

*Equitable Access
for Deaf or Hard of Hearing Students:
Understanding Legal Responsibilities for Institutions*



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Pepnet 2 is funded by the Research to Practice Division, Office of Special Education Programs, U.S. Department of Education via Cooperative Agreement #H326D110003. Funding is provided from October 1, 2011 to September 30, 2016.



Section Nine

Internships and Accessibility

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Overview

When a college student does an internship or clinical experience, who is responsible for ensuring that the experience is accessible for the student? Colleges, universities, and the entity hosting the student's placement must independently examine their legal obligations to ensure full accessibility for the student. Another entity that may be responsible is the state vocational rehabilitation agency charged with assisting eligible individuals with a disability to find employment. When more than one party is responsible, each must take the steps necessary to ensure full accessibility. An institution may be liable if it refuses to provide accommodations on the ground that another institution is responsible; it may not "contract away" to another entity its liability.¹

Whether any particular party bears responsibility for ensuring accessibility is a highly fact-specific question that will turn on the particular situation. Several different federal laws may apply and state and local laws may offer additional protections to students with a disability who do internships or clinical experiences. This publication provides an overview of the federal disability antidiscrimination laws but is not a substitute for legal advice.

Colleges and Universities

The Americans with Disabilities Act requires colleges and universities – public and private – to ensure that students with a disability have an opportunity equal to that of their peers to participate in any and all educational programs and activities.² Colleges and universities accepting federal financial assistance must also ensure equal opportunity to participate pursuant to section 504 of the Rehabilitation Act.³ Under both statutes, colleges and universities must provide auxiliary aids and services such as interpreters or make reasonable modifications to ensure that educational programs are fully accessible to students with a disability, unless doing so would result in fundamental alteration or undue burden.⁴

When a college or university requires or provides students with the option to do internships for academic credit, it must ensure that the experience is accessible.

Hosting Organization

Title I of the Americans with Disabilities Act prohibits discrimination on the basis of disability in job application procedures, the hiring, advancement, or discharge of employees, employee compensation or training, or in "other terms, conditions, and privileges of employment."⁵ Title I requires covered entities to provide reasonable accommodation to ensure that the individual with a disability can do the essential functions of the job.⁶ Title I protects job applicants and employees from discrimination based on disability.⁷ Title I also protects other individuals who are not employees, including in the following circumstances:

- The intern is a volunteer who receives “significant remuneration” such as pension, group life insurance, worker’s compensation, or access to professional certifications (even if from the educational institution).⁸ Courts have held that academic credit and practical experience do not qualify as significant remuneration.⁹
- The intern is a volunteer in a program that regularly leads to employment with the hosting organization or with another employer.¹⁰
- The intern participates in an apprenticeship or training program.¹¹

Even if Title I does not apply, other disability laws may apply. Section 504 applies to entities receiving federal financial assistance.¹² Title II of the ADA applies to public entities.¹³ Some courts have held that Title III of the ADA applies to places of public accommodation that use independent contractors or otherwise provide volunteering opportunities for the public at large.¹⁴

Vocational Rehabilitation Services

A possible resource is your state’s vocational rehabilitation agency. Each state has a vocational rehabilitation agency charged with assisting individuals with a disability in finding employment. Each state has its own eligibility requirements – for instance, some will assist only those individuals who demonstrate financial need. Eligible individuals with a disability may receive financial support to obtain the skills necessary for employment, including but not limited to accommodations necessary for that education. The agency may provide financial and logistical support in placing the student in an internship and ensuring that the experience is accessible, especially if the internship will lead to employment. Check with your state’s agency to determine what services it will provide for eligible individuals with a disability.

In a 1982 case predating the ADA, a federal appeals court held that as between the university and vocational rehabilitation agency, the state agency is primarily responsible for paying for auxiliary aids and services for eligible clients.¹⁵ In that case, the court held that the vocational rehabilitation agency rather than the university had to pay for the interpreter services for a deaf college student.¹⁶ In light of this holding, institutions should consider requesting that the state agency cover the cost of auxiliary aids and services. However, an agency’s refusal to pay for auxiliary aids and services for eligible clients does not excuse universities or hosting organizations from compliance with disability laws.¹⁷ If neither the institution nor the agency provides auxiliary aids and services, courts may hold both entities liable.

