

ACCOMMODATE: Student and Faculty Rights and Responsibilities under the ADA.

PRESENTATION FOR FACULTY AND STAFF

2019 FACULTY DEVELOPMENT-DESOTO CENTER

Presented by ...

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Outline

1. Review of the Laws that govern accommodations
2. Documentation Requirements
3. Accommodations
4. Rights and Responsibilities:
Faculty & Staff
5. Academic Freedom and Personal Liability
6. Teaching Tips
7. Trends

Why Do We Accommodate?

(1) This is a Human Right

- Do the right thing for the right reason because it's the right thing to do (GB)
- A nation's greatness is measured by how it treats its weakest members (Ghandi)
- Learning and thinking define us as human beings—it isn't always about employment**

(2) Disability is a form of diversity

- Adds to the classroom
- An engine for innovation
- Serves the disability community with professionals who have “walked in my shoes.”

Why Do We Accommodate?

(3) It is the law

- It is founded upon many well established principles as race, gender, national origin law
- It came about through struggles and strategies common to other civil rights movements



Motivating Factors**:

Not all students are here for the same reason

Vocation seeking

Self fulfillment

Entertainment

Bucket list



1. THE LAW!

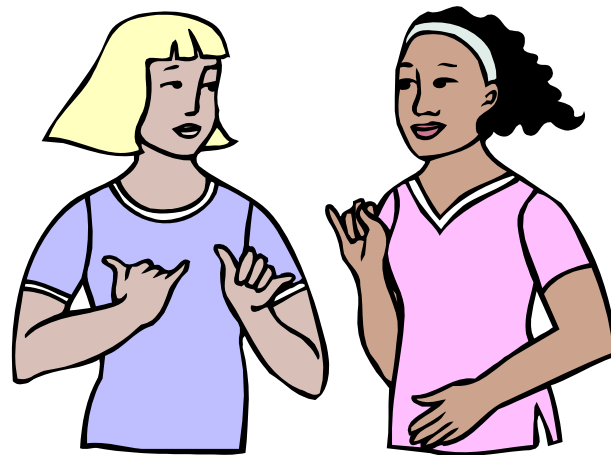


Section 504 of the
Rehabilitation Act of 1973

Americans with Disabilities Act of 1990

504 & ADA....

..are civil rights statutes designed to prevent discrimination against students with disabilities.



Section 504



- ▶ Forbids discrimination against persons with disabilities by programs and activities receiving federal funds
- ▶ First civil rights statute designed to prevent discrimination against persons with disabilities

Section 504

“No otherwise qualified individual with a disability in the United States shall solely by reason of his (or her) disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal assistance, or under any program conducted by any executive agency or by the United States Postal Services.”

Section 504

The objective of 504 is to ensure that people with disabilities have opportunities and access to the benefits of all federally funded programs and activities.



Americans with Disabilities Act



- ▶ Requires that people with disabilities not be excluded from participation in, or be denied the benefits of, or be subjected to discrimination.
- ▶ Does not require the institution receive federal financial assistance.

Enforcement

- ▶ Investigation by designated agency or DOJ
- ▶ Compliance review
- ▶ Agency referral to DOJ or
- ▶ Withholding funds (OCR)
- ▶ DOJ litigation
- ▶ Suits by individuals



Where These Laws Apply?

In EVERY program or activity: academic and non-academic settings

In field placements (an area particularly subject to compliance issues)

All events

In the “virtual world” (web pages etc.)



Covered Services: EVERY Program Service, and Activity You Offer

- Course Materials
- Websites / Online
- Testing / Tutoring
- Admissions
- Financial Aid
- Athletics
- Library
- Alumni Affairs
- Transportation
- Child Care
- Physical Access to Facilities
- Emergency Preparedness
- Food Services
- Housing / Parking
- Community Events / Entertainment
 - (plays, concerts, athletic)
- Voting

To Whom Do These Laws Apply?

- Applicants
- Employees
- Visitors
- Applicants for services
- Students
- The non-retaliation provisions apply to everyone

Implications of 504 & ADA



- ▶ Those who have qualified for admissions have a right to be in higher education.
- ▶ Once admitted, students have a right to access academic and nonacademic programs.

