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**CALIFORNIA ASSOCIATION OF
INDEPENDENT SCHOOLS (CAIS)
TRUSTEE/SCHOOL HEAD
CONFERENCE**

**Reasonable Accommodation
of Students**

2/2/2013

PRESENTED BY:

Michael Blacher & Donna Williamson

Reasonable Accommodation of Students

CAIS Trustee/School Head Conference | February 2, 2013


Presented by: Michael Blacher & Donna Williamson

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Reasonable Accommodation of Students

California Association of Independent Schools

Presented By: Michael Blacher & Donna Williamson



AGENDA

- Overview of Disability Related Statutes and Guidance
- Legal Requirements for Independent Schools
- Practical Considerations
- Suggested Policies

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STATUTES

Applies to All Independent Schools:

- Title III of the Americans with Disabilities Act
 - Except for Religious Schools
- Technical Assistance Manual
 - <http://www.ada.gov/taman3.html>
- California Education Code, Section 48203

Applies to Schools that Receive Federal Financial Assistance:

- Section 504 of the Rehabilitation Act
- Individuals with Disabilities Education Act

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Americans with Disabilities Act (ADA)

The ADA gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

<http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html>

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Title III of the ADA

Applies to Students Who:

- Have a Physical or Mental Impairment
 - Substantially Limits One or More Major Life Activities
- Have a Record of an Impairment
- Are Regarded as Having an Impairment

42 U.S.C. § 12102(2); 28 C.F.R. § 36.104

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Title III of the ADA

Applies to Places of Public Accommodation Including:

- Places of Education (e.g. , nursery schools, elementary, secondary, undergraduate, or postgraduate private schools).

28 CFR 36.102-36.104

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Title III of the ADA

Religious Schools Exempt:

- Religious Organization; or
- An Entity Controlled by a Religious Organization

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Title III of the ADA

III-1.5200 Scope of exemption. The exemption covers all of the activities of a religious entity, whether religious or secular.

ILLUSTRATION: A religious congregation operates a day care center and a private elementary school for members and nonmembers alike. Even though the congregation is operating facilities that would otherwise be places of public accommodation, its operations are exempt from title III requirements.

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Student Applications

Does the ADA apply to the admissions process of an independent school?

NAIS Publication (2010): THE ADMISSIONS PROCESS: WHAT CAN WE ASK, WHAT SHOULD WE DO?

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Student Applications

May an independent school make oral or written pre-admission inquiries as to whether an applicant is disabled?

NAIS Publication (2010): THE ADMISSIONS PROCESS: WHAT CAN WE ASK,WHAT SHOULD WE DO?

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Student Applications

May an independent school include on its admissions application a request for voluntary self-identification of an applicant's disability?

NAIS Publication (2010): THE ADMISSIONS PROCESS: WHAT CAN WE ASK,WHAT SHOULD WE DO?

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Student Applications

May an interviewer ask an applicant whether he or she is disabled?

NAIS Publication (2010): THE ADMISSIONS PROCESS: WHAT CAN WE ASK,WHAT SHOULD WE DO?

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California Education Code

48203(a) [T]he principal of a private school ... upon the severance of attendance or the denial of admission of any child who is an individual with exceptional needs ... [must] report the severance, expulsion, exclusion, exemption, transfer, or suspension beyond 10 schooldays to the county superintendent of schools.

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Denial of Student Admissions

Department of Justice Settles with Pennsylvania Private School That Refused Admission to HIV Positive Eighth Grader.

- The full settlement can be accessed at:
<http://www.justice.gov/iso/opa/resources/75920121220161432503826.pdf>.

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Denial of Student Admissions

Dept. of Justice Settles with Louisiana Private School who Denied Admission to Applicant with Diabetes After Family Requested Accommodation.

- The full settlement can be accessed at:
http://www.ada.gov/alexandria_settle.htm

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Denial of Student Admissions

Dept. of Justice Settles with Preschool Who Refused to Admit Any Children with Autism.

- The full settlement can be accessed at:
<http://www.justice.gov/opa/pr/2011/May/11-crt-631.html>

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Acceptable Disability Inquires

Schools May:

- Ask Applicants to Identify Needed Accommodations
- Ask Applicants about Disabilities After Conditional Offer
- Ask Applicants about Disabilities Post Offer

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Inquiries Regarding Disabilities

III-4.1300 Unnecessary inquiries. The ADA prohibits unnecessary inquiries into the existence of a disability.

ILLUSTRATION 1: A private summer camp requires parents to fill out a questionnaire and to submit medical documentation regarding their children's ability to participate in various camp activities. The questionnaire is acceptable if the summer camp can demonstrate that each piece of information requested is needed to ensure safe participation in camp activities. The camp, however, may not use this information to screen out children with disabilities from admittance to the camp.

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Reasonable Accommodations

Schools Must Provide an Accommodation if it:

- Is reasonable;
- Is necessary; and
- Does not fundamentally alter school's program or cause an undue burden.

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Reasonable Accommodations

Reasonable:

- Case-by-Case basis
 - What is Reasonable for One Student or School may not be for another.
 - Must be "Reasonable," not Just Preferred.

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Reasonable Accommodations

Necessary:

- Does it Allow Student to Participate in Program?

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Reasonable Accommodations

Does Not *Fundamentally* Alter Nature of School:

- Cannot provide student with unfair advantage.
- Cannot require schools to lower academic standards.
- Courts generally defer to schools' academic decisions.

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Reasonable Accommodations

Undue Burden:

- Nature of Accommodation;
- Cost of Accommodation; and
- Overall Financial Resources of School.

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Reasonable Accommodations

Examples:

- Academic Accommodations
 - More Time for Assignments and Tests
 - Modifying or Waiving Certain Course Requirements
- Auxiliary Aids
 - Audio Taped Lectures
 - Transcriptions
 - Smartpen

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Reasonable Accommodations

True, False, or Maybe

A School may indicate on a transcript that a test was modified for a student with a disability.

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Reasonable Accommodations

Dental School Did Not Violate the ADA When It Dismissed Learning-Disabled Student Who Was Unable to Pass Required Exam.

Lipton v. New York University College of Dentistry,
--F. Supp.2d-- (2012), 2012 WL 896210.

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Suggested Policies

Reasonable Accommodation Policies:

- Who Should Receive Requests for Accommodations?
- What Documentation Should be Provided to Family?
- What is the Process for Requesting Medical Information from Family?
- Who Will Review Information?

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Suggested Policies

Reasonable Accommodation Policies:

- Who will Engage in Dialogue with Family?
- Who Will Determine whether Accommodation is Reasonable?
- How Will Decision be Transmitted to Family?
- Document Everything!

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THANK YOU!

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