

The Impact of Change on Student Services

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Good afternoon, everyone. I would like to start by telling you a story that I first heard from my nephew several years ago when I attended his graduation from high school. He was the valedictorian of his graduating class and therefore gave the commencement address. He started out by telling a story about a gentleman who bought a new, very flashy, sports car and decided to take it out and test it on the road and see what it could do. He's out tooling around at high speeds on some country roads, and as he approaches a blind curve, a woman comes careening around the corner, swerves into his lane and back out again. As she passes him, she rolls down her window and yells "pig."

The man is taken aback. He thinks, "How dare she! I've never seen her before. Besides, she was in my lane, I wasn't in hers!" So he rolls down the window and shouts, "Cow." He is feeling very good for having gotten off this stinging retort in time. He then goes around the corner -- and hits the pig!!!

Now, my nephew's question to his fellow graduates was, "Will you recognize an opportunity when it presents itself?" My question to you here today is, "Will you recognize a warning when you hear it?" I would like to talk today about some danger signs that I see coming up on the horizon for students with disabilities in general, in higher education, and specifically for deaf and hard of hearing students.

The First "Pig in the Road"

As I look down the road at where we are going with services for students with disabilities in higher education, the first pig that I see in the road looks, at first glance, very militant. When you get a little closer, he looks a little bit war torn and a little worse for wear. I think the danger here lies in trying to find a balance between fostering a good self-image for students who are deaf and hard of hearing and endangering the protections that they have available to them in the process.

More and more, I hear a discussion of deafness as a culture and sign language as a language different from, not inferior to, standard English. I believe that. I agree. But I also believe that deafness is a disability. I believe that people who are deaf have a significant limitation, as opposed to their hearing peers, in communicating and interacting with the world around them. I don't believe that deafness represents an impenetrable barrier. I don't believe that it is the fault of the person who is deaf. I don't believe that it is the sole responsibility of the deaf community to bridge the gap to the hearing world that is created by their deafness any more than it is the responsibility of those in wheelchairs to build their own ramps.

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I do believe, however, that deafness is a disability in our society, and that in the process of building Deaf Pride, we may move the perception of deafness out of the realm of disability and into the realm of cultural diversity. And I believe that might be to the detriment of deaf students.

Culturally diverse populations are not protected by law. People with disabilities are. International students for whom English is a Second Language are not entitled to be presented classroom information in their native language. Deaf students can demand that information be provided in their first language because they are disabled, and thus legally entitled to equal access. Non-native speakers of English cannot demand that signage be in their native language or that telephone operators be multilingual, but deaf individuals can demand the presence of alternative delivery systems and full access, often at some expense to the provider, because they are disabled and therefore legally entitled to equal access. I worry that if the deaf community chooses to discard their affiliation with the disability community, they will lose the protections that go with it.

Look at what is happening on college campuses today. . . threats to Affirmative Action laws and programs, challenges being made to the issues of cultural diversity and inclusion, the resurgence of racism and prejudice. If we drift too far from the civil rights nature of legislation that protects people with disabilities and, under that umbrella, protects people who are deaf and hard of hearing, we run the risk of losing the protection that was granted in that process.

I think we need to remember that the reason the ADA got passed is because for the first time in the history of this country, people with disabilities came together as a group and said, "None of us are well served unless all of us are well served." Only because the 57 million people with disabilities in this country and their families came together and put pressure on Congress to get the law passed, did it get passed. If we pull out of that to any extent, if we lose that sense of community that put the whole thing together, we could lose a lot more.

The Second "Pig"

The second pig in the road is wearing a sign that says, "Credibility," with a great big question mark after it. The ADA and 504 are both civil rights statutes--nothing more and nothing less. They promise non-discrimination on the basis of disability. Yesterday I was in Kansas speaking to a group of service providers, and their major concerns centered around learning disabilities. I talked for some time to that group about the fact that when they start thinking about providing services, they need to remember that there is a difference between documenting that someone has a disability and documenting that someone has a need for accommodation. They are two different things.

By law there is a definition established for "a person with a disability". If you fall under that category, if you are part of that protected class, what you are entitled to--and all that you are entitled to--is not to be discriminated against. We do not provide accommodations for students at the postsecondary level because they are disabled. We do not provide the accommodations because they carry the label of being a person with a disability. We do not provide accommodations because the laws we operate under are a

continuation in some way of the special education laws and regulations. We do not provide accommodation because we feel sorry for them or want to give them an advantage. We provide accommodation only if not providing the accommodation would be discriminatory--that is, only if not providing the accommodation would set up a situation in which that individual did not have equal access to the educational setting.

