



Spring 2025 CLE Workshop · March 26 – 28, 2025

# Higher Education Discrimination Law

## Navigating Legal and Compliance Challenges in Student Accommodations

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# Agenda

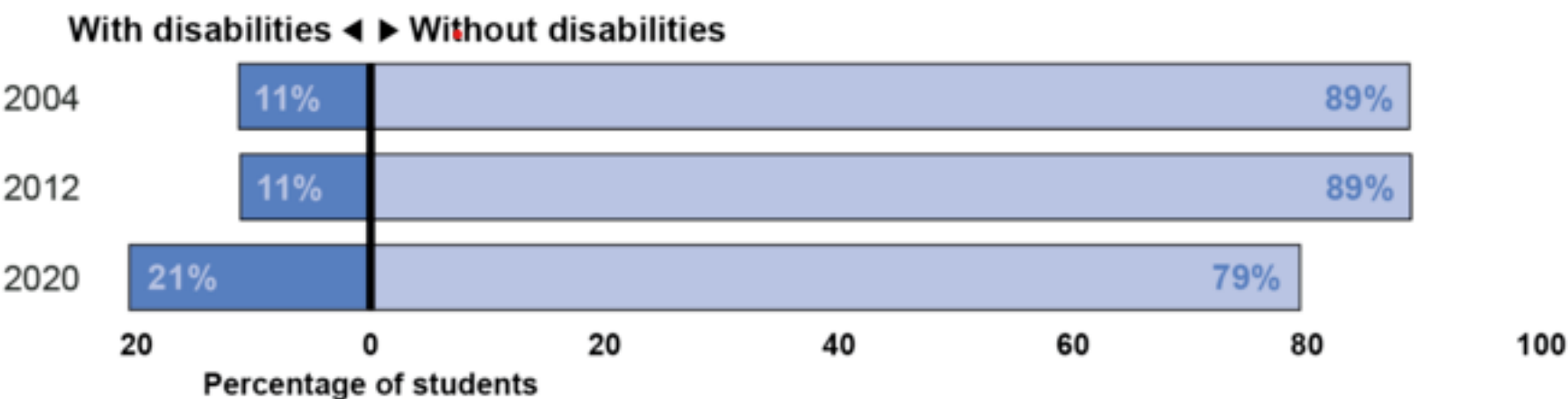
- Review of GAO Report and implications for student accommodations on campus
- Discussion of risk management challenges with the interactive process
  - Student engagement with process to request accommodations
  - Internal disputes between Accessibility Officers and other campus partners
  - Determining whether accommodation request is a fundamental alteration of an essential element of an academic course
  - Working with clinical programs
- Review and discussion of hypotheticals with an emphasis on legal and operational issues

# Themes in 2024 GAO Report Regarding Students with Disabilities at College Campuses

**Increase in Students with Disabilities:** According to the National Postsecondary Student Aid Study (NPSAS) data, the percentage of college students with disabilities increased from 11% in 2004 to 21% in 2020.

**Enrollment Trends:** While the overall number of students enrolled in college decreased by 15% (from 20 million in 2004 to 17.1 million in 2020), the *number of students with disabilities increased by an estimated 56% (from 2.3 million in 2004 to 3.5 million in 2020).*

