

Association of American Medical Colleges
Disability Law 101_What Faculty Need to Know About Student Accommodations

I'm Elisa Laird-Metke. Hi, is that Jayme.

It is. I apologize. I'm sorry. We're going to go ahead and get started now. I spoke to myself probably for about five minutes, and I apologize. So good afternoon. What a wonderful start. My name is Jayme Bograd, and I'm the director of Student Affairs at the AAMC.

We're so excited that almost 400 of you have registered for this webinar, as we'll focus our efforts on "Disability Law 101: What Faculty Needs to Know About Student Accommodations." I have the distinct pleasure of introducing you to our talented speakers, Jonathan McGough from the University of Washington is the assistance director of Disability Resources for students. His responsibilities include improving and coordinating accommodations for all students in professional health science program.

I also can introduce you now to Elisa Laird-Metke from the University of California, San Francisco, and she's the associate director for Student Disability Services at the University of California, San Francisco, where she's a primary service provider for students with disabilities in the schools of nursing, pharmacy, and the physical therapy joint UCSF SFU program. Her extensive background in law, disability, and public health provide her with a unique perspective on the future of disability and the health sciences.

And our moderator and co-conspirator behind these powerful webinars is Dr. Lisa Meeks from the University of California, San Francisco, where she is the director for student disability services. She is also a co-founder and president elect of the coalition for disability access in health science and medical education and the co-chair of the association on higher education and disability autism spectrum disorder special interest group.

So without further ado, apologies for being late on the call, we'd like to introduce you to Elisa.

Thank you so much, Jayme. So, first, we in the Coalition for Disability Access and the Graduate Health Science and Medical Education want to thank the AAMC for their generous support in developing this webinar series with us. We plan to leave plenty of time at the end of the webinar for Q&A, so if you have a question, please type it into the bottom right of your screen and select -- if you could do the next slide -- select all panelists from the dropdown menu, as you could see from that red arrow there on that screenshot.

So this webinar is primary geared to faculty, and it is intended to be just an intro to disability law. The manual published by the coalition, which is going to be released later this summer, will cover legal topics in a lot more depth, and that would serve as a great resource for faculty and disability service, or as we'll often refer to them today, DS providers. Jon is going to introduce us to today's topics now.

All right, thank you, and hopefully everybody can hear me okay. Today's topic, and this is a pretty ambitious set of topics for 45 minutes I think. We really do want to leave time for questions. But our first question we're hoping everyone will be able to answer after today's webinar is why are more students receiving disability accommodations. We're also going to cover what are the disability laws applicable to higher education. Third, how is disability determined and what are the school's obligations in serving these students. Fourth, we also hope to identify faculty's role in the determination and implementation of disability accommodations. And lastly, we'll cover disability accommodations intersect with patient safety and technical standards.

Great. This is a photo of the Supreme Court. And they heard a case back in 1979 called *Southeastern Community College v. Davis* regarding whether a deaf woman could enroll in a nursing program. The program required that students use a traditional stethoscope to hear a heart beat, breath sounds, and this applicant couldn't do that. The court ruled in favor of the school in that case and said the school did not have to admit the deaf student. But, in its opinion, the Court recognized its decision in that case might not hold up in the future, and they said, "It is possible to envision situations where an insistence on continuing past requirements in practices might arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program. Technological advances can be expected to enhance

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opportunities. Thus, situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory."

So this prediction from the Supreme Court that technology might open doors in the future for people with disabilities that were closed to them in 1979 has certainly come true. Accommodations that were not required in 1979 have really become the norm today, and we're going to talk about some of those later on. Jon?

So, on the next screen here, you'll see an image of an arrow pointing from left to right, intended to represent the evolution of disability law in a really brief infographic. Inside that arrow are three boxes. The first says 1973, which is when Section 504 was passed. In the second box is the year 1990, which is when the Americans with Disabilities Act was passed. In the third box was the year 2008, and underneath that the letters, "ADAA," which was the year the Americans with Disabilities Amendment Act was passed, and then on top of that, boom, in our very animated slide, it says state law. So in 1973, Section 504 of the rehab act was passed as part of a larger wave of civil rights legislation in order to afford individuals with disabilities protection against discrimination under the law. Section 504 still applies to all entities receiving federal financial assistance, so every college and university that receives Stafford loans for example, or grants to do its research from the federal government is still held accountable to Section 504. And under this law, individuals with disabilities should be afforded equal access to services offered by recipients of federal funds. So that begs the question, why do we need more laws? Since I've got the mic I'll attempt to answer that question very briefly.

