safety officer near Meehan’s office
  • Bied saw the officer, at first ran, then froze up, was put in a Stryker Chair and taken to the Safety Office, refusing to take off her back pack, it was cut off of her; she was not handcuffed
  • Bied was also charged with resisting arrest
  • Ultimately all the charges were dismissed
Bied’s Third Disability Discrimination Claim concerning her Arrest Is Dismissed (1)

• That Defendants violated Plaintiff’s rights under these Acts [504 & Title II] by failing to appropriately consider Plaintiff’s disability before arresting her, thereby depriving her of a reasonable accommodation

• [Claims 1 & 2 in a moment]
Third Claim Dismissed: Discriminatory Arrest (2)

• Though it put a very substantial burden on Bied, though it did not use the term, initially the court appears to have done a “manifestation test:”
  • “[T]hese representations in the Psychological Report, read either singularly or in the context of the entire report, would not lead a reasonable college or law enforcement official to conclude that Plaintiff’s conduct … were merely manifestations of Plaintiff’s disabilities.”
  • Was the court in action contracting its own terms?
  • Note that at the elementary and secondary level, unlike the post-secondary level, a manifestation process would have been required
Third Claim Dismissed: Discriminatory Arrest (3)

• However, in the next paragraph the court takes a more absolute position: “Requiring others to tolerate misconduct … is not the kind of accommodation contemplated by the ADA.”... Likewise, a “requested accommodation that simply excuses past misconduct is unreasonable as a matter of law.” .... “The ADA and the Rehabilitation Act do not restrict a college from disciplining inappropriate behavior, even if that behavior allegedly was caused by the student’s disability. To the contrary, both statutes ‘permit [a college] to discipline a student even if the student’s misconduct is the result of disability.’” [citations omitted]
Bied’s First Claim: Not Enough Process

• The evidence is clear that neither Bied nor her family provided Meehan the accommodation letter, even though:
  • Meehan had reminded her
  • Bied had done so in the past
• NONETHELESS, Bied’s counsel argues that, given the nature of her disability, as an accommodation she should have been excused from this requirement:
  • “Plaintiff argues that the record is devoid of any evidence that HVCC “diligently assessed” whether the accommodation that it “denied and frustrated” [Plaintiff’s accommodation of taking her tests at the CAAT] could have been afforded ‘without imposing undue financial and administrative burdens’ on HVCC or would have required a ‘fundamental alteration to the academic caliber of its offerings.’”
First Claim: Process – Is Sustained by the Court (1)

- Court buys this argument, enough that it does not dismiss the first claim:
  - “[A] reasonable factfinder could conclude that HVCC personnel were put on notice that Plaintiff was electing to exercise her accommodations in Prof. Meehan’s class when Plaintiff showed up for the first test [at the testing center] but it had not been sent by her professor”
    - Notice here was not an explicit request to DSS
    - Was the court generous as to notice because of the nature of Bied’s disability?
  - “A reasonable factfinder could also conclude that HVCC should have, but did not, diligently assess whether, in light of Plaintiff’s documented difficulties in communication and self advocacy, it should have overridden the policy that students present accommodation letters before they receive their accommodations.”
  - “In this regard, a reasonable factfinder could conclude that HVCC failed to properly assess whether its policies allowed Plaintiff to access her disability accommodations.”
First Claim: Process – Is Sustained by the Court With a Limit

• But the claim for monetary damages for the first claim is dismissed as there is no evidence of animus or deliberate indifference, given all that Meehan and the College did to induce Bied to ask for accommodations

• This will be hard to square with court’s finding on Bied’s second process claim
Bied’s Second Claim: Again, Not Enough Process

• Similarly the court does not dismiss claim that College should have given her more or longer extensions to make up missed exams, instead requiring the completion of four exams within a short period of time

• “The record evidence cited by Defendants on this motion does not squarely establish that, in rejecting additional scheduling modifications, Prof. Meehan or anyone at HVCC diligently assessed whether a scheduling alteration would allow Plaintiff the opportunity to continue in and complete Principles of Marketing without imposing undue financial and administrative burdens on HVCC or requiring a fundamental alteration to the academic caliber of its offerings”
Disposition of Second Claim – OMG