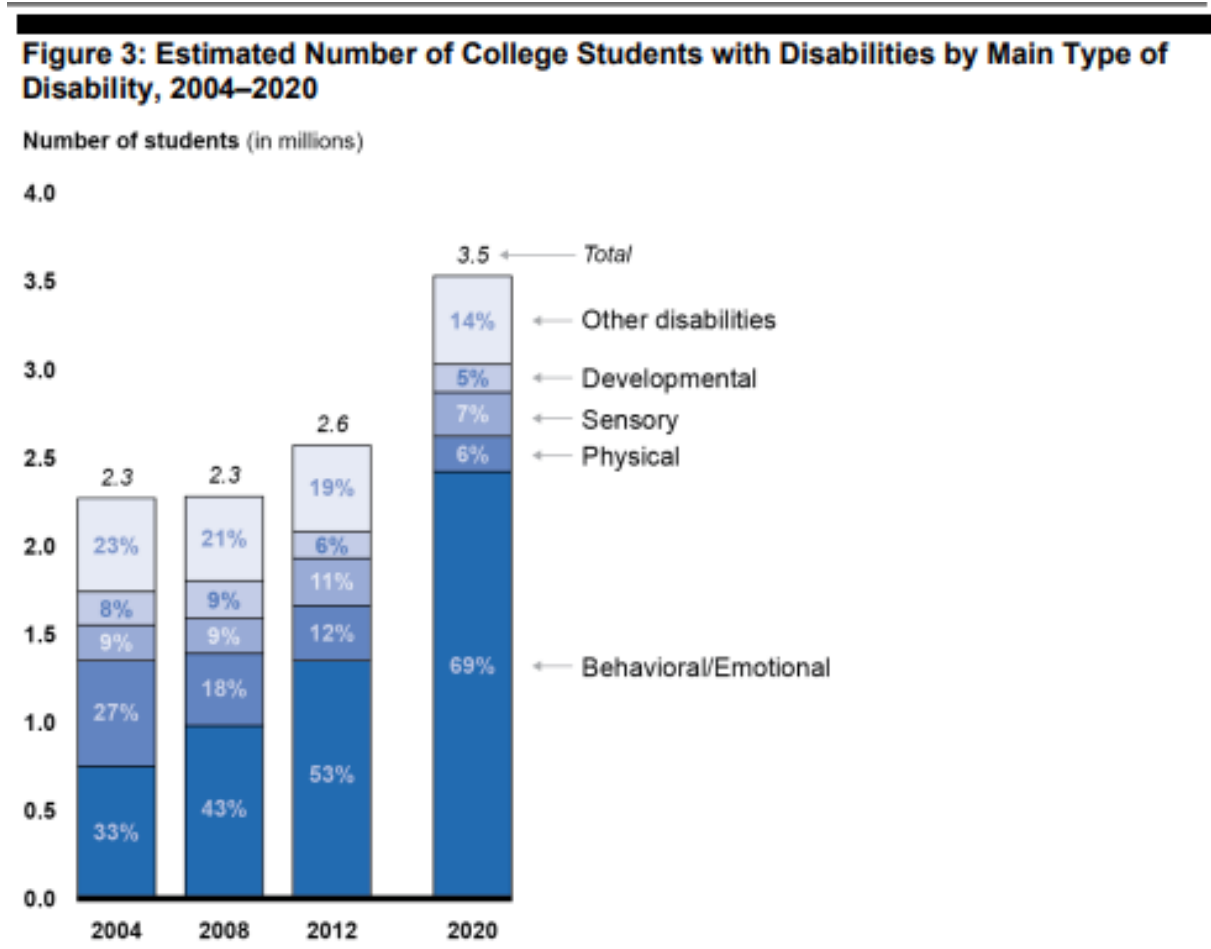
Estimated Percentage of College Students by Disability Status, 2004-2020



Source: GAO analysis of National Postsecondary Student Aid Study data. | GAO-24-105614