Implications of 504 & ADA

- ▶ Qualified students are eligible to receive reasonable accommodations that relate to their disabilities.
- ▶ Students have a right to confidentiality of all disability related information.
- ▶ Guarantees ACCESS - NOT success!



Electronic Access



Guarantees the right to persons with disabilities in accessing electronic information, including web sites, computers in public libraries, etc. This bill requires compliance by municipalities, counties, community colleges, universities and any agencies in state government.

Eligibility Process:

Students have a responsibility to self-identify

Students have to provide documentation of a disability

The documentation provided has to meet the college's policy guidelines

Determination of eligibility and reasonable accommodations is based on the documentation

2. DOCUMENTATION



Documentation Requirements

- ❖ To receive academic accommodations for his or her disability, a student must present documentation (at his or her expense) from a licensed or certified professional to the director or coordinator of Disability Services at his or her college or university.

- ❖ All documentation must be within the last three years.

- ❖ All documentation must be decided on a case-by-case basis.

- ❖ The purpose of documentation:
 - ✧ To establish that an individual has a disability.
 - ✧ To describe and document the functional impact of the disability for use in establishing the need for and design of accommodations.

Documentation Guidelines

❖ According to the *Association on Higher Education and Disability (AHEAD)*, documentation should include the following elements:

✧ The credentials of the diagnosing professional.

✧ A statement identifying the disability, date of the most current diagnostic evaluation, and the date of the original diagnosis.



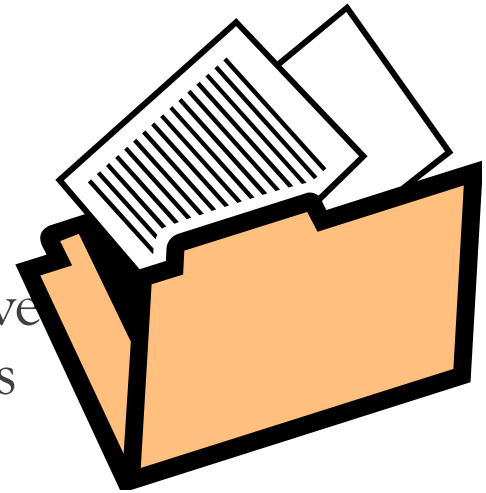
Documentation

- Description of the diagnostic tests, methods, and/or criteria used
- Description of the **current functional** impact of the disability which includes specific test results and the examiner's interpretation
- Description of the **expected progression** or stability of the impact of the disability over time

Documentation Guidelines continued

✧ A description of current and past accommodations, services, and/or medications.

✧ Recommendations for accommodations, adaptive devices, assistive services, and/or support services and strategies.



Confidentiality

- ❖ All colleges or universities will treat data on students with disabilities with confidentiality in accordance with applicable laws and regulations.
- ❖ Disability information and documentation is housed separately from students' academic information.



Disability Support Services Information/Declaration of Disability Form

1. Name _____ Student ID# _____

Address _____ Phone # _____

E-mail address _____

2. Date of Birth _____

3. Which of the following categories best describes your **primary** disability(ies)? (Please check all that apply.)

Attention-Deficit/Hyperactivity Disorder _____ Orthopedic/Mobility Impairment _____

Blindness/Visual Impairment _____ Psychological Disorder (Be specific) _____

Deafness/Hearing Impairment _____ Speech/Language Disorder _____

Learning Disability _____ Traumatic Brain Injury _____

Other (Be specific) _____

****This information is voluntary, and will be kept confidential and used in accordance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act.**

I CERTIFY THAT THE ABOVE QUESTIONS HAVE BEEN ANSWERED TO THE BEST OF MY KNOWLEDGE.

Signature of Student

Date

Northwest Mississippi Community College does not discriminate on the basis of race, color, national origin, sex, disability, religion, gender identity, age, or status as a veteran or disabled veteran in all its programs and activities. Northwest Mississippi Community College prohibits sexual harassment and all forms of sexual violence, regardless of sex, gender identity or sexual orientation. The following have been designated to handle inquiries regarding non-discrimination policies: Americans with Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973: Disability Support Services Coordinator, Tate Hall, P.O. Box 5555, 4975 Highway 51 North, Senatobia, MS 38668, telephone number 662-562-3309, e-mail address gbeard@northwestms.edu; Title II of the Age Discrimination Act: Vice President for Finance, James P. McCormick Administration Building, P.O. Box 7017, 4975 Highway 51 North, Senatobia, MS 38668, telephone number 662-562-3216, e-mail address jhorton@northwestms.edu; Title IX of the Educational Amendments of 1972/Title VII of the Civil Rights Act of 1964: Vice President for Student Services, Tate Hall, P.O. Box 7010, 4975 Highway 51 North, Senatobia, MS 38668, telephone number 662-562-3997, e-mail address dsmith@northwestms.edu.