It is not discriminatory to deny accommodations to persons with disabilities who don't need them. We do it all the time. I don't know of a single college or university that provides sign language interpreters for their blind students. Blind students are clearly persons with disabilities and sign language interpreters are something that we know is our responsibility to provide. But we don't provide sign language interpreters for blind students because they don't need them, can't use them, and would not have any better access to the educational system or setting if they were there!

With that having been said, recognize that, in truth, we have traditionally provided accommodations for deaf and hard of hearing students because they are deaf and hard of hearing. We have established that they are deaf or hard of hearing by visual inspection, by conversation or, in some cases, from audiograms. We have established their hearing loss and we have then guessed at what kind of accommodation they should have or is appropriate. We have no documentation that says, "If this is the profile in terms of the individual's disability, then this is an accommodation that is appropriate in order to equalize the playing field." We have made assumptions and thus far those assumptions have, for the most part, served us well, but it's not going to go on forever.

Right now the people who are serving students with invisible disabilities are under a lot of fire from the academic community to show that the accommodations they are setting up and insisting on for students with those disabilities are justifiable. "Show us that this accommodation, in fact, equalizes the playing field and does not give the student an advantage, does not interfere in some way with what else is going on. Show us that there's a legitimate reason for asking for these accommodations." Thus far we have not dealt with that kind of skepticism for deaf or hard of hearing students because the disability is so much more evident in terms of interaction. Because of communication problems, or the presence of an interpreter, or the presence of a hearing aid, the academic community is more accepting of the reality of this disability, so they have been more willing to accept our statements about what kinds of accommodations are appropriate. Sooner or later, however, there will come a time when they start looking at what we are doing for those students as well.

What we have to examine at this point in time is whether we have any information that will allow us to answer the hard questions when they start getting asked. Let's use notetakers as an example. It's pretty obvious that you can't write notes and watch somebody at the same time. Since our deaf and hard of hearing students are, at least to some extent, listening by watching, we generally can justify the need for a notetaker without a lot of problem. But can you justify the need for a notetaker with certain kinds of training? Can you justify that any old notetaker is going to be good enough for this particular student? On what basis do we make the decisions about what kind of training should be provided or what kinds of skills

are necessary in order for the accommodation to do what we say it's going to do--which is to provide a level playing field.

Interpreters. I have had numerous calls from service providers who say, "I have a deaf student who is requesting an interpreter. This is an individual who has never used an interpreter before (either a newly deaf adult or someone who came through an oral program in school). We'll provide the interpreter if it's appropriate, but how do I know if it's appropriate? How do I know if this person can really make good use of that interpreter? My answer is, "I don't know!" At this point in time, I don't know that we have any way of establishing for whom that is a reasonable request and for whom it is not.

Extra time. This is a particularly interesting accommodation to discuss in this context. It is not uncommon for us to request extra time on tests for students who are deaf or hard of hearing. As service providers, we know why it is necessary. It is necessary because often these students are dealing with English as a Second Language. They need the extra time to sort through the language issues, to understand fully what is being asked, and to be able to create a response that is appropriate. However, that is certainly not the argument I would want to make to faculty in this day and age. As noted, students for whom English is a Second Language and who have language differences are not necessarily entitled to extra time on tests because of their language difference. I do know some institutions where they have instituted such a policy. They have said, "Non-native speakers of English will get extra time on their tests. We are more concerned about what they have learned of the subject matter than their English competency." However, if you are not fortunate enough to be housed at such an enlightened institution (is that an oxymoron?), then to ask for extended time because English is not the student's native language is to ask for an accommodation based not on disability, but on difference. The student is not legally entitled to that. However, a student is entitled to ask for the accommodation of extended time if the disability interferes with their ability to follow standard English in the typical fashion. That is why we ask for extra time for learning disabled students--because their disability interferes with their ability to process standard English in the typical amount of time. Sometimes we may be dealing with nothing more than how to phrase the requests and the documentation, but that phrasing may be important in providing justification and credibility for the accommodations we believe are important for students.

Assistive listening devices. Perhaps you know of studies that I don't, but I am not aware of any information that tells us what the audiological profile is of the individual who can successfully make use of an ALD versus those that cannot. I know that it is not just a question of how much you hear, but also a question of your language competency and what other cues are available within the environment, and so on. I am not sure that just looking at the audiograms is going to give us the justification we need. . . but what is going to do it? How do we justify saying this individual needs and should have an ALD but this individual really is not in a position to benefit from one?

