

UNC Chapel Hill CEDI Lecture Series: Stephen Rawson and Jennifer Bills

January 24, 2019

Disability and the Law

I'm just going to do a brief introduction and then we're going to jump into it our topic for today into disability and the law and we have two wonderful lawyers who have donated their wonderful time to come talk to us about sort of their life and in the way that I'm framing it as like disability and the law so we have good parts about education.

Jennifer who talks about the workplace and public and public accommodation issues right.

Steve is an attorney who represents litigation throughout the state of North Carolina with practice to focus on special education laws personnel law in general litigation depends on behalf of school board and taught middle school Jennifer is a litigation attorney for noble law.

Prior to retirement noble law Jennifer served as senior attorney at disability rights bill with Carolina where she worked for nine years to protect the rights of people with disabilities under the ADA.

Jennifer teaches disability law as an adjunct professor of law at UNC Chapel Hill.

So thank you for coming over out of campus she frequently lectures and teaches CLE courses on employment law conference including the ADA, FMLA, and a sexual harassment and ethical issues in

representing clients with disabilities
she also served her community including
on the Carver elementary school
improvement team and on other nonprofit
boards and volunteer committees
advocating for racial equity.

So we're gonna see Steve first and then Jennifer and
thank you.

>>Okay good afternoon everybody
Amelia said I'm Steve I'm a lawyer.

So we'll start with the lawyer stuff on
the next slide here quick disclaimer
that the PowerPoint here is very very
bones had to convince a lot of Jennifer
does allow these trainings as well that
I had to condense this down from really
what can cover an hour training
into minutes while building in some
opportunities for discussion so it's
going to be just really really great
about these text of the law so you can
kind of follow along with what I'm
saying illustrate doesn't have any of
the fun embedded videos or things that I
often like to try to do so.

As Amelia said that I represent public school
boards so a couple things that I need to
do if you ask a lawyer to come talk to
you get the lawyer stuff first and that
is a couple things one I represent
boards across the state of North
Carolina.

I am not here today speaking
for them right so nothing I say today is
the position of any County school board
that you work it may go to or that you
may see about news things like that so
please those you hear and anybody
listening online make sure that you

understand.

This is coming from my personal experience my own interpretations of information and law but should not be attributed to any of my clients second thing is as an attorney I am speaking here in just an educational capacity I'm not offering any legal advice if you have questions I would love to answer them please ask me hypothetical questions and I cannot tell you about what your child is going through or what your school your child's school has done

But if you have a general question or even a detailed hypothetical I can answer a hypothetical question as already said that I've really had to condense this down so this is very very high-level stuff and it's probably only to go to make plan that's okay because six years into this career and I'm still doing that pretty much every day so but stop me as we go as as a presenter I'm much more comfortable having a conversational opportunity here.

Probably why it didn't make it as a middle school teacher had to become a lawyer it's much easier by the way to be a lawyer than the middle school teacher folks who end up in middle schools have my infinite respect.

But in terms of the rest of the disclaimer here that then the one thing I wanted to start with was this reading that y'all had about the Georgia Public Schools.

I wanted to make sure we weren't all coming to this thinking that's what special education looks like in most

places that articles horrifying and you know as I was reading and I was I was between tears and rage and there are some real problems all around the country with how we educate how we provide educational access to students with disabilities but that's not what it looks like.

I work with just given their hearts and their souls to this everyday and the vast vast majority of them are just doing wonderful wonderful work with wonderful students who are just learning a little bit differently than the students in their non-disabled peers.

So please carry that with you right that are both art is important but please don't attribute that to every school system that you encounter so what do I want to do today we're in a skiffle at one because I didn't have Jennifer was coming to do that she's far more qualified and that's right here to cover that so I'm gonna code just exons.

Bullet one and we're going to jump straight into just the educational context for students rather than working and looking at how schools also have to incorporate working with employees with disabilities and how we accommodate that how we make sure that schools are compliant with their various legal obligations with their staff.

So let's get through a few of the first slides here but I must stop here because the AEA definition of disability carries through in the in the school system and I didn't reproduce the slide in the section.

So I'm going to stop here so the first thing what is section of the Rehabilitation Act in really really condensed to terms all it says is you can't discriminate against people with disabilities in the provision of public programs.

And so what that means where schools is any educational program that we are providing to non-disabled students has to be made accessible to the maximum extent possible with reasonable accommodation to students with disabilities so we have students who have mobility needs our school buildings need to be accessible to those students if we have students with hearing needs right much the video that is a very public system again how depressing some of these these stories can be.

But we have an obligation to make sure that those students have access to their education even though they do not hear the way that their common stable peers do that also extends to non instructional programs right so it's not just that you have to have access to math class and reading class but you have access to the ball game and to the dance program and things like that.

So any program that is funded school as part of the instructional program is something that the schools have to be thinking about how do we make sure that this is accessible to students with disabilities in the same way or in an equal way to their non-disabled peers so when we think about what does it mean for a student to have a disability we're now two different areas that we're looking at one is section that's from the

start but imma spend most of my time with the IEA and so the in terms of the provision of special education services to students with disabilities and they have slightly different definitions with disabilities so to make sure we separate those two out

This is your ad a definition of disability and it applies to section so we're looking for either a physical or mental impairment that substantially limits one or more major life activities again they're about ten slides that follow this that that's cut so let me summarize them so grab a major life activity it's really just anything that you would do in your average day that's important to your ability to function in society that would be limited by that disability in a significant way.

So walking, clearly a major life activity.

Breathing a major life activity.

Some of the ones you don't think about.

Concentrating.

A lot of ways this the come to students' ability to access their educational programs there's no definitive list.

Congress did not create a law saying these are the major life activities.

There's no just all inclusive list.

We need to be thinking about adapting based on what we're seeing as students come through the system.

How does this impact them and does this qualify.

And in it does, we need to move on into section protections, thinking about how to provide accesses and services.

Y'all let me know if this broadcast is looking weird, if I get too close to the camera.

These last two bullets Jennifer will spend a little more time on than I will.

It's going to be this first bullet.

We'll worry about the actual impairments.

There's less issue with such impairment or being perceived as an impairment.

Irrelevant but far less common.

We pause at the arrow.

I am not going to be able to stick around for the discussion at :.

Please feel free to interrupt me.