A series of court cases eroded congress's initial intent with that law, and institutions continually failed to meet their obligations. So in 1990, the Americans with Disabilities Act clarified and buttressed Section 504. It spelled out in greater detail the obligations, not only of recipients of federal funds but also private businesses and public spaces. So, in a nutshell, the ADA has three parts. These are referred to as titles, and Title I applies to businesses and their responsibilities to their employees who may have disabilities. Title II applies to public entities such as public colleges and universities, as well as public spaces, and Title III applies to private entities such as private universities and colleges.

So in 2008, after a series of court decisions eroded congress's intent yet again with the ADA, the Amendments Act reaffirmed congress's intention that the ADA apply to individuals with all types of disabilities, including those with illnesses such as cancer, impairments to bodily systems and made clear that mitigating measures can't be taken into account when determining if an individual can be considered as someone with a disability. And the intent and the effect of this was that more and more individuals are covered under the law. So although we often refer to ADA requirements or ADA accommodation, really, what we're referring to is institutions' obligation under the series of law, and together these laws help clarify what exactly schools needs to do. And then, as if three laws wasn't clear enough, we all have state laws that are relevant in, and most state have laws that protect the rights of individuals with disabilities.

One quick example of why it's important to know your state law, I can tell you here in Washington we have our own definition of service animal, so the ADA Amendment Act clarified this for colleges and places across the country that service animal means dog in most cases, and sometimes a miniature horse, but our state has a separate definition. And this helps to underscore the point that knowing your state laws are critical, in addition to all the federal laws. So hopefully that brief overview kind of paints the landscape as much as possible. Next slide, please.

So not only is the law changing but more students with disabilities are attending college. At the University of Washington and at UCSF we've seen a significant increase in the number of students we serve. At the University of Washington, that increase is about 50% more students served by our office than five years ago. A survey of medical schools currently underway found that 3% to 12% of students enrolled in medical schools have disability. The increase is probably due to a lot of factors, such as new technologies allowing access to students, particularly those with sensory and physical disabilities so they can meet technical standards in health science programs. Another reason for the increase is that we now have a pipeline of students who have been covered by the ADA since birth. I actually met with a student

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yesterday who reminded me the ADA was one year older than she was to give some context. And I'm a couple years older than the ADA if anyone's curious.

The second bullet point is increased awareness and reduced stigma, particularly around psychological and learning disorders, and many other kind of invisible disabilities we could call them. It's important to note that many psychological disabilities only first appear in early adulthood and so are initially diagnosed when many students are enrolled in graduate school. As many high-achieving students with learning disabilities and ADHD might be able to cope and build compensatory skills that get them through high school or undergrad, medical school is a different beast to say the least.

And finally, disability service offices around the country are intentional about trying to reduce stigma associated with students who receive services from their office. It has to do with the language that we use and the ways that we try to outreach and network and offer our services as one of many services available to students and try to normalize that experience. And last but not least, changes in the law in 2008 mean more people are covered under the law, and, therefore, eligible to receive services.

Great. So ensuring quality service to this increasing population has several benefits. We firmly believe that providing high quality services to students with disabilities provides the needed supports to improve student retention, student graduation and also reduce disability related complaints and litigation against medical schools. Furthermore, the increased diversity in medical programs actually improves the medical school experience for all students. For example, students with disabilities often have more experience with being a patient, and, therefore, they bring a unique perspective to caregiving from which their medical school peers can also benefit. And finally, schools with robust disability services also can easily meet the NIH requirements and grant applications for describing university efforts to recruit, retain, and graduate students with disabilities.

So, as this image of a football field implies, the goal of providing disability accommodations is to make sure that all students get to start their education on the 50-yard line with they are peers. We're not work working to guarantee these students success in medical school just equality. Whether they carry the ball into the end zone, if we're going to continue the sports metaphor, that's up to them, just as it is for any non-disabled student. Next slide.

So now that Elisa has kind of covered the intent behind DS Offices and benefits of accommodations that they work to approve, we'll hope to clarify what exactly does the DS Office do. First, we'll use the term DS Office, Disability Service Office. We have a lot of names. Ours is Disabilities Resources for Students. You may have Access Services. So we'll just try and keep to one term consistently, but it may be called something else on your campus.

As we covered in the previous slide, there are a lot of laws that schools and DS Offices need to understand, and that's "laws" plural. It so it can be extremely complex to untangle the rights and responsibilities of a student and the rights and responsibilities of an institution. And it's important to keep in mind that the DS Office works on behalf both the student and the school to help unpack the term "reasonable."

On behalf of the school, the DS Office provides guidance regarding legal obligations of the school to the student with disabilities. The DS Office ensures that students are getting the accommodations they're entitled to without giving more accommodations than they need -- not to give them a better starting point - - we'll stick with our football analogy -- or some unfair advantage. The DS staff work with faculty to ensure that accommodations are reasonable and don't fundamentally alter the program.