- As to second claim court also does not dismiss damages claim
- “[W]hen reviewing the facts in a light most favorable” to Bied, a “reasonable factfinder” could find animus and deliberate indifference based on:
  - Bied made Meehan very uncomfortable in several ways including stalking
  - Meehan wrote to Public Safety reports that contributed to Bied’s arrest
  - Meehan told Bied to stop emailing her even though Bied was still enrolled in her class
  - Meehan told Bied she would get an F in her class even though the semester was not over
Settlement

• On June 19\textsuperscript{th} this matter became subject to a conditional settlement order
• The terms of the settlement appear to be confidential
Several factors have contributed to a very unfortunate turn of events; one major factor was a “method of administration” of the College, requiring all students to self-advocate and carry accommodation authorizations to their teachers as a condition of receiving accommodations:

- The school did not take it upon itself to consider individualizing this administrative accommodation practice.
  - It could argue that it was never asked to do so
  - But the court appears to think it knew enough about Bied and the problems with her behaviors to have taken this on, anyway
- How hard would it have been to make, a reasonable modification to this practice?
- What would be a “best practice” for notifying teachers of accommodations that would avoid this kind of unfortunate outcome?
E) Case Study - A Good Example of the Need for an Interactive Process

OCR Letter to Rose State
• Student with a disability followed process to request accommodations.
• Student requested to use notes on math exams due to disability.
• Disability Coordinator told student notes were not permitted on exams.
• Student was approved for:
  • additional time on work being done in class and during evaluations
  • scheduling test dates
  • special test location to provide a quiet and reduced distraction environment
  • special seating near front of classroom
  • and permission to record lectures
Background

- Student enrolled in remedial math which was required in order to progress to next math course.
- Student again requested to use notes on math exams.
- Student was again told notes were not permitted as an accommodation in college.
- Coordinator told OCR that they did not recall these interactions but notes and emails recorded interactions about this request.
- Parent called both the Disability Coordinator and Instructor to ask again for notes as an accommodation and was told by both that notes would not be allowed because it would create an unfair advantage.
- “Algebra Professor told OCR that the math committee met to discuss whether to allow students to use notes on exams as an accommodation and decided that it should not be allowed… because using notes on exams would create an unfair advantage for those students using notes.”
OCR Findings

• Once a student makes a specific request for an accommodation “the College must engage in an interactive process to determine what, if any, academic adjustments are appropriate in light of the Student’s individual needs and the nature of the institution’s program.”

• “College failed to meet its obligation to participate in an interactive process with the Student to identify what academic adjustments were appropriate in light of the Student’s individual needs and the nature of the College’s course and program.”

• “The statements made by the Disability Coordinator, Algebra Professor 2, and the Math Coordinator indicate a decision was made to not allow the Student to use notes on math exams based on generalized ideas and notions that the use of notes would be an unfair advantage, without conducting an individualized inquiry into the Student’s disability and its impact on her ability to have an equal opportunity to gain the benefits of the College’s educational program, and the nature of the course and program.”
OCR Findings

• “the College Departmental Practices explicitly states that notes are not allowed on exams and **does not allow for an interactive process** to evaluate requests for academic adjustments…on a case-by-case basis.

• “the written denial of notes for exams in the Departmental Practices document constituted a blanket denial of notes for students contrary to the College’s duty to conduct an **individualized inquiry** for requests for academic adjustments.”
F): Sample Fundamental Alteration/Wynne Processes
Sample
Fundamental Alteration Policies
University of Kansas Medical Center
Sample Policy (1)

• “Fundamental Alteration of a Course or Program
  • There may be times that the student and/or the ADA Panel request an accommodation that a professor believes may compromise the academic integrity, or create a fundamental alteration, of the course and/or program. To determine whether an accommodation fundamentally alters the nature of a course, instructional staff members who teach or who have taught the course should: Identify the essential academic standards of the course; requirements that go to the very nature of the subject matter, or that are of the utmost importance in achieving the course/program objective.
  • Articulate specific requirements that individual instructors believe are fundamental to teaching the course/program, taking academic freedom into consideration.
  • Identify the unique qualities of the course/program in relation to its overall objectives, and any program in which the course is required.
University of Kansas Medical Center
Sample Policy (2)

• Engage in ‘reasoned deliberation’ as to whether modification of the course/program would change the fundamental academic standards, and determine whether there are any options to the fundamental requirements of the course/program?
• Why is the standard that the instructor believes will be lowered, important to the course/program?
• Is the standard the better way (or the only way) to achieve the desired academic objective?
• Will the requested accommodation lower the academic standards of the course/program?
• Can a different method or requirement that will not be altered by the accommodation, achieve the required academic or pedagogical result? If not, why not?

