RECREATION, TRANSPORTATION, EVACUATION, AND EVENTS

The ADA: Beyond the ABC’s of Academics -- Part A
Concurrent 3.4

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SERIES AND SESSION

The ADA:
Beyond the ABCs of Academics
• Part A, Recreation, Transportation, Evacuation, and Events
• Part B, On-campus Living and Dining
• Part C, Animals on Campus

Series premier: four topics
• Athletics and recreation
  — Dear Colleague Letter from OCR
  — 2010 Standards and recreation
• Transportation
  — Accessible parking
  — Buses, shuttles
• Emergency preparedness and response
  — Notice
  — Safe evacuation from buildings
• Events
  — Accessibility
  — Seating, ticket sales

ADA/504 principles
• Civil rights: equal opportunity
• Reasonable modifications
• Effective communication
• Most integrated setting

ATHLETICS AND RECREATION: DEAR COLLEAGUE LETTER FROM OCR
Evolution of the DCL (1)
Section 504 regulations (1980)
• Recipients cannot discriminate in athletics and similar services
• Provide equal opportunity to participate
• Offer separate or different programs only per most integrated setting provisions
34 CFR 104.43 and 104.47
http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html

Evolution of the DCL (2)
• Follows 2010 GAO report
  – In elementary and secondary schools, students with disabilities not being afforded equal opportunity to participate in extracurricular athletics
  – These activities provide health and social benefits to all students: Socialization, leadership skills, improved teamwork, athletic skills

Evolution of the DCL (3)
Dear Colleague Letter from OCR
• Guidance on extracurricular athletics for students with disabilities, January 25, 2013
http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf

Applies to...
• Elementary and secondary education
  – Club, intramural, and interscholastic athletics
  – But students at postsecondary level must also be provided equal opportunity to participate
• Under section 504
  – To extent title II provides greater protection, comply with title II also

DCL part 1: Section 504 overview (1)
• “Qualified”
  – Of an age for which the school provides these programs for all students
  – Age that State law or IDEA (Federal Law) requires the provision of school services for students with disabilities
• Selective or competitive program
  – May require level of skill or ability to participate
    • As long as selection criteria are not discriminatory
    • Spot on team is not guaranteed
DCL part 1: Section 504 overview (2)

Associations: Obligation supersedes rules of association, club, league that would limit eligibility
- Cannot give significant assistance to association, club, etc. that discriminates
  - Association is subject to 504 if members are recipients and have ceded controlling authority to organization over portions of athletic program
- Implication: where athletic association covered by 504, member school’s obligations apply to that association

Part 2: Do not act on generalizations and stereotypes
- Do not act on generalizations or stereotypes about disability generally or about a specific disability
- Example: Coach won’t play lacrosse player with a learning disability because he thinks she can’t play successfully under time constraints of an actual game

Part 3: Ensure equal opportunity for participation (1)
- Make reasonable modifications and provide aids and services if necessary to ensure equal opportunity to participate
  - Example: for track team member with hearing disability, visual cue for starter pistol sound
  - Example: for swimmer with only one hand, allow “one-hand touch” rather than just “two-hand touch”

Part 3: Ensure equal opportunity for participation (2)
- But school does not have to make fundamental alterations in program
- Undue burden defense will almost never work here
- May adopt bona fide safety standards

Fundamental alteration
- A change that
  - Alters such an essential element or aspect of the activity or game that it would be unacceptable (even if it affects everyone equally)
    - E.g., fifth base in baseball
  - Gives an unfair competitive advantage to the student with the disability and thus fundamentally alters the character of the competition
- Must take steps up to that point

Examples
- For track team member with hearing disability, visual cue for starter pistol sound
  - School argues it would distract other runners
  - OCR: not a fundamental alteration
- For swimmer with only one hand, allow “one-hand touch” rather than just “two-hand touch”
  - School argues it gives unfair advantage
  - OCR: doesn’t alter essential aspect of activity
  - If gives unfair advantage, school might have to allow her to touch with one hand and other arm simultaneously stretched forward
Separate opportunities? (1)

- The provision of unnecessarily separate services is discriminatory; section 504 requires provision of services in the most integrated setting appropriate for the student with the disability

What if number at school is not enough for a team?