DISABILITY VERIFICATION
To Be Completed and Signed by a Qualified Licensed Professional
(*-Indicates Required Information)
(-Indicates Required Information, if applicable)**

*Name: _____ *SS/ID# _____

*Date of Verification: _____ *Verified By: _____

*Date Diagnosed: _____ *By Whom: _____

**DSM V Diagnosis: _____

**Physical Diagnosis: _____

**Learning Diagnosis: _____

***Major Life Activity** with which this condition interferes:

__ Manual tasks __ Walking __ Seeing __ Hearing __ Breathing __ Learning __ Speaking

Functional Limitation

____ **Organizing/Sequencing**

____ **Easily Distracted**

____ **Poor Concentration**

____ **Difficulty Focusing for Extended Periods of Time**

____ **Difficulty Formulating and Executing Plan of Action**

____ **Abstract Thinking**

____ **Panic Attacks**

____ **Other: (Be Specific)**

Recommended Accommodations:

*Physician's Signature

*Date

*Physician's Printed Name

*Address, City, State, Zip

Physician's Email Address

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NORTHWEST
MISSISSIPPI COMMUNITY COLLEGE

STUDENT REQUEST FOR FACULTY DISABILITY NOTIFICATION

Name _____ Student ID# _____

Semester: Fall _____ Spring _____ Campus Location _____

Address _____

Phone# _____

Please inform each of my instructors concerning my approved accommodations. I understand that this request and a copy of this email will become a part of my confidential academic file.

My preferred method of delivery to my instructors is as follows:

_____ Please email information directly to my instructors.

_____ I will pick up the letters at the Disability Support
Office (Tate Hall) and hand deliver to my instructors.

Yes () No () Permission to disclose disability information to instructors.

**Yes () No () Permission to discuss academic progress with parents without
contacting the student.**

Student Signature

Date

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3. ACCOMMODATIONS



Accommodations

Purpose...

- is not to improve chances of being successful, but rather to assure equal access to the opportunity, allowing the student to show whether he/she can be successful

Guarantees access, not success.

Accommodations

Colleges must look at each individual disability and the functional impact of the disability for each student.
(case-by-case and class-by-class)

Colleges must provide reasonable accommodations to ensure equal access.



Accommodations

The process of making accommodations should...

- follow institutional policies and procedures
 - Syllabus statement (college policy?)
- involve personnel from the Disability Services Office
- “...not allow for individuals to make decisions concerning reasonable accommodations without regard to campus policy and at the exclusion of the Disability Services Office”

Salome Heyward, 1998



Accommodations

- give primary consideration to the student's request
 - ADA, Title II, Part 35, Subpart E, Sec. 35.160
 - (2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.
- communicate with faculty
- make sure the accommodation is reasonable.

Accommodations

An accommodation is not reasonable if it causes...

- a direct threat to the health and safety to others
- a substantial change in an essential element of curriculum
- a substantial alteration in the manner in which services are provided
- an undue financial or administrative burden

Accommodations

Examples of reasonable accommodations...

- Extended time for tests (allowing a specific amount of extra time allows the student to focus on the test not the clock, and lessens the chance that anxiety or other symptoms will interfere with performance)
- Tape recorders/laptop computers
- Visual aids/handouts
- Concise oral instructions
- Reading list in advance
- Seating in front row

Accommodations

- Clear black print on white or pale yellow paper
- Advance notice of class scheduling change
- Computer software to enlarge print
- Notetakers
- Interpreters-ASL
- Instructions and demonstrations presented in more than one way



Explanations of Accommodations/Modifications

Please read and discuss with Disability Officer/Special Populations Coordinator any concerns or questions you have regarding any and all requested accommodations. This notice to you will address some of the reasonable requested accommodations/modifications listed on the form (***Student Request for Reasonable Accommodations/Modifications Form***).