It makes me a bad middle school instructor but hopefully makes me a good presenter.

If I didn't say something that's unclear, stop me and we'll go through.

I'll jump whenever the souped says somebody posted something.

The definition of disability here.

This is the slide that's going to tell you what our obligations are in paraphrase.

What does that look like?

How do we do that.

How do we operationize going from a legal obligation to a student in front of us in a classroom and serving that student and meeting the student's need.

First thing to determine is are they eligible for the types of accommodations and modifications that section guarantees to them.

Do they have a disability.
Here's the definition again.

And if they do, what does it mean?

There are lots of students walking through our schools who have a disability who do fine without accommodations.

There are many students who need accommodations and modifications but maybe we didn't catch it.

Just because they're not getting it doesn't mean we don't provide it.

The next step is saying do you have a disability and does that disability mean that you need accommodations and modifications in order to access program.

And if you do, we have an obligation to provide it.

So when we think about that, one of the questions that we get, what if a student is on medication.

We have a student with ADHD, a common example.

That is very well-managed by their medication and because of where they are or socioeconomic status they have access to the

medication, they have the opportunity to take the medication before or after they come to school.

If the kid is on medication, you have no idea.

Can we consider that when we think about eligibility for ?

No.

That's something that our teams struggle with.

We don't see it.

You don't see it because it's really well.

well-managed by medical intervention or

some other support.

That's not enough.

We can't look at it saying that takes care of it, not eligible.

We need to look at hypothetically what is this student's needs without that medication, without that support, and then would they be eligible.

If the answer is yes, then we move into the next question.

We look at mitigating managers when the medication is needed.

A student with ADHD who may have a lot of energy and need to move.

My wife is a better teacher than I am or was.

We both had students when we were teaching that had a need to move.

We had this idea in some classrooms where they have to sit.

And we're in this sort of assembly line type of instructional model that's hopefully been left behind in the last century but some students don't work that way.

They need to move.

So if they're able to not disrupt the class and they're able to learn while they're doing this, why would we stop them from doing that.

That's a pretty simple accommodation.

We've had teachers, who they'll set out a taped line.

This is your movement box.

You don't need to be at your desk.

If you need to move, bounce around in your movement box.

That is an accommodation.

The way that we can change the programs so the student is able to access education.

People say isn't that distracting?

? It really not.

You can be creative but we can't just rely on what's good for everyone that's not good enough.

We do not consider it for eligibility but we consider it when we go to their accommodation needs.

If their medication is managing it and they don't need to get up and move, great.

We don't need to provide that accommodation.

But if they do, then we build it into their plan.

So , big picture, what do we want our school teams thinking about.

Boil it down to this.

How do we give a student a fair opportunity to participate and the fair opportunity is a really piece of language, it's a paraphrase, doesn't come from me law.

But the idea here is that a plan, when I get to IEPs, an IEP plan is not an guarantee of success.

You cannot hold the school to that standard, that once you put that plan in place that we are making a promise that this will work.

What with have an obligation to do is to create is plan that is likely to work and if it doesn't hopefully we're coming back together collaborating with parents and resource to make a better plan.

A

plan is not a promise of success.

Not a guarantee.

That's where the fair opportunity comes from.

This going to provide the student opportunity to access their education on

a fair basis with their peers.

And this last one is really important.

Sometimes we get in big arguments with parents, they're saying you're not doing enough, my son can do more.

My son has infinite potential.

And the teacher is saying we agree, we believe in your child.

But that's not the legal obligation.

We can't do that.

We cannot promise maximum outcomes for every student through these plans.

Hopefully, as a policy matter, we're pursuing that and our teachers believe in that and doing everything they can.

But from a legal obligation standpoint our obligation is that basic floor of opportunity.

Do we make sure that everybody is starting from a place that's fair.

And then hopefully we are going to work to make it better throughout.

But please keep that point in mind in particular.

So when we talk about section , the big focus that's going to be on accommodating and modifying.

Those are slightly different terms.

They generally come as a pair.

Accommodations and modifications.

They're not really the same thing but today it's okay to put them together.

What does that mean?

It means we're going to take whatever aspect of the education is the barrier and think about how do we shift it so that that barrier is not in the way anywhere.

So if it's a space issue, we figure out how to make the physical space work

for this child.

If it is a form of instruction, how do we figure out how to instruction write -- some students, the video that you watched of the Detroit students.

If they can't hear the instruction, how do we make sure they can still access the instruction.

That means that their teacher should not just be at the front of the room lecturing with no visual supports, no materials they can follow along on.

Not every school is going to have the resource to do closed captioning for every classroom.

But we can be creative.

We can get them notes written ahead of time to read while the teacher is talking.

We can have PowerPoints that they can read, the teacher can refer to.

Ideally we've got a situation where we've got an interpreter available when necessary.

Not always possible.

Do we have specialized programs but we have an obligation them in the least restrictive.

I'll come back to the Detroit video.

There was a lot of conversation in this video that was inconsistent with the least restrictive mandate that the schools are operating under.

We'll talk a little about that when we get there.

Just some examples.

I have this conversation with school teams all of the time sometimes they're a little hesitant to be really creative.

You could make the joke at any presentation to a large group of teachers, you know, quick, think of the most common two accommodations or

modifications that show up on plans and IEPs and it's going to be extended time and preferential seating and they all laugh, oh yeah, I know that.

I get IEPs all of the time and the only things on there are extended time and preferential seating.

That's great.

Extended time could be great for a student who has trouble concentrating, maybe has hand cramps as they're writing.

That's really important.

But it's not always enough.

Preferential seating is great.

Let's be specific.

Do we want a student at the front of the room because they have trouble concentrating the they see their peers.

Do we want the student at the back of the room because they have social anxiety and if you put them in the front of the room they think everybody is looking at them then they can't concentrate.

We assume preferential seating means up front close to the board if they have bad eyesight or they can hear better or concentrate better.

But it's not always true.

Sometimes they need to be aware from peers engaging in distracting behavior and the teacher needs to put them in a preferred seat that's where it may be, away from the distracting peers.

Students will refuse -- their IEP says preferential seating, the teacher reads it assuming it means right up by the teacher and they're mortified.

They'll skip class or they'll refuse -- they'll do something to get thrown out of the class.