I think justification of accommodation requests will become a big issue quickly when we start dealing regularly with students who are requesting real-time captioning. The price tag that is involved with real-time captioning is very high in most of the areas around the country. As we have more students

making the request, the question that is going to be asked--it's already being asked-- will be, "Is this justified? Is this a reasonable accommodation?" When we consider the rather frightening statistics about the average reading level of many students who are deaf and hard of hearing in higher education and listen to the concerns expressed by people working with deaf students at the postsecondary level about getting them through basic English competency tests, how will we answer questions about whether it is appropriate to provide a very expensive accommodation that demands a high level of proficiency in both reading and language? How do we show them that this is justifiable and appropriate? We don't have the documentation. We don't have any way of justifying what we ask for regularly. Thus far nobody's looking closely. They are too busy picking on people who are easier targets, because they think they can argue the existence of some disabilities. But as money gets tighter, and, possibly, as some of the disability backlash continues to surface, sooner or later there will come a point in time when we need to be concerned about whether we can provide credible evidence that the accommodations that we request for students are, in fact, justifiable in establishing the aim of accommodation--nondiscrimination, a level playing field. I don't think at the moment we have that kind of information available to us.

The Third "Pig"

The third pig in the road is wearing a sign that says, "Who's going to pay for all this?" Let's talk about the situation between the postsecondary setting and the Vocational Rehabilitation system in this country and deal very specifically with the issue of whose responsibility it is to pay for interpreters because that is the issue that has been raised.

Let me digress for a quick history lesson. In Subpart E of Section 504 of the Rehabilitation Act of 1973, it was established that among the accommodations, auxiliary aids, and services that must be provided for an individual with a disability in postsecondary education, is alternate forms of accessing material, including interpreter services. If you read the implementation guidelines regarding Subpart E, and Section 504, there is specific reference (dating from the initial guidelines in 1977) to the fact that sign language interpreters must be available for those who have need of them and that it is assumed that colleges and universities will access other agencies such as the Vocational Rehabilitation system, in helping to mitigate the costs involved whenever possible. In other words, Congress assumed that other existing agencies could be looked to as a means of holding down the cost involved in providing this service to students with disabilities in higher education.

In 1978, the case hit the courts that has been our case law precedent since that time. In *Jones v. the Illinois Institute of Technology (IIT) and the Illinois Department of Rehabilitation Services*, the question came down to, "Who's going to pay for the interpreters?" The answer was very clear at that point in time. If the student is a client of the Vocational Rehabilitation system, then VR will pay for the interpreter. If the student is not a client of the Vocational Rehabilitation system, then the institution must see to it that the interpreter is there at no cost to the student. If you go back to the IIT decision, you will find that it does not say that the institution must pay for the interpreter out of a line item in its budget. It

does not say that the institution must make arrangements within their system to have a pot of money set aside to pay for interpreters. It says if the student is not a client of VR, the institution must see to it that the interpreter is there at no cost to the student. If they want to do that through a regular line item in their budget, that's fine. If they want to do that through a special appropriation as needed, that's fine. If they want to hold pancake breakfasts on Sunday morning and put the money into a pot to be used for interpreters, that's fine. Essentially, the court said, "We don't care where it comes from as long as it doesn't come out of the hide and out of the pocket of the student who is deaf." We operated comfortably under that rule for a long time. If a student was a client of Vocational Rehabilitation, VR paid for the interpreter. If not, it was the responsibility of the institution to see that the interpreter was there.

In 1994, the CSAVR, the Council of State Administrators of Vocational Rehabilitation, sent a letter to the Department of Justice (DOJ), referred to in the inner circles as "the Janet Reno letter." The letter asked Janet Reno, as Attorney General of the United States and, therefore, the head of the Justice Department, for a reading on relative responsibilities between the Vocational Rehabilitation system and the postsecondary institutions regarding the issue of auxiliary aids and services--specifically, interpreters.