# Themes in 2024 GAO Report Regarding Students with Disabilities at College Campuses

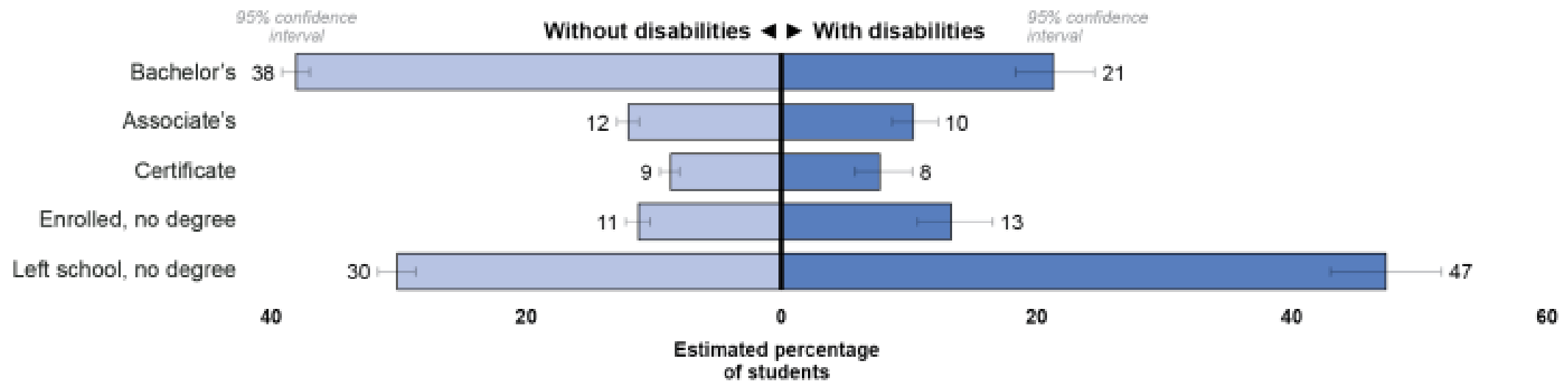
Increase in Students with Disabilities and Increase in Mental Health Conditions:



# Themes in 2024 GAO Report Regarding Students with Disabilities at College Campuses

Students with Disabilities have lower graduation rates:

**Figure 6: Estimated Percentage of College Students by Disability Status and Degree Attainment through 2016–2017**



Source: GAO analysis of Beginning Postsecondary Students Longitudinal Study data. | GAO-24-105614

Note: This figure includes individuals who first began a postsecondary undergraduate program regardless of level in 2011–2012 and measures the cumulative outcome of enrollment through the end of 2016–2017. All estimates are within a 5 percent margin of error.

# GAO Report Identifies Barriers to Obtaining Support:

1. Students not understanding the eligibility for academic supports in college compared to high school.
2. Obtaining documentation for accommodations.
  - a. Not knowing that students need documentation to request an accommodation (particularly for students whose diagnoses with mental health condition arise in late teens);
  - b. Not having the documentation that the college or university requires; and
  - c. Experiencing delays or hardships in obtaining documentation.
3. Faculty reluctance to implement accommodations.

“Students sometimes face faculty resistance to implementing approved accommodations, in part due to lack of faculty training, according to faculty, students, and DSO officials we spoke with. They said **faculty sometimes think that students are trying to cheat or gain an unfair advantage or that the approved accommodation is not legally required.** Faculty explained that **professors need to balance the provision of accommodations with the integrity of the course and that they could benefit from training in this area.** According to faculty we spoke with, some faculty also lack training in how to teach in a universal design environment—one in which individual accommodations may not be needed because the course is designed and delivered to be accessible to all.” GOA Report, p. 16

# Colleges Are Prohibited From Discriminating Against Students With Disabilities Under Three Federal Laws:

1. **Section 504 of the Rehabilitation Act of 1973:** Prohibits entities receiving federal financial assistance, including both public and private higher education institutions, from discriminating against otherwise qualified individuals with disabilities (29 U.S.C. § 794).
2. **Americans with Disabilities Amendment Act of 2008 (ADAAA):** Prohibits disability-based discrimination in a broad range of schools, with public schools covered under Title II (42 U.S.C. § 12131-12165) and private schools covered under Title III (42 U.S.C. § 12181-12189).
3. **Fair Housing Act (FHA):** Prohibits disability-based discrimination in the provision or assignment of university housing.

## Responsibilities in K-12 v. College:

- In K-12, the Individuals with Disabilities Education Act (IDEA) requires state educational agencies, other state agencies, or school districts to evaluate children who may have a disability and provide special education and related services (20 U.S.C. § 1400 et seq.). Once students graduate from high school, these IDEA requirements no longer apply.
- Also, while students in K-12 may have received disability services under a Section 504 plan, such plans are not dispositive at the college level and do not guarantee provision of the same services.