And it's all because we didn't spend

the time to communicate.

Right, preferential seating for you means in the back of the room or near the window.

Some students with look out the window and hearing everything going on and learn it just like that.

It's an individualized inquiry.

Teams are really good at this but sometimes they're hesitant to be creative.

Be creative.

Talk to the students.

Talk to the parents.

Come up with it.

Be as inventive as you like.

There's no list.

Checklist, we have options for this student.

No.

It's whatever you as a professional think is appropriate.

And people sometimes forget that that our teachers are professionals, highly trained, well-educated and doing a job where they don't get the respect they deserve and they don't get the pay they deserve and they don't get the support they deserve.

They're really fantastic people and they have really good judgment for the most part.

So we try to encourage them, go ahead and believe in yourself, do that and they do a really nice job with that.

These are just some examples of the accommodations and modifications.

Is that clock accurate?

Okay.

Cool.

Make sure that we have time to take questions as well.

Please do ask a question if you have one.

So let's transition here, into IBA.

That's in a nutshell in minutes.

Let's compare that to the

IDEA.

is about preventing discrimination.

It's just leveling the playing field basically.

Making sure they can access it.

Anti-discrimination.

It's a prohibition.

There are no affirmative obligations there.

It's, you can't do that, you cannot discriminate.

You have to think of ways that your program is not discriminating.

The IDEA is an affirmative mandate.

It federal courts and a separation of our state versus federal system.

That was poorly articulated.

Congress is not allowed to tell states all of the time what they have to do.

They say we'll give you money if you do what we want you to do that's what the IDEA is.

If you're going to take the money, you have to do these things.

That's how the federal government imposes the obligations on the state.

But it's an affirmative obligation.

You have to do these things for the students eligible under the IDEA.

A much more comprehensive set of regulations, a much broader, more detailed set of expectations, which is interesting because it's a narrower field, right?

covers a lot more students than the IDEA does.

you get your Adom nations and the IDEA is if we need to go well beyond that.

Here's the one graphic -- yes.

STUDENT: -- something removed because they aren't meeting the .

>> Sometime between exactly never and exactly never.

It's one of those, that the law can be enforced without taking the money.

>> What happens?

>> I didn't spend a lot of time in this Power Point but we can talk a little bit about what it looks like when the parent or child is dissatisfied with their services or they feel they should be getting services and they are not.

There are procedural rights built into the IDEA.

That's why they look a little different -- that give the parents the opportunity to challenge decisions made by the school, to say to the school, you're not doing what you're required to do.

We just have to get the federal government to pull their funding.

Frankly, it's not going to happen.

So I do have -- put a pin in that one.

When we get to the parents rights slide I'll talk a little bit more about what that looks like.

That's a huge part of my life, sadly.

We work hard to stay out of that.

But I only get called when things go wrong.

I only get to see those situations.

The % of things going really well, they don't call me.

And that's good.

But it gives me a skewed view sometimes.

If you're under IDEA, you're going to be technically eligible for .

That's almost as a rule.

But you don't generally have an IDEA, an IEP and a section plan because the plan is going to be built into the IEP and the law makes clear you don't have to have both.

We do have students that have both if their needs are completely distinct.

If they have a learning disability and a G-tube for feeding, that may be handled through a health plan through that has nothing to do with their IEP which is related to a specific learning disability.

You can have both but it's pretty rare.

But any student under the IDEA is going to be tech chill eligible under

.

Differences in eligibility.

What gets you under one versus the other.

We talked about the .

That's the third time you've seen it now.

Jennifer is going to talk about it as well.

You're going to have that one down when we're done.

But the IDEA is very specific.

You have to meet the definition of a disability as laid out in the IDEA.

That's different.

It is not this definition.

Nice of the government to do that for you.

Disability means this year but it means this here.

In the IDEA we have different categories of the disability generally consistent with what the federal government laid out.

In North Carolina we have categories of disability and I'm not going to list them off for you.

But they range from blind to having autism.

So it really covers the gamut, specific learning disabilities and a catch all of other health impairment covering any sort of medical or health issue that has a significant impact on your education.

It's pretty comprehensive but it is the specific categories and you to fill the definition of the categories.

Sometimes we have parents say I know that my student needs special education services.

Let's do an evaluation, let's go through the eligibility process and we understand no they don't meet this criteria and they get upset.

No, we're not done.

There are other categories.

Hang on.

They just didn't meet this one.

Let's look at this one and this one and you walk through the process.

Sometimes there's a gap in their

understanding of just because you didn't meet this category of services, doesn't mean you won't meet these.

If you got in the category of autism, your IEP looks like this.

No.

Once you're eligible we design a plan just for you.

Every child with autism presents a little differently, has different needs.

We don't write an IEP for a student with autism.

We write an IEP for your student.

So, the second bullet is really important.

Just as in you can have students who have a technical disability under a technical definition but they don't require accommodations for equal access to the program.

In the same way, in the IDEA, you may have a student who meets one to have categories, diagnosed with autism, easy, we're there, right, you're eligible.

But they don't require any specialized instruction.

They're doing absolutely fine.

So if you don't require specially-designed instruction as a result of your disability, even though you have the disability, you're not eligible under the IDEA for services, which makes sense.

We don't want to say that because your doctor diagnosed you with autism, you must have this IEP.

You must go through these processes.

No, I'm fine.

We don't want to place the burden on anybody.

You're doing great, then we're not going to go through that process.

Eligibility.

You have to meet the definitions and these two as well.

Adverse effect of your educational performance.

Some sort of barrier as a result of your disability.

And then there has to be a need for specialized instruction.

I think I have a slide -- no, don't have a slide on that one.

What is specially-designed instruction.

It's more than accommodating or modifying.

In we're changing your seating, providing visual supports, we are changing your schedule a little bit.

If you have social anxiety and struggle with transitions, we have a modification where you leave the class three minutes early and get to the next classroom already it gets crowded in the hallway.

We can change the way we present your home work to you, in either fewer problems or more visual or you only have to do every other problem because of a pacing issue.

Whatever that may be.

We can do that.

Modifying, accommodating, that doesn't change the instruction in any way.

But the IEP requires that there's something about this student's disability, the way this presents in the educational environment that requires us to change the way that we teach in order to better instruct this student, to better enable them to make progress in the general curriculum.

