

Creative Accommodations

Handling increased requests for student accommodations requires keeping an open mind while not altering standards or veering away from mission.



Susan Guerette is a partner at Fisher Phillips law firm, where her practice represents management, including that at independent schools, on a wide range of labor and employment matters. sguerette@fisherphillips.com
www.fisherphillips.com

From therapy pigs to medical marijuana, the types of accommodations that students request are becoming increasingly varied and impactful to school operations. Accommodations can range from support for students with physical disabilities, such as assistance navigating the school campus, to students with psychiatric disabilities, which may involve allowing a student with anxiety to play instrumental music or natural sounds while taking tests.

For independent school business officers, this means thinking strategically about how classroom accommodation policies can remain as equitable as possible. Communication and nimble thinking between the business office, teachers and families are critical to informing these decisions.

The Americans with Disabilities Act (ADA) requires institutions to make reasonable accommodations for disabled students as long as there is no undue hardship to the institution; no direct threat of harm to the individual or others; and no fundamental alteration of the institution's program. The goal is to create a level playing field for disabled students or applicants. Yet many school leaders are left confused or uncertain on how to proceed, fearing either offending a student or family or not fully complying with ADA obligation.

The defense that an accommodation will create an undue hardship does not often hold up in court, so think carefully before rejecting an accommodation.

For example, some of these accommodations require training teachers on matters with which they may not be familiar or comfortable. Measures such as managing a child's diabetes and injecting glucagon when necessary or administering anti-seizure medicine during a prolonged seizure have been found to be reasonable and required accommodations. Accommodations may also impact other members of the school community, for example, in the case of allowing service dogs in the same classroom as children that have allergies or fears of animals.

As schools navigate these challenging issues in often uncharted waters, they should hold a few considerations in mind.

LEGAL MATTERS

The Americans with Disabilities Act's legal framework provides the basis for a school's obligation to accommodate certain conditions. Title III of the ADA prohibits disability discrimination in places of public accommodations, and so applies to independent schools. Schools can also be subject to Section 504 of the Rehabilitation Act, which prohibits discrimination against people with disabilities in programs, but only if a school receives federal financial assistance.

Schools can receive federal financial assistance through grants or loans provided directly to the school, or through funds paid to the school on behalf of a student admitted to the school. Schools can also inadvertently become subject to Section 504 by participating in federal programs, such as E-rate, which provides discounted internet access to eligible schools. Therefore schools should consider the source of funding and potential implications before taking advantage of programs as that may have unexpected consequences.

THE CASE FOR CREATIVITY

In other contexts, your school attorney has probably repeated the mantra to treat everyone the same way. However, when considering a student's disability, be open-minded and creative. The defense that an accommodation will create an undue hardship does not often hold up in court, so think carefully before rejecting an accommodation request on that basis. Accommodating a child with a seizure disorder or who needs assistance managing his or her diabetes, for example, is not usually considered an undue hardship. If a student needs a support animal and another student is allergic to animal dander, consider whether they can be put in different classes or on opposite sides of the room. This is an area where treating people differently and providing creative solutions can often benefit the student and avoid a potential lawsuit against the school.

HOLDING THE LINE

Although courts require schools to go beyond their comfort zones, schools are not required



to fundamentally alter the nature of their program or lower or substantially modify their academic standards. So, for example, while schools should certainly provide additional time and quiet areas for tests, they do not need to — and should not — change grades or lower minimum academic requirements. The latter may attract additional scrutiny following fallout from the Varsity Blues college admissions scandal.

THE RELIGIOUS EXEMPTION

Some schools do not realize that Title III of the ADA contains an exemption for “religious organizations or entities controlled by religious organizations.” These organizations have no obligations to students under the ADA and do not need to accommodate their disabilities. Schools should be careful before invoking this exemption, however, because courts consider a number of factors in order to determine whether the church or other religious organization sufficiently “controls” the operations of the school. These factors can include whether the school’s articles of incorporation state a religious purpose, whether a religious entity participates in the management of the school, whether the school regularly includes prayer or worship in its activities, and whether it includes religious instruction in its curriculum. Courts do not apply the religious exemption lightly, so a school would want to make sure that most of these elements weigh in its favor.

MANAGING EXPENSES

When a student’s disability is brought to the school’s attention, administrators should determine what the student and parents believe would be a reasonable accommodation. The school is not, however, obligated to provide what the student and parents want, but rather what is effective. Students and parents are becoming very savvy and may request an expensive or burdensome accommodation. For example, the parent of a student with hearing issues may request a full time

interpreter when assistive listening devices may be sufficient. The school can reject the student’s choice of an accommodation in lieu of another accommodation as long as it is an effective alternative.

The school is permitted to request medical documentation from the student’s physician regarding the impairment, how it impacts the student and the range of possible accommodations that may be needed. Schools should take the time to make this assessment so that administrators can understand what is needed and better determine what the school might be able to offer.

SOME LAWS ARE LOCAL

Before rejecting a requested accommodation or offering a different alternative, school leaders should check with counsel to see if any state or local laws apply to the situation. Some accommodations are particularly complex, such as medical marijuana, which has different state law requirements and little guidance for administrators on implementation. Likewise, counsel can advise whether a school has basis to argue that a particular accommodation would be a hardship for the school’s particular size or limited resources.

The number of ways that schools must accommodate applicants and existing students is growing, as courts seek to allow all students access to the same school experience. By keeping some of these considerations in mind, schools can more effectively navigate the interactive process and accommodate student needs while ensuring a positive experience for their communities and without compromising their school’s mission. **N**

POSSIBLE CLASSROOM ACCOMMODATIONS

- Additional time to complete a test
- Testing in a small group setting
- Special lighting or acoustics
- Specialized computer software or equipment
- Modification of a class schedule
- Allowing students to record or videotape classes
- Allowing students to take tests in quiet areas without distractions
- Assistance with notetaking or a peer tutor

RELATED CONTENT

The More You Know (Jul/Aug 2018)

Preparing for Transgender Staff and Students (web-only, May 2018)

Along with three other panelists, Susan Guerette will speak about managing mental health accommodations in a Deep Dive at the 2020 NBOA Annual Meeting, February 23-26 in Orlando. Learn more and register at nboannualmeeting.org.