**Higher Education Disability Law**

**Year in Review: 2014-15**

**Court Decisions, Settlements, and Guidance[[1]](#footnote-1)**

**Paul D. Grossman, J.D**.[[2]](#footnote-2)

OCR Chief Regional Attorney, S.F., Retired

Adjunct Professor of Disability Law, Hastings College of Law, Univ. of Cal.

AHEAD Board Member; Expert Panel Member, Disability Rights Advocates

## Edited with Ruth Colker, J.D.

## Distinguished University Professor

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**Presented with Jo Anne Simon, J.D.**

Adjunct Professor, Fordham University School of Law

New York State Assembly Member, District 52

Founding Member and General Counsel of AHEAD

## Documentation and Definition of Disability

**DOJ NPRM** *at* [http://www.ada.gov/ nprm\_adaaa/ nprm\_adaaa.htm](http://www.ada.gov/%20nprm_adaaa/%20nprm_adaaa.htm)

***Rawdin v. American Board of Pediatrics,*** 985 F. Supp. 2d 636, 2013 U.S. Dist. LEXIS 159458, 2013 WL 5948074 (E.D. Pa. 2013)

Insert Colker and Grossman, ***Higher Education*** at p. 46 as first **NOTE.**

***Consent Decree, Department of Fair Employment and Housing (DFEH) and the United States v. LSAC***, No. CV 12-1830-EMC (N.D. Cal. May 20, 2014), *available at* <http://www.ada.gov/defh_v_lsac/lsac_consentdecree.htm> . On January 31, 2015, the panel filed its report. *See* <http://www.justice.gov/opa/pr/2014/May/14-crt-536.html>

Insert Colker and Grossman, ***Higher Education*** at p. 57 before box and p. 204 before the first **NOTE**.

**Academic Deference and Qualification**

***Walsh v. University of Pittsburgh,*** Civil Action No. 13-00189, (W.D. Penn. 2015), 2015 U.S. Dist. LEXIS 2563, 2015 WL 128104 <http://law.justia.com/cases/federal/district-courts/pennsylvania/pawdce/2:2013cv00189/208081/63> (last viewed, June 22, 2015).

Insert Colker and Grossman, ***Higher Education*** at p.210 before **NOTE 3.**

**Notice**

***Grabin v. Marymount Manhattan College***, 2014 U.S. Dist. LEXIS 79014, 2014 WL 2592416 (S.D.N.Y. June 10, 2014). <http://www.leagle.com/decision/In%20FDCO%2020140611E99/GRABIN%20v.%20MARYMOUNT%20MANHATTAN%20COLLEGE>

Insert Colker and Grossman, ***Higher Education*** at p. 196 before **Documentation.**

**Reasonable Accommodations/Auxiliary Aids/Academic Adjustments**

***Testing accommodations***

***Rawdin v. American Bd. of Pediatrics***, 582 Fed. Appx. 114 (3d Cir. Pa. 2014).

Insert Colker and Grossman, ***Higher Education*** at p. 316 before **NOTE** 2.

***Individuals with mobility impairments***

[***Murillo v. Citrus College***, 2014 Cal. App. Unpub. LEXIS 6111 (Cal. App. 2d Dist. Aug. 28, 2014)](https://advance.lexis.com/api/document/collection/cases/id/5D13-F5D1-F04B-S0M5-00000-00?context=1000516). <http://www.courts.ca.gov/opinions/nonpub/B248201.PDF>

Insert Grossman and Colker, ***Higher Education*** at p. 223 before **Burden and Order .**

***Individuals with sensory impairments***

***Dudley v. Miami University*** (S.D. Ohio 2014) (1:14-CV-00038). *See* <https://nfb.org/images/nfb/documents/pdf/miami%20teach.pdf>

Motion for intervention.<http://www.justice.gov/opa/pr/justice-department-moves-intervene-disability-discrimination-lawsuit-alleging-miami>

Insert, Colker and Grossman, ***Higher Education*** at p. 260 after **NOTE** 3.

***Argenyi v. Creighton Univ.****,* 703 F.3d 441 (8th Cir. Neb. 2013).

***Argenyi v. Creighton Univ.,* 2014 U.S. Dist. LEXIS 63726, 2014 WL 1838980 D. Neb. May 8, 2014)**

Insert Colker and Grossman, ***Higher Education*** at p.280 after **NOTE** 1.

***Food allergy accommodation***

***Pilot [draft] Guidelines for Managing Food Allergies in Higher Education,*** <http://www.foodallergy.org/>document.doc?id=382

Insert Colker and Grossman, ***Higher Education*** at p. 317 before **Safety.**

**Students with Psychological Disabilities**

***DOJ Settlement with Quinnipiac University* -** [http://www.ada.gov/ quinnipiac\_sa.htm](http://www.ada.gov/%20quinnipiac_sa.htm)

Insert Colker and Grossman, ***Higher Education*** at p.319 following the third paragraph.