So that is a huge piece.

And we get hung up on this in IEP

meetings all of the time.

Parents say, well my kid clearly has a specific learning disability in reading.

Yes, you're right, they do.

And it's clearly messing with their education.

They're not doing well in reading.

You're right.

But what does the specialized instruction look like for that student.

If we can't come up with that, if there's nothing there, if they're accessing the general curriculum appropriately even with their disability, then they're not going to require specialized instruction.

They may require accommodations and modifications, we shift back to .

It doesn't mean they don't get nothing.

It means that we don't have to change the way we teach.

How do we change the environment, how do we change the structures so we remember the barriers.

It is all just kind of a balance.

We have to look at what that is.

You have a question.

>> Hypothetically, then doesn't this say that -- okay.

How do I phrase this.

Sometimes me providing the specialized instruction is unfair because you're asking me to do something that's different than the rest of the class.

Not just specifically in school.

Just in general.

This is the attitude a lot of organizations have about specialized anything, right?

And so I guess the question is how do we even begin to address that attitude?

By definition is child should be receiving specialized instruction.

The instructor saying it's not my job to do specialized instruction.

>> Let me separate a few things there.

I'm going to take off my lawyer hat.

We have a cultural issue in this country about fairness.

And it seems very often the people who are already ahead are the ones complaining about unfairness.

And that applies across disability, it applies across ethnicity.

It always seems to be the people who are in the best position.

Wait a minute, that's not fair.

Why do they get that.

And so I think that's a cultural problem and that's something we need to be discussing, something we need to be having conversations about.

One of the reasons that a course like this is so important to start that conversation and provide a space for that so that people can begin to understand where they are advantaged.

And maybe disadvantaged right?

Some people think as soon as I have one disadvantage, everyone is ahead of me.

Everybody has advantages, everybody has disadvantages.

I think probably in this room are in a much better place to talk about this than I am

.

To finish the policy piece, yes, there are teachers who will respond inappropriately with that type of statement.

It's not accurate and hopefully if you're training in education we're moving those teachers -- that's not

something that the majority of teachers would say, particularly teachers who are engaged in special education.

But I have heard it and it's unfortunate and it's wrong

. What does the IEP process look like.

We have a child and this child may have a disability.

What do we need to do?

The first thing we need to do is to find that child and take a look at whether they may be a qualifying student.

Somebody who is remote, check your mike if you're coughing and sneezing, mute your mic for us.

.

The team gets together, they talk to the parents and teachers, say what is going on with this student.

And what are the issues, how is it presenting in class.

And then what do we need to do in terms of formal testing to try to figure out what to do here.

And we'll do, you know, psychological evaluation.

We can do an occupational therapy evaluation, a medical evaluation.

A host of different kinds of evaluations that we can do.

For each of the categories of disability, there's a list of evaluations that we have to do to think about whether that student qualifies as a student with autism or other health impairment, things like that.

We have psychologists, we have

occupational therapists.

We need something socialized, we may have to send out for it.

The send out the evaluations, the team gets back together and goes through the eligibility process.

Here's what we found out from our evaluations, here's what you're observing at home, here's what the community folks that are with you are observing and how we have to roll all that together and say does this meet the criteria for other health impairment.

Does it meet the criteria for a specific learning disability, for emotional disability.

And if it does, then we're going to move to the other questions, which is adverse impact on education and need for specialized instruction.

Let's assume for the moment that we answer yes to all of those.

The student has a specific disability in reading and we decide they need specific instruction for a portion of their day in order to make progress and access the general curriculum.

We need to develop an IEP, an individualized education a plan.

It's an IEP.

And what that IEP is about is about describing who that student is as a student, what their needs are and how we're going to address the needs.

It's really that simple, right?

What are the needs, how are we going to do it?

There are some forms and North Carolina has its own forms, other states do it differently.

We walk through to make sure that the team is doing a comprehensive look at

that.

At the end of the day you're trying to have a plan to describe their needs and how we're going to address the needs.

The student with the specific disability of reading, we decide they need minutes of specialized instruction in reading and we're going to set some goals for them because they're struggling with decoding.

We're going to set up some specialized instruction for decoding and that's going to help us to figure out how do we do this and it's supposed to be a one-year document.

Set a goal for one year.

Ambitious goal.

We want to push the student because they're a little bit behind.

They need to catch up, moving faster than their nondisabled peers if they can manage it.

It also needs to be attainment.

You can't say he's three years behind and set the grade level standard and make up the three years in one year.

You set an ambitious goal but attainable goal.

You read the recent Supreme Court decision that clarified that legal standard that we're after.

In order to do that we need to be meeting a student where they are but then really pushing them.

How are they setting goals and provided services that are ambitious but attainable.

Once we've got an IEP, the IEP training is like six hours.

Then we have to follow up on it.

Here's your IEP.

Bye.

Good luck.

Now we're providing services and it's going to be a licensed teacher who has

to provide those services.

We can't hand it to the regular maths teacher.

They're not trained to do it.

The math teacher is going to participate but we need a specialized licensed teacher to provide the services.

It may be in the classroom, it might be a smaller setting with four or five students, it might be one on one.

They might be working on reading, on behavior, working on self care.

It can be whatever the student needs in order to fully function and make progress.

Progress monitoring means now that we've got the plan, we're doing the plan and tracking it to make sure it works.

We're following the student with their goals and measuring their performance and then we're checking it and hopefully coming back and adapting as we need to.

And the annual review means that we come back at the end of one year saying how did we do?

How is he doing?

That worked.

That didn't work.

Ready to move the goals forward.

Let's push it out a year.

Ambitious but attainable.

Trying to move them toward catching up to their nondisabled peers.

And then the reevaluation just means every three years we go back and do the psychological evaluation again.

Now that information is old.

Students change over time so we do that every three years.

I've got two minutes here.

You'll be able to see the slides.

The IEP team has to have specific people on it.

I'm going to highlight the parent.

The whole IDEA is built around including the student and the parent in the decision-making process.

>> When do the children join?

>> They can come at any time.

I've done IEP meetings with -year-olds.

They're required to be notified, I give the opportunity around age and then at they take over the rights, special decision-making rights from their parents.

But typically it's not until they get into high school when we have students who are participating and even though it's not that common.

But at they actually take over the procedural rights from their parents.