## College Responsibilities:

In college, students with disabilities are responsible for:

1. Identifying themselves as having a disability.
2. Providing documentation of their disability.
3. Requesting accommodations and services.
4. Engaging in the interactive process.



# Section 504 of the Rehabilitation Act of 1973

- A federal law that prohibits discrimination on the basis of disability:  
***No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of ... disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.***
- The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints.
- Both OCR and U.S. Department of Justice (DOJ) have enforcement authority.

# “Otherwise Qualified”

- Student must be able to perform the **essential functions of the program** *with or without reasonable accommodation*

# “Individual With a Disability”

**Physical or mental impairment** that **substantially limits** one or more **major life activities (MLA)**

**Record** of such an impairment

**Regarded** as having such an impairment

# Major Life Activity (examples)

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- **Learning**
- **Reading**
- **Concentrating**
- **Thinking**
- **Communicating**
- **Working**
- Major Bodily Functions (next slide)

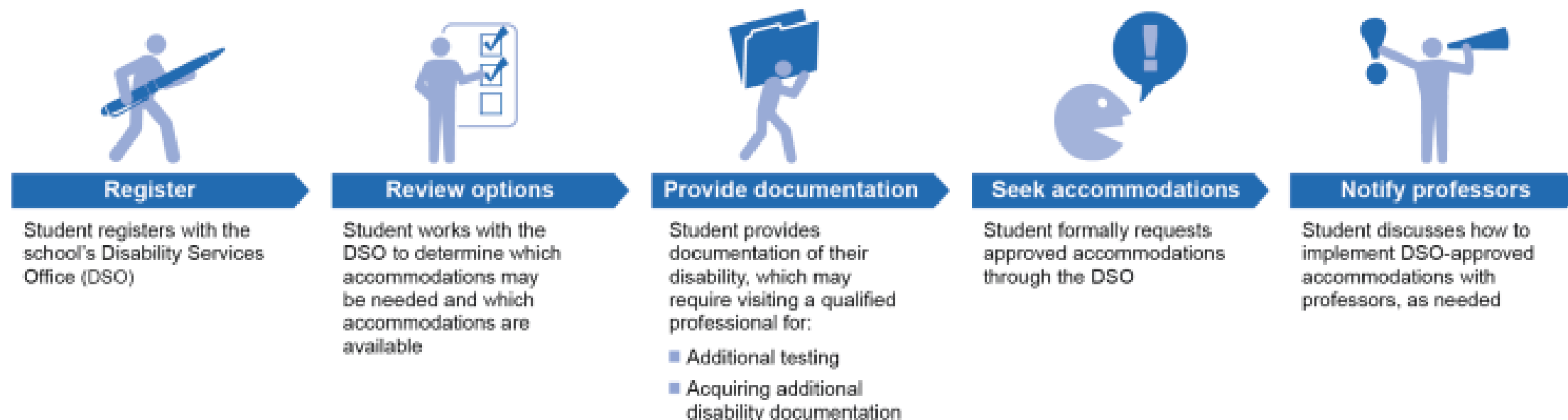
# What is a “Substantial Limitation” of a “Major Life Activity?”

- What does “substantial limitation” mean?
- Case-by-case determination

# Can a Student Have a “Temporary” Disability?

- E.g., sprained ankle
- Not disabilities **unless** severity results in substantial limitation of one or more Major Life Activity for an extended period of time
- Case-by-case determination

**Figure 1: Example of the Process for a Student to Obtain Accommodations in College**



Source: GAO analysis of Department of Education documents and discussions with college officials; GAO (icons). | GAO-24-105614

**Process for Obtaining Accommodations:** While the general procedure for obtaining accommodations is similar across colleges, the specific steps may vary. Colleges ***are required to make individualized determinations regarding appropriate academic adjustments and auxiliary services based on each student's specific circumstances.***

# **Risk Assessment: Making Sure That SWDs Understand How to Engage in the Process of Requesting Accommodations**

- Are your institutions' processes clearly defined and distributed widely?
- Are student-facing departments, students, and faculty aware of the processes?
- Does your university provide information to incoming students on how to register with Accessibility Offices? Is this information made available using many modes of communication?
- Does your university perform periodic audits to determine the effectiveness?
- Based on available resources, can your university provide more effective and streamlined ways to reduce barriers for students with disabilities to understand and access the interactive process?