***Hershman v. Muhlenberg College*, 17 F. Supp.3d 454 (E.D. Pa. 2014).**

Insert Colker and Grossman, ***Higher Education*** at p.211 after **Note** 2.

***Quinones v. University of Puerto Rico, et al.,*** No. 14-1331, 2015 WL 631327, 2015 U.S. Dist. LEXIS 18319, 31 Am. Disabilities Cas. (BNA) 471 (D. P.R. Feb. 13, 2015).

Insert Colker and Grossman, ***Higher Education*** at p.126 after **Note** 1.

**The Intersection of Race, National Origin and Disability**

***Salmeron v. Regents of the University of California***, No. C 13-5606, 2014 U.S. Dist. LEXIS 80344, 2014 WL 2582712 (N.D. Cal.06/09/14).

**Retaliation**

***Cottrell v. Norman*,** 2014 U.S. Dist. LEXIS 101645, 2014 WL 3729215 (D.N.J. July 25, 2014). <http://law.justia.com/cases/federal/district-courts/new-jersey/njdce/1:2012cv01986/272545/66/>

***Widomski v. State Univ. of N.Y. (SUNY) at Orange,*** 933 F. Supp. 2d 534 (S.D.N.Y. 2013)

***Sjöstrand v. Ohio State Univ***., 750 F.3d 596 (6th Cir. 2014)

***See also McKee v. Madison Area Tech. College***, 2014 U.S. Dist. LEXIS 70967, 2014 WL 2159257 (W.D. Wis. May 22, 2014). <http://leagle.com/decision/In%20FDCO%2020140527G48/McKEE%20v.%20MADISON%20AREA%20TECHNICAL%20COLLEGE>

**Facilities Access**

[***Williams v. Southern Univ. & Agric. & Mech. College*** (M.D. La. Oct. 10, 2012)](https://advance.lexis.com/api/document/collection/cases/id/56SP-0281-F04D-C0J8-00000-00?context=1000516)

**Lawsuit:** <http://theadvocate.com/csp/mediapool/sites/dt.common.streams.StreamServer.cls?STREAMOID=miL3Pu8Yv$M$aME5$ZQguJM5tm0Zxrvol3sywaAHBAnivlp5nxSJnEO0Mfd4eDSfE0$uXvBjavsllACLNr6VhLEUIm2tympBeeq1Fwi7sIigrCfKm_F3DhYfWov3omce$8CAqP1xDAFoSAgEcS6kSQ--&CONTENTTYPE=application/pdf&CONTENTDISPOSITION=Southern%20Williams%20Lawsuit.pdf>

**Settlement:** <http://theadvocate.com/csp/mediapool/sites/dt.common.streams.StreamServer.cls?STREAMOID=jQQKWnilRvICOWv3Ez02v5M5tm0Zxrvol3sywaAHBAmTauUdzj2jhKYG34RyvxpFE0$uXvBjavsllACLNr6VhLEUIm2tympBeeq1Fwi7sIigrCfKm_F3DhYfWov3omce$8CAqP1xDAFoSAgEcS6kSQ-->&CONTENTTYPE=application/pdg&CONTENTDISPORTION=Southern%20Settlement.pdf

***Fortyune v. City of Lomita,*** 766 F.3d 1098 (9th Cir. Cal. 2014); cert. denied \_\_ U.S.\_\_ (June 29,2015). <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/09/05/12-56280.pdf>

<http://www.supremecourt.gov/orders/courtorders/062915zor_4g25.pd>

**Digital Access and Equality**

The Department of Justice has published its spring 2015 regulatory agenda pursuant to Executive Order 12866, ‘‘Regulatory Planning and Review,’’ 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. 601 to 612 (1988).*See* <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1190-AA65> (split from RIN 1190-AA61).

Insert Colker and Grossman, ***Higher Education*** at p. 289.

***Digital access in academia***

***University of Cincinnati,*** OCR compliance review #15-13-6001 (December 2014) <http://www2.ed.gov/documents/press-releases/university-cincinnati-agreement.pdf>

Insert Colker and Grossman, ***Higher Education*** at p.290 before **Notes.**

***Youngstown State University***, OCR compliance review #15-13-6002 (December 2014) [*http://www2.ed.gov/documents/press-releases/youngstown-state-university-letter.pdf*](http://www2.ed.gov/documents/press-releases/youngstown-state-university-letter.pdf)

Insert Colker and Grossman, ***Higher Education*** at p. 290 before **NOTES**.