So we talked a little bit about the IEP.

We don't have a ton of time on this.

But all of this rolls into what are the kids' needs, goals, ambitious Wu attainable, what services are we going to provide that's different from everyone else gets to help them meet the goals and move forward and then are we going to do any related services, speech, occupational therapy, things schools don't normally teach that this student needs in the school environment to succeed.

So we have occupational therapists on staff.

They have a lighter caseload more school so then they move around.

Fewer students per school so they cover more schools.

This is the last thing I'll touch, the controversy over the least restrictive environment.

Another two-hour topic that I'll do in seconds.

The bottom line here is that students with disabilities have a right to be educated with their nondisabled peer to the maximum extent appropriate.

And that's a really important word.

We have people say my child has a right to be in the general classroom.

Not accurate.

They have a right to be educated with their nondisabled peer to the maximum extent appropriate.

Sometimes it's % of the day.

Sometimes it's % of the day.

It depends on the child.

So the burden is on the staff, the people -- maybe parents as well.

Whoever is proposing the removal to be able to articulate why.

It's not why should be in the general classroom.

It's why not, right?

So the presumption is general education population, general education classroom remove only if absolutely necessary.

So we think about what are the ways that we can keep the student in the general education classroom if we have to, then what is the minimum amount of time we can pull them out in order to make sure they're making progress toward their goals.

>> Are there any legal obligations for private school or only protections in public schools.

>> Great question.

I do not interact with private schools so I'm not in a great position to talk

about the nuance of that.

But the IEPs will often follow students.

Charter schools absolutely have special education responsibilities consistent with the IDEA.

Private schools generally do not but they often provide it anyway.

There's also where the public school has to provide special education service to the private school students even though they're not attending the public school system.

But that is part of the law as well.

I didn't talk about due process at wul.

If you hang around at the break we can talk about that if necessary.

Parents can sue if they're not happy and I get called.

We talk about how to stay out of court because there's better things to spend our money on rat than lawyers, educating the kids.

But if we have to go to court, the lawyers get involved and off we go.

That is available to the parents.

I'm going to stop there.

>> Thank you.

[Applause]

>> I'm going to make sure that if you're at home or your office, make sure you're muted.

Because we're recording, we can't turn over the host

. The slides for this lecture are available on the website.

>> Thank you.

Happy to be joining you.

All of the caveats, I'm not giving legal advice here.

I have way too much information to cover than I have time for.

I will talk about employment in the workplace and also address some other disability issues covered by the Americans with disability act, community access and access to private and state.

So again, there is going to be a little overlap.

I'm going to fly through a bunch of technical slides that are there for you.

In you want to stop me, do.

But I'm going to try to cover as much as possible.

So a lot of this is pretty basic and I know that you're early in the semester.

But as you're, you know, developing your vocabulary, some of the types of disabilities, physical, mental, very specific ones, traumatic brain injury, other specific diagnoses but also in the legal context, a label or a name or a disease or a diagnosis if you have some limitations that are Functionally you may qualify for protections as well.

So Steve also mention there had's some cultural context to disability and legal rights of disabilities.

We're going to talk about that a little bit today.

I just want to give ooh a shout out to all of the folks with disabilities who are fought for disability rights for many many decades.

Mostly getting started in the 's.

But as a result of activism by people with disabilities that we have the legal protections that we do today in many areas.

Putting their body literally on the line, and the court help us and the legislators to advocate.

Again, beginning in the 's you have the rehabilitation act which section is part of.

You have the precursor to the IDEA, there's a specific voting law, a specific law governing air carrier access, a specific law around housing, other laws that touch on disabilities, such as the family medical leave act . But the main law that I'm going to talk to you about today is the ADA.

The Americans with disabilities act.

It's a federal civil rights law like section as Steve mentioned was it does impose an affirmative requirement too.

Dr.

Gibson was mentioning.

We're going to get into that a little bit.

Because it doesn't just say don't discriminate.

It actually does include some requirements that you have to do certain things to make the playing field even.

So mainly it's about removing barriers and preventing discrimination.

Passed with bipartisan support and signed by a republican president.

And still enjoys some bipartisan support but there are also different of opinion about it and how effective it is.

In fact when it was first enacted,

after it was first enacted, there's not a list of disabilities in the law.

The courts were narrowly construing the law saying well we're not going to discuss about the protections provided because you don't qualify as a person with a disability.

And that went on for almost two decades and Congress came back -- they don't often do this.

We meant it.

This is supposed to be a civil rights statute.

We want it available to protect people's rights and provide protection.

We're strengthening it, clarifying some of the points.

They still didn't have a list of disabilities but they made it a lot clearer that they really meant it and it's supposed to provide broad coverage.

So most people, if they have to go to court, they don't get kicked out at the stage of do you qualify for protection.

One of the major protections is measures like eyeglasses, medication that help a person function better, sometimes to the point where they don't need an accommodation.

However what was happening before, if you have a mitigating measure that helps correct your vision or whatever, then you don't qualify for the act.

Now you're covered.

Let's talk about what you --

So you have to understand what is meant by a person with a disability.

We're going to go over some of the parts of the Americans with disabilities act, talk a little more about reasonable modifications and accommodations.

I've thrown in other laws for reference.

So the three main titles I'm going to talk about today, one covers employment.

Schools and others for staff.

Title covers state and local governments services and programs.

And title

is for everything else, restaurants or hotels, any place that makes itself open to the public.

Public accommodations.

So I'll just spend a minute here that within the ADA it does cover an individual with a disability.

We're going to break that down, that definition.

But it also covers somebody who might not currently have a disability that's impacting them in a specific way but they have a record of it.

Maybe a past history of a mental illness or some condition that's in remission, not affecting them currently but there's a record of it somewhere and the party or employer can discriminate on that writing and record that they had a disability.

A person can be regarded as having a disability.

You might have been in a car accident and have a scar that's visible but it doesn't limit any of your Functional abilities.

So it's not necessarily going to qualify as a disability to get you covered but it might be the basis for someone discriminating against you.

You're going to get coverage under here as well if you prove that you were regarded as disabled.

You can also get protection if by having an association with a person with disability.

If you have a child, a parent, spouse, sibling with a disability that's known and someone takes action on the basis of your association, maybe you need a lot of leads to take care of a child, something like that, which otherwise would be protected, but if you face discrimination because of that association, you might get coverage under the act.