On that third bullet, on behalf of students, the role of the DS Office is to protect the students' private medical information by being a liaison between the student and the program. The DS Office uses this information to verify that the student does, indeed, have a verifiable disability and to figure out what appropriate reasonable accommodations should be afforded to the student. For medical school administrators to acquire diagnostic and other personal health information about students increases the risk, in my opinion, of a student alleging that this knowledge biased a med school administrator's opinion.

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And it's also important to point out that DS Offices work to ensure that accommodations are implemented in conjunction with both the student and the faculty.

The fourth bullet, DS Offices have knowledge of common accommodations. We talk to each other. As Lisa was introduced as co-conspirator -- I like that -- we do work together on a lot of things and often check and balance ourselves against practices at other institutions to understand how we're approving and implementing accommodations for similarly situated students.

And that fifth bullet point is that DS Offices can be a resource for problem solving uncommon accommodation requests. Just to provide one brief example that came to mind is when I worked with a student who was quadriplegic and taking a chemistry course, and I had to consult with all sorts of tech experts and hear what other schools had done to try and figure out how does the student draw chemical models with voice commands. It was very cool to learn how this was able to happen, but it really did require that I learn a lot of unique things. And I'm sure that all your DS Offices have similar experiences.

So what exactly is a disability? The ADA provides a definition, which is on the screen now. A physical impairment that substantially limits one or more major life activities. In determining how to accommodate a student, the ADA requires that the schools first determine whether or not the student has a disability. And that's by evaluating whether a particular condition arises to the level of being disabling which is to say whether or not it substantially limits a major life activity.

The law expressly names some but doesn't provide a comprehensive list, major life activities include things like manual tasks, seeing, hearing, eating sleeping, et cetera, and the Amendments Act continued to grow this list and included things such as concentration, thinking and communicating, and working. And then the ADA Amendments Act also added specific bodily functions to the list of major life activities. And these functions include the immune system, cell growth, digestive, gallbladder, et cetera, and those functions that are listed on your screen.

It's important to note that DS Offices are very careful to base decisions on verifiable information. Disability accommodations are never determined based solely on student's word or request, and I wonder sometimes if faculty get that impression that DS Offices act as a rubber stamp so to speak. But in reality, I think it's important to note that we do, at times, have to say no, and this can happen often when a student may have a medical condition but we conclude that it doesn't rise to the level of being disabling, or it's unsubstantiated documentation. So it's important to note here that there's a difference between diagnosis and disability and those things aren't always quite the same.

So, to make sure that this next slide is accessible to everyone, I'll do a brief description of it. This is three boxes labeled "Student interview, Documentation, and Observation" and each has an arrow pointing to a central circle labeled "Accommodations." So once a student's disability is verified through the process of Jon just described, then the DS Office's inquiry turns to what possible accommodations would allow the student to have the same access to the curriculum as their non-disabled peers. So, in combination with the recommendations from the student's healthcare provider that would be included in the medical documentation and also the DS provider's own observations of the student, we also look to the student's description of how the disability affects their every day life, and that's key to informing accommodation determinations.

Accommodations are tailored to meet the individual needs of the student, but it has to be done in such a way that it does not fundamentally alter the educational program, and that language is directly from the ADA. No accommodation that would cause a fundamental alteration to the educational program should be made.

The most important consideration when crafting reasonable accommodations, really, is to figure out what is the learning outcome. So, for a written exam, that would likely be demonstrating knowledge of the material. For example, students with a visual processing disability or other learning disability often take longer to be able to read printed text, whether it's on the page or the screen than other students. On the exam, once they understand the question, their ability to synthesize the material and come up with an

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answer is similar to their peers. They should take a little longer to read and process the question being asked. So by allowing these students some extra time on exam, they're able to demonstrate their knowledge and answer all the questions on the exam without running out of time and without being penalized for having a reading processing speed that's slower than the other students. However, allowing unlimited time or allowing students with disabilities to have an open-book exam when other students don't get that, that would be a fundamental alteration of the exam, and, therefore, that would be considered unreasonable and would not be granted.

For certain student evaluations, for example that involve patient or live tissue, time may be of the essence there, so providing additional time in some circumstances might not be reasonable. So each requirement, whether it's didactic or clinical, should be evaluated independently to determine what is the essential skill here that has to be demonstrated by the student. So to illustrate this a little further, let me give you an example that's outside of the medical school setting that illustrates how the determination of accommodations create a fundamental alteration has been examined before. Next slide.

This is a photo of Pro Golfer Casey Martin. So he has a disability is that affects his ability to walk long distances. You might be able to tell from looking at his legs in this photo, which are visibly thinner than a lot of pro golfers. He requested a disability accommodation from the PGA that he be allowed to use a golf cart to get from one hole to the next. Once he's at the hole he can hit the ball fine. Well, better than fine, he's at the pro level. But he needed an accommodation to get to the holes. The PGA denied his accommodation request. They said that providing a golf cart was a fundamental alteration of the program, here, the program being the game of golf, and he sued under the ADA.