1. **Preferential seating:** You may sit anywhere in the classroom that you choose. Please choose to sit somewhere where you can see, hear, and listen to the instructor and any classroom participant.
2. **Examinations and quizzes given orally:** Arrangements must be made ahead of time for examinations and quizzes to be given orally. Documentation must support this request.
3. **Extended time on tests:** Extended time is granted in accordance with documentation and the ADA. Arrangement must be made with the instructor and Disability Services staff prior to the examination date.
4. **Non-distracted environment:** Instructor may provide this environment or send exam to Disability Services Office.
5. **Peer Tutoring:** NWCC (Senatobia campus) has a Student Support Services Program that provides free tutoring services in all subjects. This program is federally funded. In order for students to qualify, the student must have an academic need and must meet other qualifications. Please sign up as soon as possible. **Space is limited.**
6. **Recording of classroom lectures:** If a student needs to record a classroom lecture, the student must pick up ***Recording Usage Policy Form*** from Disability Office. This recording cannot be given to other students, and the contents can only be used by the student for the purpose of the class.
7. **Copy classmates/instructor notes to supplement own:** This accommodation will be granted provided another student wishes to share his/her notes. The accommodation **does not** mean that the requesting student may sit and not take notes; the sharer's notes are to be a supplement. NWCC is not responsible for finding a note sharer; it is the student's responsibility to locate an accountable classmate willing to share class notes. Instructor may provide notes on request. Copying may be done in the Disability Support department free of charge.
8. **Handicapped parking:** Handicapped parking spaces are provided for handicapped persons who have the appropriate decal. Students with a disability will receive special consideration upon application to the Office of Campus Police.
9. **Adequate-warning devices in residence halls:** To alert the student to any danger signal by an alarm siren whether light or sound.
10. **Access to audio text books:** This is provided through the Disability Support Services department on the campus you are attending. Books are readily available and ample time must be given to provide this accommodation. Student **MUST** contact appropriate Coordinator.
11. **Interpreters, readers, lab assistants, aides, etc.:** Documentation must support this request. The Disability Office must have sufficient notice for this accommodation to be provided. Paperwork must be completed at least six (6) weeks prior to need.
12. **Special residence hall assistance:** This request will be honored if needed; please check on **Housing Application**.
13. **Instructional support:** Instructional support is provided to all students. You must make it known to your instructors that support is needed.

4. FACULTY & STAFF RESPONSIBILITIES AND RIGHTS

Responsibilities

Provide reasonable accommodations for students with documented disabilities.

Do not provide accommodations without communication from Disability Services Office.

Students with disabilities are covered under FERPA and civil rights laws. College employees should not make any statement or implications that the student is any different from the general student population.



Faculty Rights



Faculty has a right to request a written agreement before allowing a student to record a class.

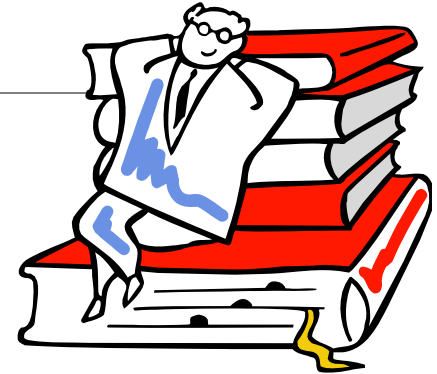
Faculty can assume that all students must adhere to the behavior/conduct policy of the college.

5. ACADEMIC FREEDOM & PERSONAL LIABILITY



Academic Freedom

Academic Freedom is a **right**,
NOT a **legal mandate**.



It should not be presumed that protection of academic integrity **supercedes** all other considerations.

“The right to protect academic integrity and to assert such right as a defense for denying access to individuals with disabilities belongs to the institution, **not individual faculty** members.” *Salome Heyward (Civil Rights Attorney)*

Academic Freedom

“The concept of academic freedom, however, is more clearly established in academic literature than it is in the court. Thus, a review of the case law shows that, despite eloquent rhetoric on ‘academic freedom,’ the courts have declined to cede all classroom control to teachers. The parameters of academic freedom are not distinct, particularly in relation to the potential conflict with a university’s duty to ensure adequate education to its students.” *Cohen v. San Bernardino Valley College, supra at 1417-1418.*

Personal Liability

There have been several judicial decisions in which people who denied services to qualified individuals with disabilities have been held personally liable.