Real-life example: University of Texas at Houston Medical School

The University of Texas at Houston Medical School (UT-Houston) provided medical students with the option to do away rotations for academic credit at programs not affiliated with the medical school. A deaf medical student applied for and received approval for an away rotation at the University of California at San Francisco (UCSF) for academic credit. The deaf medical student contacted UCSF to request interpreting services. UCSF stated that it would require reimbursement from UT-Houston for interpreter services.

UT-Houston initially refused to provide interpreters because doing an away rotation for academic credit was optional and not necessary for a medical degree. UT-Houston reconsidered and agreed

to pay up to \$12,375 for interpreter services. This amount represented the approximate cost of interpreter services in the deaf student's two previous rotations. UT-Houston stated that the student would be responsible for the rest of the cost. UCSF estimated that the total cost of interpreter services would be nearly \$22,000. The student was unable to participate in the away elective due to the lack of sufficient committed funding for interpreter services.

The student filed a complaint against UT-Houston with the United States Department of Education's Office of Civil Rights (OCR). OCR issued a letter of finding stating that UT-Houston violated section 504 of the Rehabilitation Act and Title II of the ADA in limiting the student's ability to do an away rotation on the basis of disability, when students without a disability were permitted to do such rotations for academic credit. Since the student filed only against UT-Houston, OCR did not address UCSF's independent obligation to pay for interpreter services.

Real-life example: University of San Francisco & Stanford Hospital

A nursing student with a learning disability enrolled at the University of San Francisco (USF). USF contracts with local hospitals to host clinical courses conducted by USF faculty. During the clinic, the nursing student interacted with Stanford Hospital patients and undertook nursing tasks including changing IV bags and administering medication. Neither USF nor Stanford Hospital paid the nursing student for her work in the clinical course. The student failed the course and alleged that USF and Stanford Hospital failed to accommodate her disability in violation of the Rehabilitation Act, the ADA, and California antidiscrimination law.¹⁸

The court held that a jury should determine whether Stanford Hospital was an employer within the meaning of the state antidiscrimination statute.¹⁹ The ruling meant that Stanford Hospital faced considerable risk that it would lose the case. Soon thereafter, the parties entered into a confidential settlement agreement and the court did not have occasion to decide the Rehabilitation Act and ADA claims.²⁰ This case demonstrates that institutions and internship sites are potentially liable if they do not act proactively to accommodate students with a disability.

Practitioner's Pointers

The institution, internship site, and if applicable, the vocational rehabilitation services agency, should work with the student to identify possible barriers and develop a plan for ensuring that the internship experience is accessible. The parties should check in regularly with the student to ensure the placement is accessible. As the internship progresses, the student may encounter new or unexpected barriers. Should this occur, the parties should work with the student to remediate these barriers to ensure a continued successful placement.

In cases where more than one party is jointly responsible, the parties can work out a cost-sharing agreement to cover the costs of any necessary accommodations. Such cost-sharing will reduce the financial burden on any one entity. In all cases, however, each responsible institution must independently ensure that the internship experience is accessible to the student or face liability. Covered entities may be able to claim tax write-offs for accommodations expenses.²¹

Regardless of who pays for accommodations, collaboration will help ensure the placement is successful for the student. The parties can work together with the student to anticipate and eliminate any barriers prior to the start of the internship. For instance, the hosting organization will likely be most familiar with the day-to-day requirements of the placement. The vocational rehabilitation services agency may have expertise in how to effectively accommodate the student during the internship. The college or university can provide guidance to ensure that the student meets the academic requirements associated with the placement. Working together, the parties can increase the chances that the placement is successful for the student.

Endnotes

¹ *E.g.*, 42 U.S.C. § 12112(b)(2) (prohibiting employers from “participating in a contractual or other arrangement or relationship that has the effect of subjecting” a qualified individual to disability discrimination); 28 C.F.R. § 35.130(b)(1) (prohibiting public entities from discriminating on the basis of disability “directly or through contractual, licensing, or other arrangements”); 28 C.F.R. § 36.202(a) (same prohibition for places of public accommodation).

² 28 C.F.R. § 35.130 (Title II regulation applicable to public institutions of higher education); 28 C.F.R. § 36.202 (Title III regulation applicable to private institutions of higher education).