The case made it all the way up to the Supreme Court. And the court examined the game and the history of golf and concluded that the essence of golf has always been shot making and concluded the walking rule is not an essential attribute of the game, and so the court held in favor of Casey Martin, and so that accommodation needed to be provided to him.

The court also examined the PGA's claim that allowing Martin to ride in a cart was unfair to other golfers, that is a claim we sometimes hear with respect to non-disabled medical students, that providing accommodations to some students is unfair. So, in the court, based on testimony about the fatigue that Martin experiences due to a disability, even riding in a cart, far outweighs the fatigue experienced by non-disabled golfers even walking, the court rejected this fairness argue.

So I share this case, because if a student challenged a school's accommodation decision, a court would evaluate the school's academic requirements in much the say way it evaluated the game of golf; what is the essential nature of the educational program cannot be changed, and is there an alternate way that a student could learn or demonstrate mastery of the essential skills. So this is the model that should be used for all disability accommodation decisions on our campuses.

There's going to be a webinar later this summer, on July 9th, exploring how to apply that model to particularized medical school settings. There will be a detailed examination of various clinical accommodations, laboratory accommodations. We're not going to go into that kind of depth in this webinar. For now we're going to go on to examine the role that faculty play in creating and implementing accommodation.

So, based on the principles of the Casey Martin case and a bunch of other cases and letters that we'll present throughout the presentation, we've identified four steps faculty can take in engaging and forming the accommodation process so that accommodations do not fundamentally alter a program. First, faculty should work with DS staff to determine accommodations. Whereas accommodations in a didactic setting are usually pretty straightforward for a DS Office to handle, in the clinical setting faculty and DS and staff and students need to work together in terms what modifications may be appropriate. It cannot be overstated just how important it is to afford students an interactive process. Even when clinical faculty might know or believe very strongly that an accommodation won't work, it's important that the student be provided a process.

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On the screen you will see a list of five court cases -- Zuckle, Kaltenberger, McGuinness, Wynne, and Wong -- and in all of these cases, the student was dismissed and challenged -- that they were dismissed because they did not receive the accommodations they felt they should have. An important note is that the court was only willing to defer to the institution's decisions once it had determined that the school had taken seriously its obligation to enter the interactive process with the student and that relevant officials, administrators, faculty were involved in making a decision after careful consideration and weighing all the options available. Where the schools did not do so, the courts ruled that it had shirked its duty to the student requesting accommodation. So we mentioned these cases to highlight the importance of process. Even if at time you're sure you know what the outcome is that something will work or won't work, process is critical.

It's also important that the right people be involved in the process of determining disability accommodations. This includes disability experts and clinical faculty. A challenge presented by the ADA is to find ways to allow students with disabilities to receive the accommodations they need in order to access information at the level of their peers without lowering the program's academic standards. Sometimes this requires creativity and finding alternate ways for students to demonstrate mastery of their skills where disability impacts their ability to demonstrate that. And DS staff rely on faculty who are experts in their own programs to help determine what's appropriate. And clinical faculty need to rely on DS staff who are experts in the trends and case law and best practices around supporting students with disabilities. At times schools may need to involve outside experts to understand whether a student's disability, to what degree it impacts them and different sorts of supports that may be available.

In the OCR letter here, mentioned at the bottom of the screen, to UC Santa Cruz, it's a great example of how faculty and DS staff can't go it alone to keep our fantastic, dare I say, riveting sport analogies going it's a team sport, and it's a team event to make appropriate determinations and supporting students. Next slide, please.

So, after faculty's involvement in determining the clinical accommodations, faculty play a role in implementing those approved accommodations. There's a recent OCR letter to Kennesaw State University that highlighted the fact the faculty can't and should not refuse to implement an approved accommodation, and that's why accommodations should be determined collaboratively in the first place.

It's important to remember that the DS Office is not just an advocacy office, and at times they may advocate for modification on behalf of a student, but as we mentioned earlier, they also act on behalf of the university and its responsibilities and liabilities. So if you have concerns about an accommodation, concerns that it might fundamentally change the program or you're unsure how an accommodation may apply to your request, don't just say no. You should contact your DS Office to talk about how an accommodation may or may not work or apply in your class. And your DS Office isn't going to ask you for something crazy, hopefully, in terms of like extra time on CPR is usually a pretty tongue-and-cheek example of a type of request that would clearly fundamentally alter something. And CPR needs to happen in the time that it needs to happen.