- “An individual may be subject to personal liability under ADA....To hold differently would allow individuals with both the authority and the discretion to make decisions based on a discriminatory animus to violate the ADA with a degree of impunity not envisioned by Congress.”

Howe v. Hull, 873 F. Supp. 72-77 (N.D. Ohio 1994)

6. TEACHING TIPS



Universal Design

Universal Design in Education

“The design of products and environments to be usable by all students, to the greatest extent possible, without the need for adaptation or specialized design.”

— Ron Mace http://www.ncsu.edu/ncsu/design/cud/about_ud/about_ud.htm

In Instruction:

- A statement on a syllabus that invites students to meet with the instructor to discuss learning needs
 - Multiple delivery methods that motivate and engage all learners
 - A flexible curriculum that is accessible to all learners
- 

Universal Design-ctd.

- Allowing students to turn in parts of a large project for feedback before the final project is due
- Class outlines and notes on an accessible website
- Assessing student learning using multiple methods
- Awareness of processes and resources for disability-related accommodations
- Examples that appeal to students with a variety of characteristics with respect to race, ethnicity, gender, age, ability, disability, and interest
- Regular, accessible, and effective interactions between students and the instructor

Teaching Tips

DO....

- write key terms or outline on the board or handout
- create study guides
- assign advanced readings before the topic is due
- briefly review the previous lecture
- use visual aids...overheads, charts, diagrams

Teaching Tips

DO....

- allow the use of recorders
- emphasize important points, main ideas, and key concepts
- explain technical language and terminology
- speak distinctly and at a relaxed rate
- leave time for questions
- administer frequent quizzes to provide feedback

Teaching Tips

DO....

- give assignments in writing as well as orally
- treat an individual with a disability the same way you would treat anyone - with dignity and respect
- Document complaints, conversations, meetings!!!



Teaching Tips

DON'T....

- turn your back to the class when speaking
- embarrass a student with a disability by drawing attention to the disability
- assume that certain professions or programs are more suited to persons with disabilities
- assume a student with a disability does not belong in a certain program

Teaching Tips

DON'T....

- assume a student with a disability cannot perform well in a class
- make medical judgements
- feel apprehensive about discussing the student's needs as they relate a course or program



Trends

1 in 100 have a diagnosis of Autism Spectrum Disorder

1 in 500 have a diagnosis of Asperger Syndrome

2017 School year totals indicated almost 214,000 students with Autism Spectrum Disorder transitioning from secondary to some form of post-secondary education nationwide

Asperger's Syndrome

- Normal to (way) above average IQ
- Mildest end of spectrum
- Best prognosis
- No language delay (clinical criteria)
- May “choose” whether to communicate
- Einstein, Mozart, Gates?

Why should we pay attention?

- Unique gifts and potential for societal impact
- Low incidence high maintenance
- Paradigm shift: environment is the barrier
- Ready or not, here they come!

Veterans and Disability

The unemployment rate for veterans with disabilities is over 41%

5.5 million veterans have a diagnosed disability

The actual unemployment rate for disabled vets is believed to be far higher. Many live on disability payments and don't seek employment, and so they are not counted in jobs numbers.



Veterans and Disability

The signature disabilities of returning veterans from recent engagements in Iraq and Afghanistan are:

Post Traumatic Stress Disorder

Traumatic Brain Injury, and/or

Depression

Considerations for School

Memory and Concentration
Poor Time Management Skills
Disorganization
Difficulty coping with Stress
Difficulty interacting with co-workers
Fatigue
Frequent absenteeism
Panic Attacks
Sleep Disturbance



PTSD

Traumatic Brain Injury

The 2008 Rand Study suggests that 19% of returning veterans have experienced brain injury

Brain Injury can be mild concussion to penetrating head wounds.

80% of reported military TBI are concussive brain injury as the result of IED explosions.