- Develop district-wide or regional teams
- Mix male and females
- Offer “allied” or “unified” teams (students with/without disabilities)

Separate opportunities? (2)

- But if inclusion not possible, schools should create additional opportunities for students with disabilities
- Examples: wheelchair tennis, wheelchair basketball, sled hockey
- Support the teams equally compared to others

Athletic associations

- Responsibility under 504 supersedes any discriminatory rule of athletic association, organization, league, etc.
- Recipient can’t give significant assistance to one that discriminates
- Association is subject to section 504 if –
  - it receives Federal financial assistance itself or
  - its members receive Federal financial assistance and they have ceded controlling authority over portions of their athletic programs to the association
- Note: an athletic association may also be covered by Title III of the ADA

Sections 234 – 243 & Chapter 10: Recreation Facilities

- Amusement Rides
- Recreational Boating Facilities
- Exercise Machines and Equipment
- Fishing Piers and Platforms
- Golf Facilities
- Miniature Golf Facilities
- Play Areas
- Swimming Pools, Wading Pools, and Spas
- Shooting Facilities with Firing Positions

Exercise Facilities

Section 236 Exercise Machines and Equipment
Section 1004 Exercise Machines and Equipment
Exercise Machines

At least one of each type...

Exercise Machines

Accessible route and shared clear floor space...

Golf Facilities

Section 238 Golf Facilities
Section 1006 Golf Facilities

Play Areas

Section 240 Play Areas
Section 1008 Play Areas

Play Components

Ground level play components
106.5 Defined Terms
Approached and exited at ground level
**Ground-Level Play Components**

Integrated into the play area...

Dispersed throughout the play area (if two or more ground components)...

**Large and Small Play Areas**

Options Differ By:

- The number of play components that must be accessible
- The systems allowed to provide access to elevated components
- The clear width of the accessible routes connecting play components

**Ground Level and Elevated Play Components**

240.2.2 & 1008.2.1

50% of all elevated play components in a play area must be reached by an accessible route

For less than 20 elevated components: ramp and/or transfer = 50%

For 20 or more elevated components: 25% ramp + 25% ramp and/or transfer = 50%

**Elevated Accessible Route Transfer Systems**

1008.3 Transfer Systems

Transfer platforms
Transfer steps
Transfer supports
Clear floor or ground space

**Swimming Pools, Wading Pools, and Spas**

Sections 242 and 1009

**Spas and Hot Tubs**
Swimming Pools & Spas
Existing Pools & Spas -- January 31, 2013

- Swimming pools, wading pools and spas...
- At least 2 accessible means of entry (except when less than 300 linear feet) -- pool lifts, sloped entries, transfer walls, transfer systems, and stairs. One of the two entry systems must be either a lift or a sloped entry.

Accessible Parking

- 208 Parking Spaces
- 209.4 Valet Parking
- 216.5 Parking
- 502 Parking Spaces

502 Parking Spaces

- Measuring width of spaces
- Vehicle Spaces
- Access Aisle
- Location
- Floor or Ground Surfaces
- Vertical Clearance
- Identification
- Relationship to Accessible Routes

Accessible Parking: Van Space First Provided

208.2.4 Van Parking Spaces. For every six or fraction of six parking spaces required by 208.2 to comply with 502, at least one shall be a van parking space complying with 502.

Five-foot Access Aisle

Exception to 502.2 allows van spaces to be min. 96 inches wide with a min. 96 inch wide access aisle.

Min 60 or 96 inch Access Aisle

Width of van spaces = 132 inches minimum
502.6 Identification

Section 502.6
• signs include ISA (703.7.2.1)
• “van accessible” for van spaces
• 60” min. to bottom of sign

Parking Sign Height
Section 502.6 Identification

60 inches min.

Maximum Slope 1:48
Section 502.4 Floor and Ground Surfaces

No Built-Up Curb Ramp

Maximum slope of 1:48 in access aisle prohibits a ramp in the access aisle.

502.4 Floor and Ground Surfaces

...shall comply with 302.

302 Floor and Ground Surfaces
208.3 Location...

502.7 Relationship...

Clear width of accessible route is maintained when vehicles parked...