# What is a “Reasonable Academic Accommodation?”

## What factors determine reasonableness ?

- No litmus test: some universities find it helpful to publish a non-exhaustive list of possible reasonable accommodations
- Must be individualized and fact-specific (process, process, process—can’t skip this part!)

## What may not be reasonable?

- Personal aids/services
- Undue financial/administrative burden
- Fundamental alteration
- Specific aid/service requested by student (not *necessarily* reasonable)



# Fundamental Alteration

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

- Whether accommodations would constitute a fundamental alteration must be reviewed on a case-by-case basis.
- A goal is to distinguish the nature of how the course has always been taught from the *truly essential* objectives and requirements of the course or academic program.
- Through this process, methods of instruction and assessment may be examined to determine how the course or program information is taught and whether there are opportunities for alternate format of materials, alternative teaching and learning methods, additional skills or strategies, etc.

# What are “Essential Requirements?”

Essential requirements are the core learning outcomes (including skills and knowledge) all students must demonstrate, with or without using accommodations, which are part of a larger interconnected curriculum related to a program or degree.

Ensure a fair deliberation when determining if a requested accommodation would be a fundamental alteration.

## *Established essential requirements:*

- Clearly articulate the overall purpose of the course/program.
- Identify required mastery of specific skills, knowledge, principles, and concepts.
- Convey the framework used to set academic and program standards.

# Factors to Consider in the Deliberative Process

The following questions should be considered:

- What fundamental course objective does this accommodation alter?
- What practical function does this fundamental objective serve in the academic program?
- Can the department provide documentation of the fundamental course objective (e.g., syllabus, professional association certification requirement, technical standard, etc.)?
- How does the requested accommodation alter this fundamental course objective?
- Has this accommodation been approved for students without disabilities or for any other situation or reason in the class in the current semester or in the past? If so, why?
- Is there any alternate way the student could demonstrate competence without undermining the essential course objectives? For example, an alternate accommodation that would not alter the essential objective of the course/program.
- Has the program or professor ever made modifications to the standard, learning outcome, or expectations in other student situations? If yes, how is the current situation different?
- Programs or degrees:
  - What skills or competencies will be needed within the field after graduation?
  - What are the requirements for licensing or professional accreditation?

# What Steps Should Faculty/program Take to Determine Essential Nature of a Course?

- What is the purpose of the course?
- What are the prerequisites or other background knowledge needed?
- What core outcomes/expectations are stated on the syllabus and required of all students?
  - What specific knowledge, principles, skills or concepts must be mastered and demonstrated?
- What aspects/requirements constitute a significant component of the learning process?
  - Could an alternative achieve the same result?
- What are the essential methods of instruction which are fundamental to the nature of the course?
  - Are any methods of instruction non-negotiable? Do other sections use other methods of instruction?

# **Risk Assessment: Identifying and Documenting Fundamental Alterations and Essential Functions**

- Institutions often do not have proper documentation of the fundamental alterations of a course or degree requirement.
- Faculty may lack the training and experience to create courses in which essential objectives and requirements are documented in course materials.
- Universities should provide support to assist in course development with examples of documented essential objectives and requirements

# Attendance Flexibility is a Common Request

Here are some guidelines adapted from OCR to use when making these decisions:

1. Is there classroom interaction between the instructor and students, and between students?
2. Do student contributions constitute a significant component of the learning process?
3. Does the fundamental nature of the course rely upon student participation as an essential method for learning?
4. To what degree does a student's failure to attend constitute a significant loss to the educational experience of OTHER students in the class?
5. What does the course description or syllabus say?
6. What is the method by which the final course grade is calculated?
7. What are classroom practices and policies regarding attendance?