Traumatic Brain Injury

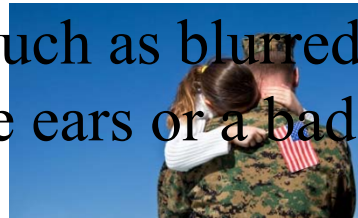
Memory or concentration problems

Headache

Dizziness or loss of balance

Nausea or vomiting

Sensory problems, such as blurred vision, ringing in the ears or a bad taste in the mouth



Sensitivity to light or sound

Mood changes or mood swings

Feeling depressed or anxious

Fatigue or drowsiness

Difficulty sleeping

Sleeping more than usual

Mental Health and Veterans

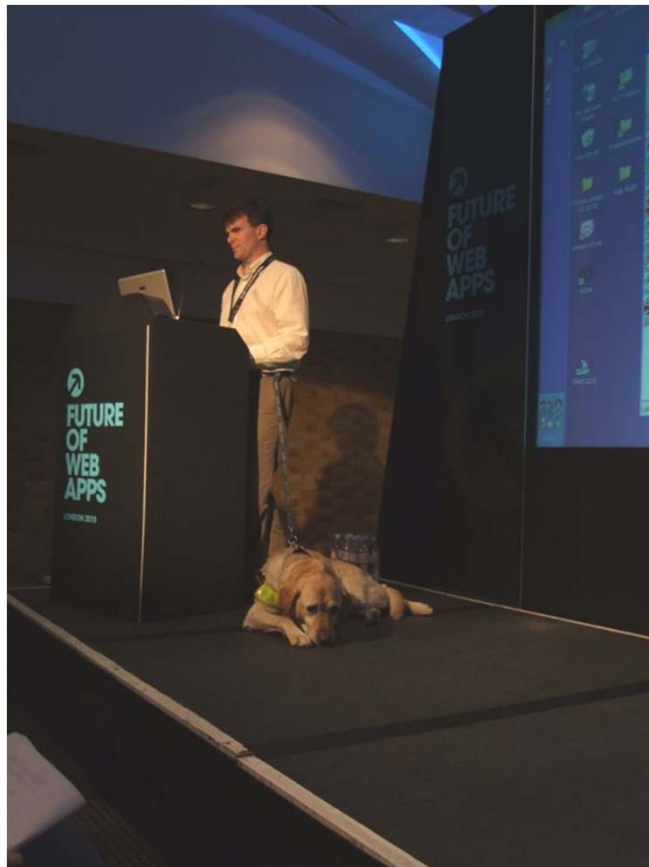
As many as 50% of returning veterans experience depression

Most veterans do not seek treatment for Mental Health issues because of the stigma associated with treatment or fear of being diagnosed with a mental illness.

Untreated mental health conditions can lead to other debilitating problems including high rates of unemployment, homelessness, substance abuse, divorce, child abuse and suicide.



Trends continued:



ADA regulations:

Reasonable modifications

Entity must make reasonable modifications in policies, practices, or procedures, when necessary to avoid discrimination.

Modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Permit individuals with service animals in all areas where members of the public, participants, invitees are allowed to go.



Service animal: definition

A dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability (including psychiatric, cognitive, mental)



Fair Housing Act

HUD regulations: In college or university housing, make reasonable accommodations for individuals who use assistance animals

Can include emotional support or therapy animals (not just dogs)



Emotional support/comfort?

If this is the only function, not considered a service animal

A service animal for a person with a psychiatric or other mental disability performs a task, e.g., detects and responds



Can ask only two questions

Is this service animal required because of a disability?

What work or tasks is the animal trained to perform?

Can't ask about disability.



Other issues (1)

- An entity can exclude a service animal if --
 - it is not controlled or
 - it is not housebroken.
- Entity is not responsible for care or supervision.
- No “service animal” license or documentation required.



Other issues (2)

No deposits can be required (beyond the usual)

- But individual is responsible for damage beyond usual wear and tear

State and local requirements may also apply

Can consider allergies of other people with disabilities:

See DOJ agreement: Law firm settled after requiring client to leave service dog outside office due to attorneys' allergies, phobia

<http://www.ada.gov/larkin-cd.htm>

CONCLUSION

We will all be impacted by students with disabilities

We have a responsibility to prepare for these interactions

We have the ability to be a positive force in these students lives

The landscape is changing



Questions and Answers?

THANK YOU FOR PARTICIPATING!