But there can be times, for example, where it's a little more gray. And that would be like during an OSCE, for example, and that's frequent point of discussion where we want to tailor accommodations like Elisa said, to meet the student's need without providing a distinct advantage. So if a student, let's say, has a learning disability and reads at a slower rate, they may be approved for extra time to prepare or extra time to chart, but not extra time for an interaction.

So in order for -- are you done? Sorry.

Yes, I am. I was trying to say go ahead. Sorry about the delay.

Okay. In order for students to access accommodations, they have to know that the office exists, and faculty have a big role to play in that too. Where students have been dismissed and then challenge the dismissal on the grounds that their disability was not accommodated, OCR, the Office for Civil Rights, has repeatedly held that the onus is on students to follow the established policy to request accommodations.

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And if the students don't follow that policy, then they can't make a claim that the school failed to accommodate them. So the four OCR cases listed here, that was the holding in all four of them.

But where a student can show that they were not informed that the disability service office exists or they could show that they truly didn't know how to access it, they weren't given that information, then OCR has ruled that the school could not dismiss the until the student had another chance to succeed with accommodations. And so that's what happened here in the Concord Career Institute case.

So what can faculty do? Faculty can help students know how to access Disability Services Office by ensuring that they and their schools; one, include a statement on the syllabus of each class with the DS contact info. Also including a link to the DS Office's website on the medical school's own webpage is a great way to make sure students are aware. And also, information about DS services and the contact info for that office should be included in acceptance letters that go out to students when they're first accepted into the school.

So doing these things not only helps the student and the school reap the benefits of providing accommodations this we described a few minutes ago, but it also helps normalize disability for all of the students in the school by making them aware that students with invisible disabilities are in their midst and also reminding them that people with disabilities can be their peers not only their patients.

So this one is another really important one. Faculty are often the first place that a student mentions having a disability, and so it's critical that you as faculty make sure that the student gets information about the Disability Services Office if that happens. So in the case *Norris v. Widener University* there was a psychology graduate student who disclosed to a trusted professor that he has ADHD. The faculty member persuaded him that it would hurt his career if he let anyone else know about that. So the student went to the DS Office to seek accommodations. And then ultimately the student was dismissed from the program, which is not terribly surprising considering that he had ADHD and didn't ask for or receive any accommodations. And the student then sued the school under the ADA. The court found that the student's disclosure to one faculty member was effectively a disclosure to the institution as a whole, and the institution was then on notice that accommodations may be needed for the student, and it was legally liable for failing to refer him to the office that could provide those accommodations.

So if a student discloses a disability -- and they don't have to say the word "disability" for it to be a disclosure, it could be as simple as mentioning having depression or dealing with a chronic illness -- you should let them know right away about the DS Office. And this also applies to long-term illnesses. So for example, students who are going through cancer treatments are also covered by the ADA and may be eligible for accommodations.

The obligation to refer a student to the DS Office does not mean that the student is required to seek accommodations. That decision is up to the student. Some students prefer not to for whatever reasons. And also, accommodations aren't always appropriate for every student, like Jon was describing earlier, and the request may be denied by the DS Office, even if the student does decide to request accommodation. The important thing is the school makes sure that the student who has disclosed a disability at least knows how to access disability services should they want.

So the student mentions a disability, faculty should first refer them to the DS Office, then follow up in writing. Send an e-mail. It can be super short. . It could just say, "As we discussed earlier, I encourage you to contact the Disability Office on campus. They might be helpful to you." I mean, it could be that succinct. If you think it's appropriate, you can CC the relevant DS staff member, but save that e-mail. Hang onto it. Folder it somewhere, just in case a student comes back and says, "I didn't know there was a DS Office. I don't know how to access it." If there's a case where you suspect a disability but you're not sure, then you can send an e-mail but refer to several campus office resources. Maybe the multicultural center or the learning support office, the wellness center, you know, whatever is available on campus as supports to all students, and include the DS Office in that list of supports, and, again, save the e-mail.

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It's really important, if a student does disclose a disability to you, not to ask them personal questions about it. Let the DS staff probe the details about the student's medical condition. This protects the student's privacy but also protects you as faculty, because you can't be accused of discriminating on the basis of a condition that you didn't know anything about.

So last thing is just be careful not to counsel a student to hide a disability, even with the best of intentions. This is what happened in the case I was just describing, *Norris v. Widener*, and it ended up having negative repercussions for both the student and the school.

So one note about what faculty don't have to do, and that is to tolerate unprofessional behavior from a student with a disability that wouldn't be tolerated from other students. Just like a school's technical standards, professionalism is also a requirement of the program that all students must meet. There could be certain times where a disability is related to a problematic behavior. So if a student with a disability is exhibiting unprofessional behaviors, get the DS Office involved. They can verify whether the student's disability may be related to the behavior or if they're completely separate issues. And if they think there is a relationship, they can help provide ideas about the situation.