Passenger Loading Zones
Sections 209 and 503

‣ Passenger Loading Zones -- 209.2.1
‣ Bus Loading Zones -- 209.2.2
‣ On-Street Bus Stops -- 209.2.3

209 Passenger Loading Zones and Bus Stops

503 Passenger Loading Zones

‣ Vehicle Pull-Up Space
‣ Access Aisle
‣ Floor or Ground Surfaces
‣ Vertical Clearance

Passenger Loading Zones

Curb Ramp?
TRANSPORTATION

Title III (1)

- Generally, college/university must provide equivalent service
  - “Fixed route”
    - “Regular” bus service,
    - Campus shuttles
    - Game shuttles
  - “Demand-responsive”
    - On-call service (not fixed time and place)

Title III (2)

In fixed route system
- If acquire new vehicles that hold >16, must be accessible
- If acquire new vehicles that hold 16 or fewer, must provide “equivalent service”

Transportation: Title III (4)

Demand-responsive
- Whether or not purchase or lease new vehicle, must provide “equivalent service” for people with disabilities
- Technically no “paratransit” requirement for campuses

Title III (3)

In fixed route system
- If don’t acquire new vehicles, follow DOJ (DOT is silent)
  - Barrier removal (lifts not required)
  - Reasonable modifications to policies/practices could mean
    - shuttle or van service
    - reimbursement
    - could lead to paratransit-like services

Transportation: Title II

- Fixed route: treated like commuter bus per DOT
  - Purchase or lease of new vehicles: accessible
    - NOT required to offer paratransit services
- Demand-responsive
  - If new vehicle, accessible OR equivalent service
  - If no new vehicles, again, DOT silent
  - So ensure program accessibility (could be similar to paratransit)
Resources

- Technical assistance letter from DOJ, 1993
  See especially 49 C.F.R. 37.25(a), 37.101.

EMERGENCY PREPAREDNESS AND RESPONSE

Emergencies are...

Be ready for anything

- Natural events
- Shooting events, spills
- Sheltering in place
- Evacuation
- Use as a shelter by a city/town/county

ADA analysis

- Individuals with disabilities
- Cannot exclude students/visitors from participation in emergency preparedness program by reason of their disabilities
- Make reasonable modifications to policies
- Make reasonable accommodations to disabilities of employees

Effective plans for cities/counties (1)

From decision in CALIF v. City and County of Los Angeles, 2011
http://www.dralegal.org/sites/dralegal.org/files/casefiles/order_0.pdf

1. Development of a comprehensive emergency plan
2. Assessment of its efficacy
3. Advance identification of needs and resources
4. Provision of public notification and communication
5. Provision of policies or procedures concerning sheltering in place
Effective plans for cities/counties (2)

6. Provision of shelter and care for individuals forced to evacuate their homes
7. Assistance with evacuation and transportation
8. Provision of temporary housing
9. Provision of assistance in recovery and remediation efforts

Plan to provide “ad hoc” accommodations isn’t enough

- Purpose of program is
  - to anticipate needs of residents and
  - to minimize last-minute, individualized requests
- It is irrelevant that individuals should also personally plan and prepare

Issues on campus (1)

- Registry?
- Individual preparedness
- Prepare for everyone
- Notice
- Sheltering in place

Issues on campus (2)

- Safe evacuation from building
  - Notice
  - Areas of rescue assistance
  - Ways to leave building
    - Evac chairs
    - Assistance (consult counsel re: Good Samaritan laws)

Issues on campus (3)

- Evacuation from campus (transportation)
- Temporary housing
- Returning to campus
- Epidemic or pandemic: social distancing

Good model

- Swarthmore College
  [http://www.swarthmore.edu/administration/physical-access-and-learning-support/emergency-evacuation-plan.xml](http://www.swarthmore.edu/administration/physical-access-and-learning-support/emergency-evacuation-plan.xml)
- See links to resources there
Highlights of Swarthmore plan (1)

- Members of the community are trained to identify and assist persons who may need aid (floor monitors, rescue assistants)
- Plan sets out roles for college’s Department of Public Safety and Borough Police and Fire Departments
- All college faculty, students, and employees must supply emergency contact information
- College uses numerous means of contact

Access to Tours, Graduation, and Other Events

Campus Access Map

Clery Act

- Passed in 1990
- Requires colleges and universities to disclose campus crime statistics, security policies, other information to students and employees
- Amendments effective July 2010
  - Have and disclose a written emergency plan.
  - Include procedures to immediately notify campus community.
  - Conduct at least one yearly drill.
  - Publicize the procedures in conjunction with the annual test.