# Other Concerns

- Recording classes?
  - The U.S. Department of Education's Section 504 regulations prohibit faculty members from banning recording in their classroom as a reasonable accommodation.
- Service dogs?
  - Service dogs are subject to special protections under the law and are allowed virtually anywhere the student is present. Some concerns involve areas where the presence of the animal creates a serious threat of physical harm (e.g., animal's presence creates an unreasonable risk, chemicals in labs that pose a risk of serious harm to the service animal, etc.)

# Hypotheticals

- There are three hypotheticals in the materials.
- Review them with these questions in mind:
  1. What are the substantive legal issues? (What area(s) of disability law are implicated?)
  2. What departments and personnel on your campus would be responsible for addressing the situation?
  3. Are they aware of the potential risk management issues related to addressing students with disabilities?
- What are the greatest challenges implicated in each hypothetical?



# Hypothetical: Fact Summary

- John is a sophomore in the University's Nursing Program
- Has medical documentation for general anxiety disorder, ADHD, and a leg fracture requiring surgery and weeks of recovery.
  - Extra time and quiet test taking environment approved by Office of Student Accommodations – student provided memo to professors
- Requested accommodations: emotional support animal, additional time for testing, wheelchair accessible room (for at least four weeks of recovery), transportation assistance.

# Hypothetical 1: Game Day

- John now has access to paratransit at the University as part of his requested accommodations.
- John is attending games using his wheelchair.
- Stadium operations has closed the roads around the stadium causing disruptions in paratransit services; stadium operations has allowed other passenger buses closer access to the stadium to facilitate transportation to external parking lots.

# Hypothetical 2: Janice the Dog

- John adopted a dog to serve as his emotional support animal.
- While his medical backup identifies an ESA as a requested housing accommodation, the letter was not shared with the Residence Life Office and that office has denied his ESA request.
- John has requested a wheelchair accessible room from both the Residence Life Office and the Office of Student Accessibility, but initially did not hear from either office.
- The accessible apartment is \$1,500 more per semester than the apartment that John and his fraternity brother roommates picked during room draw.
- John goes to the Office of Student Accessibility and complains about the denial of the ESA. The OSA coordinator feels bad for John; he writes an email to Residence Life granting the ESA and tells the housing director to assign John and his roommates to the accessible suite immediately and to charge them the lower cost of the original assignment because “that is what’s required by law.”
- Residence Life refuses to charge the lower rate.
- One of John’s roommates has a serious allergy to animals and has requested an accommodation to make the suite animal-free.

# Hypothetical 3: Fall Semester

- John is pursuing a Bachelor of Science in Nursing. This semester he is taking a lecture class, a seminar, and a clinical course located at a local hospital. He has started the semester well with an A- average.
- He has a clinical rotation at a local hospital that begins after the classroom component ends. The clinical course's syllabus states that missing two classes will result in a maximum highest grade of a C.
- John's medical troubles continue and he is hospitalized for an emergency appendectomy. After a successful surgery, he is released. While John recovered quickly, he was not allowed to take his medication during the weekend and in the three days following the medical procedure. He did not contact anyone on campus to let them know that he had been ill and required surgery. He did not show up for his clinical class on Wednesday or Friday.
- John explained to the clinical professor that he missed class because he did not take his medication and was still tired from surgery and asked if he could attend another session as a make-up class. The professor restated the grading policy to John and explained that each clinical day is important to understand and practice the nursing techniques. According to John, the professor made "some reference to the State Board of Nursing licensure requirements" and told him he "would need to take the C" or fail the class if he missed more sessions.
- Dean of Nursing Program denied John's request for a make-up class.



# Q & A with Panel

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