And then the act specifically protects against retaliation.

If you're asserting your rights under the American with disabilities act, engaging in protective activity such as requesting a reasonable accommodation or complaining about treatment or something like that.

And then adverse action gets taken against you, you may have a claim for retaliation based on this law.

So again, I won't linger here.

You see the definition.

It has to be a substantial limitation of major life activities, a record regarded as.

There are specific exceptions.

If you're using illegal drugs, unfortunately you're not covered.

Or maybe fortunately.

There's an interesting example in my disability law class last semester, one of my students read about medical marijuana and it's in an interesting legal state because some states have -- many states have legalized its use for medical purposes.

However the federal government still has not.

And so its use still considered illegal under federal law.

Generally probably not protected by the ADA.

Let's talk about title employment.

It does apply to public and private employers who have 15 or more employees.

So it does cover all aspects of employment such as applying for a job.

Somebody might need accommodations in the setting of an interview and you're covered.

It covers all the way through your employment.

And some, boss bring after you are no longer employed, if there is some retaliation, like giving you a bad reference or something lingering from the employment relationship.

It's possible it can carry over, minor situations past employment.

But it's generally covering the employment relationship.

Employers are only required to accommodate known disabilities.

If you have an invisible disability and they don't know about it, they're not held responsible to cover that.

It's enforced by the equal employment commission.

You have to have a qualified individual with disability in an employment context.

It's not just that you have a disability and you think are accommodations that might help you become qualified to do the job.

You have to have the requisite education, experience, meet the job requirements and then if there is

something, accommodation that you need in order to perform the essential functions of the job, then the ADA is going to be your friend here.

So there's a lot of litigation about what are essential functions and what does qualified mean, what are reasonable accommodations.

I'm going to talk about specifics there.

But this is the basic definition.

Here are some examples of what some courts have found to be major life activities.

These were generally found after the law was initially enacted.

ADA amendment act, a lot of additional activities have also been found to be major life activities in this context.

Am I going too fast?

Great.

So substantially limit -- if it is just a minor limitation, it may not qualify.

If it is an impairment that is temporary, such as broken bone, it might not be covered under this law.

But if it's a condition that's episodic that comes and goes, it probably will be covered.

And again, if you have the condition, even if it's in remission or being currently mitigated, you're going to qualify for coverage under the law.

Regarded as -- again, this is one of the areas where courts are really narrowly construing the ADA initially.

And they tie themselves in knots here because there were opinions -- if a

person, employee was under protection and claims they were regarded as disabled, they not only had to claim that, they had to say the employer regarded me as having this specific disables condition which substantially limited this major life activity.

They had to get into the mind of the employer and assume or, you know, speculate on how they were exactly precisely discriminating in regarding you as a person with disability.

That is no longer required.

If you show that they recorded me as X, you know, limited in a certain way, that's going to be enough for regarded as.

Mitigating measures can be anything.

They can be prosthetics, medicine, anything addressing the condition.

It's not going to count against you for coverage under this act.

The accommodation principle is really important in this law.

In the employment context and others.

And it is an affirmative civil rights obligation.

And there's no funding attached to it.

But it does impose an obligation on employers and public entities and some private entities to adjust things through the usual course of business and how they usually do things.

Change the physical space that they have, give longer time, modify rules and things.

Because the principle behind the ADA is they are trying to equalize opportunity.

Right?

So if you have the job but you can't access health insurance benefits because you have to pass some kind of medical test to get coverage, you're not being treated the same as an employee who doesn't have a disability who can easily pass a fitness test to get you covered for insurance or other wellness benefit.

This is a lot

What are some reasonable accommodations under the ADA.

You can't be denied an opportunity because you need accommodation.

It doesn't mean you're necessarily going to get the reasonable accommodation you asked for or want.

There's some balancing of costs and what's reasonable to the employer, what's not a burden on the employer.

But you can't be required to accept a separate benefit.

So it can't be considered an undue -- what the employer considers an undue hardship.

They're going to balance cost, they're going to consider the size of the employer, whether it's a small employer or large employer and relatively speaking how that cost will fall.

And generally larger employers with bigger budgets are going to be required to do a little more.

So the process in requesting an accommodation as an employee, again, I think it can be before you're hired during the interview process, trying to access an application online or something.

It can cover employees who are part time, full time were even on probationary status.

There aren't any magic words to invoke the act but the employers aren't required to do anything if they don't know that there's a need.

And once there's a disclosure of disability and request for accommodation, they have to be kept confidential.

It kicks off that interactive process.

The employee and the employer are supposed to engage in a dialogue of what is reasonable and what is not an undue burden.

They may not start in the same place but hopefully they can reach a compromise.

If there's one offer of I'll get you an ergonomic desk and that's not really going to help me, it shouldn't end there.

It could be I have one that I can bring in but I need help with cost or need something moved around or whoever.

There should be a dialogue about that.

There are burdens on both parties and responsibilities of both parties.

This is a really good resource, the job accommodation network.

It gets some federal funding from the department of labor.

It's housed at West Virginia university.

But you can go online and access them, call them.

You can e-mail them.

You can chat online and tell them what your situation is, what the disability is, what the need is and they will brainstorm with you.

They have a catalog of accommodations that are frequently used in different places and they're just a free resource.

They're available to employers.

>> Title Q of the ADA governs state and

local governments, so schools, of course, public schools.

Any other state or city, county programs that are offered.

Courts, council, city councils, police and fire department.

State and local government and cities may not refuse to allow a person to participate in a service, program or activity because of their disability and they're also required to make reasonable modifications to provide equal access.

>> Can I just.

>> Yes

.

[Too far away from the mic]

>> Absolutely.

So given that, I have a question.

What are -- do you take about some sort of standard practices that libraries engage in to make themselves more accessible?
?

[Too far away from the mic]

>> What do you all think are some access issues that people have?
?

[Too far away from the mic]

>> Staff training.

We can have goals in place, don't move furniture, don't -- can you help me move this?

No.

[Too far away from the mic]

>> What are some other access issues you all have seen or are aware of?

Libraries.

>> Very practical space issues.

Things like spaces that have no room for a wheelchair to move, like in the main space of the library.

No seating that offers any accommodation.