Highlights of Swarthmore plan (2)

- Evac chairs
- Personal GPS locators
- Evacuation maps with indicators of Safe Wait Areas and fire stair towers
- Class announcements
- Orientation of faculty, staff, students and opportunity to have referral form
- Individual information sharing encouraged

Campus Access Map
Where a circulation path directly connects a performance area to an assembly seating area, an accessible route shall directly connect the assembly seating area with the performance area. An accessible route shall be provided from performance areas to ancillary areas or facilities used by performers unless exempted by 206.2.3 Exceptions 1 through 7.

Where a direct route connects a performance area to an assembly seating area...

• Incorporate Accessibility from Beginning...
• Know Accessible Routes and Facilities -- Relocate if Necessary
• Remember Integration and Equal Opportunity
• Keep Checking and Training!

• Accessibility
• Seating, ticket sales
• Segways and other mobility devices
Accessibility

- Your place or mine? – Check it!
  - Is the facility accessible now?
  - Is the site accessible?
  - Will the facility stay accessible? (security barriers, clear floor space, booths, parking)
- Contractors/vendors
  - Services: security, transportation, food, set-up
  - Porta potties (equipment itself, placement)

Ticket sales: 2010 additions to regulations

- New ADA rules apply to selling tickets for assigned seats at concerts, plays, lectures, and sporting events
- For single events or for series of events
- Use them as guidance for events where seats aren’t assigned (e.g., graduation)

Key: equal opportunity to purchase tickets

- Hours
- Stages of sales
- Methods of distribution
- Same types and numbers of ticketing sales outlets

Eight provisions

- Ticket sales
- Information about location of accessible seats, features
- Ticket prices
- Options for purchasing multiple tickets
- Hold and release
- Ticket transfers
- Secondary ticket market
- Fraud

Ticket Sales

- Tickets for accessible seating must be sold
  - during the same hours,
  - during the same stages of ticket sales (pre-sales, promotions, lotteries, wait lists, special fan clubs)
  - under the same terms and conditions, and
  - through the same methods of distribution (including Internet and third party vendors), as all other tickets for the same event or series of event are sold.

Ticket prices

- Not higher than for same seating area for same event/series
- Available at all price levels
- If can’t be provided at particular price level, offer for sale at same price nearby or in similar location
Prevention of Fraud (1)

In selling accessible seating --
• Ticket seller may not require proof of disability, such as a doctor’s note
• Ticket seller may ask if the individual buying the ticket has a mobility disability or a disability that requires the use of the accessible features of the accessible seating.

Prevention of Fraud (2)

• Covered entity may investigate the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.
• Covered entity may warn purchasers that accessible seating is for individuals with disabilities and that ticket holders for accessible seating who purchase tickets fraudulently are subject to relocation.

Resources

• DOJ TA piece: http://www.ada.gov/ticketing_2010.htm

• Events and ticketing – several resources from the Kennedy Center
  http://www.kennedy-center.org/accessibility/education/lead/resources.html

Wheelchairs and OPDMDs

Two tiers of devices, two approaches

Wheelchairs and manually powered mobility aids
• Wheelchairs, walkers, crutches, canes, braces: Permitted in any area open to pedestrian use

Other power-driven mobility devices
• Devices not necessarily designed for use by people with disabilities: Make reasonable modifications to permit use by people with disabilities

Other Power-Driven Mobility Device (OPDMD)

“[A]ny mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion.”

Use of OPDMDs

• Burden is on university to demonstrate use is not reasonable: that the class of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the entity.
Assessment Factors

1. Device: type, size, weight, dimensions, and speed
2. Facility's volume of pedestrian traffic
3. Facility's design and operational characteristics
4. Substantial risk of serious harm to environment, resources
5. Conflict with Federal land management laws and regulations.

Policies:
DOJ guidance

• Develop a policy by building/area and inform the public
  ▪ Clearly state circumstances under which permitted (follow assessment factors)
  ▪ Specific rule
  ▪ Procedure for assessment
  ▪ Consider grouping by type

Limits on inquiries

• Can request a “credible assurance” that an OPDMD is required because of the person’s disability.
  ▪ Give examples in policy: placard, I.D.
• May not ask about nature and extent of disability.

Policy examples

• Government building: no gas-driven devices, no use of escalators, maximum speed
• Trails and other outdoor areas: may prohibit certain types that may damage particular environment (e.g., ATV’s in cross county ski area, on narrow trails)

Resources

• DOJ’s ADA website, including regulations
  www.ada.gov
• Department of Education’s section 504 regulations
  http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html

QUESTIONS?