So webinar number six in this series, which will be on September 9th, will provide in-depth information on disability and student communication and will include discussion of professionalism issues, how to address them, so if you're interested more about that topic, you should definitely register for the September 9 webinar. Jon?

So on the screen there's a quote from the ADA, and it says, "Schools shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability, or any class of individuals with disabilities, unless such criteria can be shown to be necessary of the provision of the service program, or activity being offered."

So we pulled that quote because it's fair to say every medical school, at least every one that I'm familiar with, has some sort of technical standards or essential function, core requirement document, and the purpose of them is to describe the essential competencies that a student needs to demonstrate in a given program, and they're set in advance by the school. They articulate that certain abilities are required of a student in order to successfully complete the program. So it's important to keep in mind, like in the *Casey Martin* case, which guys us in determining what's essential and what is business as usual.

And this quote also reminds us that we can't set standards that rule out an entire group of students or potential students. And this comes up time and again when schools have technical standards along the lines of a student must hear this or see this while hearing and seeing are often the most common way that certain assessments are performed, they're often not the only way. So it's important to keep that in mind.

There's a couple recent court cases that we'll mention, and I do want to be as expeditious as possible in the interest of time. But in the Eighth Circuit Court in 2013 there was a case, *Argenyi* was the name of the medical student at Creighton University Medical School, and he was hard of hearing and he used queued speech interpreters to access courses, and he wanted to use them, as well as real-time captioning in the clinical environment. And one argument that was made by the institution was that it was a fundamental alteration to have a student use an intermediary, and they cited their technical standards in making that argument. But the federal court found this practice had the effect of screening out an entire segment of the population and was, therefore, in violation of the law.

To move to this next slide here, the example on the screen compares two technical standards, and you may find things like this in your own. The first technical standard reads "the ability to hear a heartbeat." And it's important to note this would probably be impermissible because individuals who can't hear a heartbeat may attain a heartbeat, may find a heartbeat through some other means like a digital stethoscope where they could see it. So the second one is a much better way to phrase a technical standard and is oftentimes what it is meant but it doesn't have the effect of screening out an entire segment of the population. Next slide, please.

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So it's also important, and may seem obvious at times, that schools must create these technical standards themselves, and a key point, I think is clever sport analogy number twelve, they can't be punted to another entity, such as a clerkship site. The case referenced here, the Office for Civil Rights at Milligan College was, in essence, when a student couldn't meet a technical standard at a clerkship site, so the student asked the school if there was an accommodation, and the school said, "Oh, that's not our responsibility."

So this underlies an important distinction between those technical standards at a clerkship site, which may apply to employees of that institution, but that school is different and that a student at that clerkship is still a student. So that dynamic between the clerkship site and the institution is often defined by clinical sites playing a supporting role in implementing accommodations, but that it's schools that are responsible for supporting their students and determining what may or may not be appropriate and reasonable. Next slide.

So patient safety is also a key consideration when considering disability accommodations, and I'm sure it's one on the top of many of your minds. So first let's take a look at what the law says should be included in the consideration regarding patient safety, and then we'll talk about a couple of cases. So the ADA regulations say, "In determining whether an individual poses a direct threat to the health or safety of others, a school must make an individualized assessment." And I want to point out before I go on that where it says -- I've added bullets and I've added underlining, but all of these words are word for word straight from the regulations. So an individualized assessment here means that the discussion can't be, well anyone with X condition is automatically a danger to patients, therefore, they can't be a student here.

Then going onto the next bullet, "based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence," so here we're saying stereotypes and assumptions about people with disabilities have to be ignored. "To ascertain the nature, duration and severity of the risk, the probability of the potential injury will actually occur," so here we're assessing how likely and bad the potential risk adhered to patients really is. And finally, "whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate this risk."

So here is where we have to consider what providing disability accommodations might do to help reduce any risk to patients. So in summary, this is a pretty high bar for denying a disability accommodation based on a potential safety risk. The ADA essentially says that a safety concern has to be legitimate and pretty bad and pretty likely and something that can't be significantly produced through the provision of reasonable accommodations.

So one case where this high bar was not met was at Gwinnett College. So their a student honestly answered that, yes, she is HIV positive when she was applying to a medical assistant program at the school. And, yes, that admission question is problematic, and we'll get back to that in a minute. So the student was admitted, started the program. When she got to the phlebotomy class, she asked the instructor whether she needs to take any additional precautions for drawing blood since she's HIV positive, and the instructor said well the universal precautions required of all students will, you know, keep everybody safe, which is true.