>> Just reminded me of a little anecdote I tell in the beginning.

I forgot to tell it.

I'm going to tell it now.

A friend of mine is a wheelchair user and she goes into the conference room or the auditorium where she is and she's like, you all have your accommodation of a seat right there.

I brought my own.

And she talks about her friend who is blind wherever she goes, she's like, I don't need an accommodation of light.

All of you sighted people need the accommodation of light.

You could save money if you had only blind people here in the room.

Save on electricity.

Accommodations on the one hand is doing something affirmative.

On the other hand it's about universal access and design and evenning the playing field.

Whether you need an accommodation of a

seat or whether you bring your own.

This furniture is interesting and space is too.

Pi would argue that absolutely, that that's the basis for amending that policy if someone obviously can't access, can't get in a space.

But even to move it for a specific reason I think sounds reasonable, given the context.

Great.

Great input.

Sometimes it might require them to move the furniture.

You can't impose any special charges on people however if what you need is some aid or service or change or something.

Program access.

People can't be excluded because of inaccessible buildings.

They're going to have to find a way to get that person into the library.

Or bring the library to them in some way.

But you're not supposed to provide a separate benefit.

You're going to have to figure that out.

And the obligation is there regardless if the person comes in the door.

The obligation is there for libraries to make themselves accessible.

Assistance can take the form of helping people, hands-on assistance with applications or, you know, specific offering sign language interpretation

for tours at museums.

You know, if you have a person needing to participate, wanting to participate in swim programs, it's not necessarily the case that everyone is going to get to participate in the same program if it's not going to be safe for them.

You might be able to provide a separate program if that is going to be the most appropriate and the safest and the most reasonable.

But that's always the last resort.

The goal is to make everything universally accessible.

You know, you can move to meeting to a different floor in a building or hold it somewhere else, class somewhere else, lecture somewhere else.

It doesn't say that every single part of the building has to be accessible necessarily but you need certain parts to be accessible.

You need an alternative group to be able to access the same program.

And accommodations again are going to be anything really that will enable that person to access the same benefit or service or program that a person without a disability can.

Again, the defense to that or the sort of limitation, outer limitation on that is does it fundamentally offer the program.

So if it, you know, offering a team sport and somebody -- if it's a golf class and you're walking around the green and somebody needs mobility assistance to use a golf cart to access that, there have been cases about whether or not that actually fundamentally alters the services, the game of golf, right?

There are different opinions that come down differently.

But it's a discussion and consideration of are you really opening up the access and making it available to people or are you really changing what's going on.

So fundamentally that it's not the same thing.

That's the balancing.

Can't refuse participation because of disability and they're required to make reasonable accommodations to service aides and services.

And can't impose an accommodation benefit.

If a person doesn't ask for it's not a problem to offer.

But if they decline it, you can't impose it.

There's a really important case called Homestead which was about people in an institution for people with mental disabilities in Georgia many years ago, stuck in an institution basically and they wanted access to rehabilitative services but in the community.

And so this is where -- I think my next slide is -- no.

It's not the next slide.

This case stands for the proposition that the ADA actually requires -- has an integration mandate.

It's similar to the educational laws that Steve talked about, the least restrictive environment and trying to make sure that the first option is definitely keeping people in the

classroom with the general population.

Similarly government entities providing benefits and service to people with disabilities.

The presumption should be do it in an integrated setting.

Don't segregate people in an institution or segregate people on their own in order for them to receive services.

Quick note on service animals.

Dogs are -- the last time checked, still the only officially recognized service animal those there are comfort animals and emotional support animals that are often allowed through various -- you know, it doesn't mean you can't bring another animal with you if you have one that's trained to alert for diabetes, sugar or something like that.

There are some other animals that have been allowed to be considered foundations.

But they're not officially recognized on a case-by-case basis.

When it was with disability rights, we had clients who had a pig who helped them in terms of remaining calm.

Pigs are very smart animals.

And there was actually a municipal ordinance that prohibited pigs within the city limits of a particular town.

And this is just something -- she wasn't trying to take it to school or, you know, necessarily.

But she had it and she would take it with her in various parts of the community.

And it was against the law. That was an interesting case.

It's a case-by-case basis for animals.

But generally in the title and title context, there's a little bit of flexibility and it's expanding.

Accessibility can be listening devices and head sets, they can be braille.

Have you guys seen braille?

Do you know what it is?

Do you know if the libraries that you work in have many?

>> We just got them.

>> You just got some?

Good. Good.

>> We got a bunch.

>> Large print.

A lot of these are easy to do sort of on the fly.

Alternative formats.

>> can I ask a question?

>> Yes.

>> To what extent do we provided -- I do it's reasonable accommodations.

But for a lot of the programs and a lot of the texts, we'll have one computer system that's set up for the entire system.

You have eight locations, one computer that's set up.

We have a single program that has a translator available.

You have assistive technology, the hearing devices available for an event but not every event that we have.

Can we do a disclaimer that says accommodations available as requested.

>> There's a lot there

. I'm going to answer as much as I can.

So in terms of every event, I would -- definitely make sure that it's known that it's available for every event.

In terms of how many, there's not a rule that you have to have a certain number for a certain number of people but there is some guidance.

Architecturally with that.

But in terms of auxiliary agent services, it's an individualized inquiry.

One person who is deaf might need an ASL interpreter and another might be able to write or see it in writing and that would be adequate for that person.

They might also have a friend or family member who could interpret, kind of whisper in their ear which is their preferred method and free to the institution.

These are individualized inquiries.

But in general you want to advertise that if there's a request, you know, please bring your request us to so you can address it.

And then make other things such as the devices available generally.

And there's a run on them and you run out, then you're going to have an issue.

That's where the rubber meets the road, right?

But generally they should be based on the population.

You can do surveys.

>> If there's a run on devices, then you know you should have more devices.

>> And maybe for some events than others.

You can rent some extra ones for some events.

You can have people request an accommodation ahead of time.

That's the best way to prepare so you say you're making it accessible.

I don't know.

Do you have other thoughts, Steve?

>> I think you covered it.

>> All right.

So again, for deaf individuals, the ADA does not say that a qualified sign language interpreter has to be provided in each case.

You have cost benefit analysis.

It's going to depend on the context and the individuals themselves.