³ 29 U.S.C. § 794; 34 C.F.R. 104.4(b)(2).

⁴ 34 C.F.R. § 104.44(d) (section 504); 28 C.F.R. § 35.160 (Title II); 28 C.F.R. § 36.303 (Title III).

⁵ 42 U.S.C. § 12112(a).

⁶ *See, e.g.*, the guidance that the United States Equal Employment Opportunity Commission (EEOC) has published for employers about their obligations under the ADA, available at www.eeoc.gov/facts/ada17/html. Covered entities must engage in an interactive process with the individual with a disability regarding what reasonable accommodations to provide. *See, e.g.*, the EEOC enforcement guidance on reasonable accommodations and undue hardship available at www.eeoc.gov/policy/docs/accommodation.html.

⁷ *See, e.g.*, 42 U.S.C. § 12112(b)(1). Individuals labeled as “independent contractors” may be employees if they establish that on the job they were actually employees and not independent contractors. *See, e.g.*, *Gulino v. N.Y. State Educ. Dep’t*, 460 F.3d 361, 377-78 (2d Cir. 2006).

⁸ *See, e.g.*, the informal guidance that the EEOC has published on when interns may be employees, available at www.eeoc.gov/foia/letters/2011//when_interns_may_be_employees.html; *but see, e.g.*, *O’Connor v. Davis*, 126 F.3d 112 (2d Cir. 1997) (sex discrimination case holding that a student’s receipt of federal work-study funding through the school did not establish her as an employee for the hosting organization).

⁹ *See* the informal guidance that the EEOC has published on when interns may be employees, available at www.eeoc.gov/foia/letters/2011//when_interns_may_be_employees.html (collecting cases).

¹⁰ 42 U.S.C. § 12112(a); *see also, e.g.*, *Charlton v. Paramus Bd. of Educ.*, 25 F.3d 194, 198 n.4 (3d Cir. 1994), *cert denied*, 513 U.S. 1022 (1994).

¹¹ 42 U.S.C. § 12112(a); *see also* the informal guidance that the EEOC has published on when interns may be employees, available at www.eeoc.gov/foia/letters/2011//when_interns_may_be_employees.html.

¹² 29 U.S.C. § 794.

¹³ 42 U.S.C. § 12132; *see also, e.g.*, *McElwee v. County of Orange*, 700 F.3d 635, 643 (2d Cir. 2012) (holding that volunteer opportunities are a “benefit” offered by public entities that are covered by Title II).

¹⁴ 42 U.S.C. § 12181 *et seq.* *See, e.g.*, *Hetz v. Aurora Med. Ctr. of Manitowoc Cty.*, Case No. 06-C-636, 2007 U.S. Dist. LEXIS 44115 (E.D. Wis. Jun 18, 2007) (collecting cases on both sides of the issue).

¹⁵ *Jones v. Illinois Dept. of Rehabilitation Services*, 689 F.2d 724 (7th Cir. 1982).

¹⁶ *See id.*

¹⁷ *See id.* at 728-29.

¹⁸ *Avalos v. University of San Francisco*, Case No. C 12-5290 RS, 2013 U.S. Dist. LEXIS 49153, at *1-*4 (N.D. Cal. Apr. 4, 2013); *Avalos v. University of San Francisco*, Complaint, Case No. C 12-5290 RS, Docket Entry No. 1 (N.D. Cal. Oct. 10, 2012).

¹⁹ *Avalos*, 2013 U.S. Dist. LEXIS 49153, at *16-*19.

²⁰ *See Avalos v. University of San Francisco*, Stipulation and Order of Dismissal, Case No. C 12-5290 RS, Docket Entry No. 41 (N.D. Cal. Aug. 29, 2013).

²¹ Businesses may be able to deduct up to \$15,000 per year in accessibility expenditures. *See* Section 190 of the Internal Revenue Code. Further, small businesses with fewer than 30 employees or less than \$1 million in revenues can claim a federal tax credit up to \$5,000. *See* Section 44 of the Internal Revenue Code. State and local taxing authorities may provide for additional deductions and credits for accommodations expenses. Entities interested in learning more should consult with their tax accountants.