So, but then the university president got wind of the issue and stepped in and called the student and said you cannot continue in this program if you are HIV positive, and I never would have even admitted you if I had known your status, which the school actually did, but he didn't personally. So the student, anyway, sued, and the DoJ then got involved in the lawsuit. And in 2014 -- yes, 2014, this was not a case from the '80s -- in 2014, the case settled, and the settlement between the school and the U.S. Government required the school to change its disability policy, remove the question about blood borne pathogens from its application, because it is not legal to ask questions about disability in admissions, other than a voluntary disclosure for affirmative action purposes.

The school also had to provide HIV training for everyone at the school, and reimburse the student for her tuition, plus pay her damages. If that school had assessed the potential risk according to this ADA

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regulation, doing an individualized assessment based on current medical knowledge, et cetera, the outcome there would have been much different.

So the bottom line about patient safety is that the DS personnel on your campus are just as concerned about patient safety as you are as faculty, and we're not interested in putting the needs of students with disabilities above the needs of patients. Where there's a genuine safety issue that you think might likely meet the criteria above, you shouldn't be shy about intervening if you feel like you need to, to give you time to assess the situation according to these ADA criteria.

So, just as with the determination of accommodations, like Jon was saying earlier about process being critical, it's also critical here. Undertaking the evaluation process in a serious way is extremely important. So another case where a school denied disability accommodations based on concerns for patient safety was Featherstone, the Pacific Northwest University of Health Sciences, and this is also a case from last year. So their, a deaf medical applicant who uses American Sign Language to communicate was first deferred for a year, and then ultimately denied admission to the medical school solely based on his deafness. The school said that in fast-moving medical situations, certain settings, hearing and communicating orally are essential to patient safety, and, therefore, based on patient safety concerns they could not admit the deaf student.

The student sued the school under the ADA, and the court ordered that the school admit the student in the fall of 2014 with the rest of the class, and also ordered that the school provide captioning in the classroom and sign language interpreters in the clinical settings, which the accommodations the student had requested so that he could be a full participant. So the court made this decision on an expedited basis, a preliminary injunction. It didn't even go through an entire full trial, which is sort of the court version of a no-brainer decision.

So let's return for a minute to the case that was at the start of this presentation, Southeast Community College v. Davis. And that was where the Supreme Court upheld the denial of a deaf student admission to nursing school. The court's prediction there, that the I read to you, that accommodations not required in 1979 might become necessary to provide in the future has certainly come true. Changing technologies, as well as shifting social norms and expectations regarding people with disabilities have driven a significant change in the accommodations that are legally required in medical schools. So we really hope this presentation has provided you with the tools you need to understand the obligations of your institutions.

Jon and I now invite you to ask any questions using the Q&A panel on your screen. Questions regarding specific detailed accommodation situations are probably better saved either for the listserv, which, if you're not already on, you might consider joining, or for the later webinar in July that's going to delve into analyzing particularized accommodations in clinical settings. But we definitely welcome questions right now about the legal obligations of schools, the roles of faculty in the DS Office and the student, et cetera. Thanks for listening.

Hi, everyone. This is Lisa Meeks. Let me be the first to congratulate Jon and Elisa on such an amazing job. I think you'll agree. This webinar is going to be recorded and available on the AAMC website. Will also be captioned. It will be a great tool for you to share with your faculty so that they can get an overview of working with students with disabilities.

A little housekeeping before we go to questions. I just want to make sure that everyone is aware that the next webinar is June 10th, and it's "Separating Fact from Fiction: Debunking Disability Myths and Addressing Legitimate Concerns." And we'll give specific scenarios on that webinar. It should be very exciting. And the information on how to register is on the screen, and it will be included on the PowerPoints available at the AAMC website. Also, we want to invite you to join the coalition, and you can find information on the coalition at sds.ucsf.edu.

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So, back to questions. I'm going to start with a question that came in, and I'm going to punt this to Jon. "With the recent announcement that food allergies will be covered under the ADA, do you see any challenges for medical education?"

Wow, so food allergies and medical education, I think the context of that case had a lot to do with affording students access to dining services and residents halls in the institution. Could I get a little more clarification on how exactly that pertains uniquely to a peanut allergy, or are we saying maybe somebody who might have a allergy to latex may or may not be accommodated. Are we asking broadly about allergies or specifically about food allergies?

So I'll go ahead and allow the person that sent in the question to clarify that, and we'll go to another question while we're waiting. And this question, Jon, I'm going to send over to you as well. And I'm happy to respond to this as well.

Okay.

It's specifically about the MSPE, and the question is, "Can disability be entered into the MSPE when a student wishes to do so?"

I'm sorry, I'm not quite -- can you -- MSPE, what is that acronym?

Yeah, I'm happy to, sure. So that refers to the dean's letter that goes out to residency programs.

Oh, yes.

Right.