***The National Federation of the Blind, Anthony Lanzilotti and Mitchell Cossaboon v Atlantic Cape Community College***, consent decree, D.N.J. Case No. 1:33-av-00001 (2015). <https://nfb.org/national-federation-blind-and-two-blind-students-resolve-complaint-against-atlantic-cape-community>

Insert Colker and Grossman, ***Higher Education*** at p. 290 before **Notes**.

***DOJ edX settlement* -** [**http://www.ada.gov/edx\_sa.htm**](http://www.ada.gov/edx_sa.htm)Litigation not filed

Insert Colker and Grossman, ***Higher Education*** at p. 290 before **Service Animals.**

***National Association of the Deaf, et al., v. Harvard University, et al*., US Department of Justice statement of Interest,** Civil Action No. 3:15-cv-30023-MGM, D. Mass (June 23, 2015). <http://www.ada.gov/briefs/harvard_soi.pdf>

***National Association of the Deaf, et al., v. Massachusetts Institute of Technology*, US Department of Justice statement of Interest,** Civil Action No. 3:15-cv-300024-MGM. <http://www.ada.gov/briefs/mit_soi.pdf>

Insert Colker and Grossman, ***Higher Education*** at p. 290 before **Service Animals.**

***Are sales and service websites “public accommodations” under Title III of the ADA?***

***National Federation of the Blind v. Scribd, Inc.,*** Case No. 2:14-cv-162,2015 U.S. Dist. LEXIS 34213, 2015 WL 1263336 (D. Vt. Mar. 19, 2015) <http://the-digital-reader.com/wp-content/uploads/2015/03/30-Opinion-denying-Motion-to-Dismiss.pdf>; ***Nat'l Fed'n of the Blind v. Scribd Inc***., 2015 U.S. Dist. LEXIS 69440 (D. Vt. May 29, 2015).

***Cullen v. Netflix, Inc.,*** 600 Fed. Appx. 508, 2015 U.S. App. LEXIS 5257 (9th Cir. Cal. 2015); [***Earll v. Ebay, Inc***., 599 Fed. Appx. 695, 2015 U.S. App. LEXIS 5256 (9th Cir. Cal. 2015)](https://advance.lexis.com/api/document/collection/cases/id/5FN4-YJW1-F04K-V045-00000-00?context=1000516). Respectively, [http://law.justia.com/cases/ federal/appellate-courts/ca9/13-15092/13-15092-2015-04-01.html](http://law.justia.com/cases/%20federal/appellate-courts/ca9/13-15092/13-15092-2015-04-01.html); <http://cdn.ca9.uscourts.gov/datastore/memoranda/2015/04/01/13-15134.pdf>

***National Federation of the Blind of California, Kelly, Hingson, and Pederson v. Uber Technologies, Inc.,*** Case No. [14-cv-04086 NC](https://ecf.cand.uscourts.gov/cgi-bin/DktRpt.pl?280572), N.D. Cal (2015)

http://law.justia.com/cases/federal/district-courts/california/candce/ 3:2014cv04086/280572/37/

*See also* ***Reyazuddin v. Montgomery County,*** No. 14-1299, 2015 U.S. App. LEXIS 10032, 2015 WL 3651710 4th Cir. (June 15, 2015)

Insert Colker and Grossman, ***Higher Education*** at p. 87 before **NOTE** 2.

**Disparate Impact Analysis**

***Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc***., \_\_ U.S. \_\_, 2014 U.S. LEXIS 4912, 135 S. Ct. 46 (U.S. 2014).

Insert Colker and Grossman, ***Higher Education*** at p. 6**.**

**Transit**

See also ***National Federation of the Blind of California, Kelly, Hingson, and Pederson v. Uber Technologies, Inc.,*** Case No. [14-cv-04086 NC](https://ecf.cand.uscourts.gov/cgi-bin/DktRpt.pl?280572), N.D. Cal (2015). [http://law.justia.com/cases/federal/district-courts/california/ candce/ 3:2014cv04086/280572/37h](http://law.justia.com/cases/federal/district-courts/california/%20candce/%203:2014cv04086/280572/37).

1. This document is indexed to Colker and Grossman, ***The Law of Disability Discrimination for Higher Education Professionals.*** This book, written for AHEAD members, Disabled Students Service Directors, and their legal advisors is published by Lexis-Nexis. It provides a comprehensive overview of disability anti-discrimination law including legal history, definition of disability, employment discrimination, and an extended chapter on the rights of students with disabilities in higher education. This book is available through Lexis-Nexis at the following link:

   <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&prodId=prod20900324> [↑](#footnote-ref-1)
2. **The information set forth in this document is presented for informational purposes only and should not be construed as legal advice. For any legal questions you may have, please consult with counsel for your institution.** [↑](#footnote-ref-2)