• The decision to deny an accommodation should not be taken lightly. Institutions have found themselves in legal trouble for devoting insufficient thought to the conclusion that a requested accommodation should be denied.

• Answering the above questions and documenting the process will allow instructors to establish that they have carefully evaluated the awarded accommodation, and the course/program objectives. Failure to provide a reasonable accommodation to a student with a disability is a violation of the law, putting in jeopardy an institution's federal funding. However, disability laws also require that students with disabilities meet the 'essential,' 'academic,' and ‘technical’ standards of the class/program/college.”
Axelrod Sample Process (1)

• If a reasonable basis exists to believe there is a legitimate fundamental alteration question, verify that the instructor, department, and/or program have articulated the essential requirements for the course and/or program and provided notice of them to students.

• Gather a committee of objective persons who collectively are knowledgeable about the academic area, any related licensing requirements, any applicable accreditation for the course of study, the student’s disability, and accommodation methods. The committee should not be limited exclusively to individuals from the department that provides the course or program.

• The committee should identify the objective of the requirement, taking into consideration the information provided by the instructor, program or department concerning essential requirements, including curriculum approval or course creation documents. The committee will ensure that the requirement is not simply based on tradition or routine practice without direct connection to essential requirements.

• The committee should consider whether the requirement is consistent with similar programs at other educational institutions, and with relevant national and expert guidelines; and whether there is any unique justification for a requirement that is not generally adopted by other educational institutions.
Axelrod Sample Process (2)

• The committee should consider information provided by the student relevant to determining whether notice of the essential requirement in question has been provided to the student, and whether the accommodation requested by the student would invalidate the objective of the requirement.

• The committee should determine whether the accommodation requested by the student would invalidate the objective of the requirement. If not, the accommodation will be implemented.

• If the requested accommodation would invalidate the objective of the requirement, the committee (or designated members) will promptly and diligently search for alternate accommodations in consultation with the faculty member, DR, program and the student.
Axelrod Sample Process (3)

• The committee should address the following:
  • Are there alternate ways that the student can acquire or demonstrate mastery of the skill that would meet the same fundamental objectives of the course or program?
  • Have we diligently searched for potential alternatives?
  • Have we included all the necessary people in this search?
  • Have we identified whether other postsecondary institutions have identified alternatives that achieve the objectives of the College without fundamentally altering requirements?
Axelrod Sample Process (4)

• If the committee has explored this issue in a well-reasoned manner, without resort to a pretext for discrimination, believes the accommodation would fundamentally alter the essential elements of the course or program and no reasonable alternative accommodations exist, then the accommodation can be denied.
See Also

G): The Ultimate Process Error

Just Let the Student “Spin in the Wind”
Alexander v. SUNY Buffalo

• Unreported, 2013 WL 750133 (W.D.N.Y., 2013)
• Motion for summary judgment by SUNY under Section 504
• Plaintiff
  • Nursing student who dropped out, alleging due to poor delivery of accommodations
  • Bilateral cochlear implants
  • Not familiar with ASL, very good lip reader
  • Requested:
    • FM system compatible with her implants
    • Real Time Captioning [RTC] (verbatim notetaking)
    • Her high school notetaker or a paraprofessional notetaker
    • Preferred seating
Requested and Received

- Plaintiff received
  - Offer of C print (paraphrasing not verbatim), not CART
  - Volunteer notetaking only in some classes: some good, some bad (including a class with a professor with a heavy accent)
  - A three week delay in FM system after first exams
  - Some priority seating, but not consistently enforced

- Impact claimed, she failed early exams before dropping out due to inadequate accommodations
Summary Judgment for SUNY Denied

• Analysis of court
  • In this case, a *prima facie* claim of disability discrimination and a claim of deliberate indifference (damages) was established by the student when:
    • A deliberate (reasoned, thought out, not accidental) decision was made to deny authorized, admittedly reasonable, facially logical and necessary accommodations
    • Even though
      • Done without any animus whatsoever
      • Based on what expert contractor provides
      • Some of denial may even have been just a miscommunication
Session Evaluation

Please see session moderator for paper evaluation form or complete the evaluation online.