And so the question is if a student wishes for the dean's letter to include information about their disability, would we advise the school to do that? And I know that, for UCSF, I think that that would be a conversation between myself and the person writing the dean's letter, so the dean. And we would also talk to the student about the benefits and the possible repercussions as such. And I think that there would have to be a pretty substantial situation that needed explanation, and one where the disability was going to provide a lot of explanation for the event, perhaps it's a leave of absence, but also that is not going to cause concern in the residency site. So you want to answer about how UW would do that?

Yeah. The handful of times that that's come up in my couple of years in working with a medical school in particular, much like you said, I think that it is extremely important to inform the student, more than anything, about the pros and cons and really leave that cost benefit analysis to the student. And I would only argue to include it if it specifically lent itself to a more informed interpretation of maybe a record, as far as why somebody extended their degree program or something like that.

Okay, great. Thank you, Jon. So the next one is for Elisa, and, my, they're coming in really quickly, so we're going to try to hit all of them. We do actually keep these questions, and we can respond to them individually as well if we're not able to hit them. But we have a lot of questions coming in all at once. And one of these questions, I think, is particularly well suited for Elisa. I think that she as worked through some of these scenarios, even recently, and, Elisa, that is, "What if the institution determines that an accommodation is reasonable, but the clinical site won't allow it; for example, an interpreter?"

So that's a sticky situation, and it does come up sometimes. And, you know, the case that we described to you, the way that the court held was that the decision can't be left to the clinical side alone. So if the school has a student placed there and the student's accommodation is not being provided, the school is legally liable for not having that for -- basically for violating the student's ADA rights, and then the student isn't getting the benefits of the education that they're there for. So I know that with site placements it's a really tricky thing because we need to preserve these relationships, and they can sometimes be very fragile relationships, so, you know, trying to negotiate it, work it out, explain why this is a critical need is important, but ultimately, it's on the school to insist that it be provided and insist that the student get the accommodations that they need.

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Great. Thank you so much, Elisa. I want to just really quickly confirm that, yes, the webinar will be available afterwards. It is being recorded and it is being captioned. So the caption will provide the transcript of the talk.

But we'll go into another question, and that is, I'm going to let Elisa or Jon, either one of you, or both can respond to this. "Is setting technical standards for specific rotations and assignments to be done by the program director or site/course director in a GME training program?" And I do want to give kind of a disclaimer that this is specific to UME, and while they're very similar, they are also different.

Yeah, so at UCSF, and I'll let Jon address what they do in Washington, but at UCSF our residents our considered employees, and then so they're accommodations are dealt with through HR not through the student Disability Services Office, and they are -- therefore, you know, whatever HR does as far as determining what reasonable accommodations are, that process takes place as if the resident is an employee, which is how they're categorized here. Jon, is it the same there?

Yes, is it. Yes, it is.

I would say that you could work with your UME office on developing technical standards, and usually that's something that's done by the school entirely. And then the next question -- we'll go back to the food allergy, because we did hear back from that individual. And the specific question was concerning food allergies with a student who claimed an allergy to green tea but raised the issue of whether schools would need to provide an allergy-free environment if food is provided at a required event. So you're providing school at an event and you're making the student come to the event, the student is allergic to a specific food type, do you then ban that food type as an accommodation for the student?

That's a great question. Thanks for adding the clarity there. I think there's a danger to saying "allergy-free environment," because I think it implies something that a school can't really regulate. And I've never heard of a green tea allergy, but when we're talking about peanuts or allergies that cause anaphylactic shock or something like that, schools can't make sure that every student has not had a Snickers bar before walking into class that they might eat one in class, that they may have some trace of peanut on their hand and go there. So I think schools should intentionally avoid language like "peanut-free zone," "allergy-free zone," because I think it's a guarantee and could be perceived as a contract almost that the school is making and unable to fulfill.

I think, instead, when it comes to food allergies, good faith efforts are best. But I think it's an undue burden to actually regulate and police that. I don't even think it's possible.

Great. And we are running out of time, so we have to wrap up. There were a lot of good questions, and we'll work with Jayme at the AAMC to figure out a way to address and disseminate those questions.

I want to take this opportunity to, again, thank UCSF for co-sponsoring this webinar series and thank my partner in crime, Jayme, at the AAMC, for really understanding the importance of getting this information out to you and helping you educate your faculty around this very timely and increasingly important subject.

And so I do invite everyone to register for the remaining webinar series, and I also invite you to go to the coalitions website at sds.ucsf.edu/coalition, where you'll find lots of information. You'll also find copies of the PowerPoints, the webinar. You'll find information on the book that we cogently spoke to that will be out in August, and lots of the information, lots of the questions that you've asked are questions that are raised in the book and answered as well, and it provides kind of a guide for all medical schools.

We really appreciate you coming into the webinar today, and your questions and your attention, and if you have further questions do not hesitate to reach out to Jon or Elisa personally, and thank you very much.