But in some instances a qualified sign language interpreter will be required and what's important is that they're adequately conveying communication back and forth.

Here's another reference to again.

And it uses some antiquated language, hang capped person.

May require different treatment to be treatment.

It's the law, that's why.

It requires affirmative action be taken to, again, to even the playing field and avoid discrimination in some cases.

Transportation

obviously provided by public entities is required to be accessible.

So buses and trains need to have some accessible elements.

But for many people, it's not feasible

for them to access main line transportation.

And so most public entities provide transit which is an individualized service for people.

A good friend of mine is sort of a transit activist here in the chapel hill area.

And we now have a board, an advisory board for

par para transit and a number of buses have increased.

By thousands.

We have a lot of access, I hear.

I'm not saying it's enough necessarily but cities and towns and public entities have that obligation but sometimes they have to be pushed a little bit to put the resources there.

This is the slide I was looking for.

So this was the case, and when I was at disability rights I was litigating under this case all of the time because the state gets federal funding to provide for Medicaid and other services for people with disabilities and there's not enough to go around.

And so often people get -- have to receive services that are not as integrated as they should be.

The standard really is in the most integrative setting for the needs of the individual.

Individualized.

It's not a test that you can point to with somebody with a specific diagnosis.

You have to individualize their needs.

There is a right to have in the most integrate Ty setting and the right to be educated in the less-restrictive environment.

And avoid segregation.

Courts must be accessible again.

Universal design.

Physical accessibility.

Many courts have an ADA coordinator.

This is a really cool video about courts in Michigan becoming more accessible.

You can check it out.

Law enforcement is covered too.

And this is another hotly litigated area.

So the extent to which the ADA covers law enforcement interaction with people with disabilities is not settled in every area.

And so there are a lot of safety consideration, there is a lot of danger in law enforcement interactions with individuals.

There are obviously weapons involved frequently.

And so, you know, there is some gray areas here.

But generally speaking, you know, if you're a person with disability, you're arrested, you're deaf or something, you can't understand the commands that they're giving to you.

They're supposed to -- you find a way to communicate that, that you can't understand the commands.

But then there's an onus on the entity to make sure they're effectively communicating with you in the effect of your arrest or investigation, whatever it is.

Courts are not necessarily required -- that are paid for provide transportation to the courthouse.

They have to make themselves

accessible

.

Public entities, this is enforced by the department of justice, department of transportation, department of education.

People can file individual complaints.

Title , I have a few minutes to cover this.

So this, again, is your libraries too, RITE library, open to the public.

So any place or space open to the public with our without a fee.

Exception would be some private clubs don't get covered.

But it says public.

So it's kind of confusing.

But this is really referring to private entities who make themselves open to the public.

That's public accommodation refer to a private entity making themselves open.

They can't deny services because a person has an disability.

They can't offer a separate benefit or services.

They're supposed to be in the most integrative setting.

And think of an insurance company or something, you can't contract or use administrative methods of the effect of discriminating.

You're going to look at the impact that the policy has.

You can offer special programs as long as you open up the general programs as well.

The physical access requirements mostly can be found in these regulations called ADAG, the ADA access guidelines.

Some states are very specific on how

wide the door has to be, how much inches the door handle has to be, how you can move it.

It's a really helpful tool for businesses.

Public accommodations being remodeled, really then open themselves up to coming into compliance with all of these guidelines.

No grandfather provision.

Its not that they don't apply.

If you're not modifying your business.

But they don't apply as much and the obligations are not do as much.

But there is some affirmative obligation for facilities to try to make themselves accessible relatively achievable.

And it's going to be a balancing of costs there.

They're also going to look at the budget.

I understood that you might want to talk a little bit about lab and Internet accessibility.

I have a fewize on that.

We have five minutes.

So these are not -- this is not an official regulation but these are guidelines that the department of justice generally uses or relies on when they're going to look at a website to see if it's accessible.

And this presentation is available to you all.

So you don't have to quickly copy down the slide information.

But using text and titles, different images, consistent and clear formatting, avoid the high contrast color.

I have a couple of photos here but generally it's text --

[Too far away from the mic]

>> Accessibility from a physical state and we'll talk in more details about those.

>> good.

You have a whole class or more than just one on this.

This is just an introduction.

Good.

The principles that for things to be perceivable.

We'll go into way more detail on that.

Some differences among the different titles in the ADA have to do with how much they have to do, how much obligation there is to become accessible . And public entities have fewer obligations than private ones

.

Title , ADAG, title entities can choose between another set of guidelines.

This is a cute little video about title accessibility that I'm not going to show you today.

Relief of what the statute provides.

Again, under some of the provisions you can go to court only after you first go to the administrative agency and file

an administrative complaint.

Other provisions allow you to go straight to court.

Other provisions are really generally enforced by the government.

So individuals can appeal to the government to try to help enforce the law.

One other law is within the help America vote act, is a provision called voting accessibility.

So these are specific protections that apply to people trying to access to vote at polling places.

And sadly, there's a % gap across the country for people, voters with disability and in North Carolina it's double that.

So we have a lot of work to do here to make that more accessible for people.

I mean, one year we decided to visit every -- all counties and check some polling places.

And words can't describe some of those settings.

We have a lot of rural counties here.

It's difficult.

But even simple, you know, schools and churches and courthouses that are being used have steps going up to them or have rouge, you know, curb issues.

So think about curb side voting, from your car, vote absentee.

We still have a long way to go.

That's the end.

Questions?

Yes.

>> That's a great question.

So those are private companies, right, and so they would be governed by title , public accommodations.

But are you asking about.

>> Kind of like what the burden -- like where the onus falls.

>> I've heard some horror stories.

I think this is a new area and those companies -- I don't know what the level of awareness is at the company level.

But it's a lot of independent contractors, are they employees of the company.

There are so many issues there.

I would argue that a company providing accommodation and the ADA applies and if a person with disability requests accessible transportation they should have -- I don't use it frequently so I don't know how to access in terms of mobile app but there should be some way to indicate you need an accessible vehicle.

They should make sure that they have within their fleet, the number that's going to be appropriate to that population so they can respond.

I don't know how that's going.

You can imagine the problem

.

Questions?

All right.

It's time.

>> I'm going to say thank you.

[Applause]

>> We're going to take a break before we come back for questions.