I was cautioned at this point to tell you that what I am about to give you is AHEAD's reading on the situation. Please consider this is kind of the disclaimer! This is not the reading of the management. They will disclaim any knowledge of . . . ----*Okay, you get the picture!*

In the Janet Reno letter, the authors attempted to make a case for the fact that now that the ADA is in place, and ADA clearly says that postsecondary institutions will be responsible for providing auxiliary aids and services, it is no longer appropriate to look to the Vocational Rehabilitation system to supply sign language interpreters for deaf students at the postsecondary level. AHEAD has opposed this argument on two different bases. First, the specific language referred to in that letter regarding the enhanced responsibility for providing auxiliary aids and services appears in Title II of the ADA. Not all colleges and universities out there are covered under Title II of the ADA; it only applies to public institutions. Private institutions are not covered under Title II, and there are deaf students at private institutions as well as public institutions. Clearly, the argument has some gaps in it because it is based largely on something that doesn't cover the full range of students and institutions that are potentially impacted by the case being made.

Beyond that, it is true that within Title II, there is discussion of making sure that auxiliary aids and services are there so that an individual is not discriminated against by virtue of those aids and services not being present. It does NOT say, in Title II that the institution must provide such services--it says the institution must see to it that the aids and services are there. It is reminiscent of the earlier statement, regarding Section 504, that indicates such aids and services must be present at no cost to the individual. As with previous compliance decisions, the statement could well be interpreted to mean that if you can find another way of seeing to it the necessary services are present, that's fine--just make sure the student doesn't get left out as a result.

Moreover, I have some problems with the idea that because of the coming of the ADA, interpreters are no longer the responsibility of Vocational Rehabilitation because the VR system, as a

federally-funded entity, is not covered under ADA. VR is covered under the Rehabilitation Act and Section 504, and those regulations--and obligations--are still in place. I don't understand how the coming of the ADA should alter VR's responsibility under an existing and ongoing statute and case law regarding relative responsibilities under 504.

Regardless of my view on the whole thing, the letter was sent (I believe it was dated late May of 1994)! In the months that followed, we saw and heard more and more reports from institutions across the country, and from state systems across the country, about Vocational Rehabilitation systems who were either taking a wait and see approach ("We're going to wait until we hear back on this letter we've sent before we fund any more interpreters"), or who were saying, "Oh, VR is no longer responsible for funding interpreters because we've sent this letter to the Department of Justice." The assumption was that, because the question had been raised, the case had been established.

When the ADA was implemented in 1992, the Department of Justice looked around and said, "We are going to have our hands full dealing with issues that arise for entities that have never been covered before under previously existing statutes. Section 504 is alive and well and, Department of Education (DOE), you still have enforcement authority over Section 504 as it applies to colleges and universities. Since anything that is in the ADA is, for the most part, also in Section 504, we will give you authority to investigate any 504 complaint as an ADA complaint on our behalf as well, as long as you investigate it under our slightly more stringent standards." My understanding is that there is something called an "inner agency agreement" in place between DOJ and DOE that says if a question of services and support for persons with disabilities arises in colleges and universities, the Department of Education will be the one to respond first to such questions. In this case, the letter was sent to Janet Reno as the head of the Justice Department because the Justice Department has enforcement authority over Titles II and III by Congressional mandate. But because the letter was sent to DOJ and DOJ has passed off on those responsibilities, there has never been a response to the letter!

Because there has never been a response to that letter, we have seen Vocational Rehabilitation agencies take a stronger and stronger stance in the intervening time. Many state agencies seem to be saying, "The Department of Justice hasn't contradicted what we said, so we have to assume that they agree with us that it is not our responsibility anymore!" We are seeing more and more state agencies pull back from provision of interpreters. I could give you example from across the country, but the most recent one I saw came from the State of Washington. The Vocational Rehabilitation agency there has announced within the last month that beginning in July of 1997, they will no longer be providing interpreter services for any of their deaf clients.

In October of 1995, there was another letter that got circulated widely within the community. This one that is referred to as "the Norma Cantu letter." I believe Ms. Cantu is Director of Rehabilitation Services either regionally or for some specific area here in the southeast. Ms. Cantu had posed some specific questions to the Department of Justice regarding responsibility and interpreter services at the postsecondary level. The questions that were asked specifically were: (1) is it legitimate for colleges and

universities to require students to apply for funding through Vocational Rehabilitation before they provide interpreter services? and (2) is it legitimate for colleges and universities to deny provision of interpreter services to deaf students until such a time as they have been through the process?

In the October, 1995 response, both questions were answered clearly, "No!" The Justice Department said, "No, colleges and universities may not require students to apply to the VR system," and "No, colleges and universities have no right to deny students access to interpreter services until they have gone through the system."

The letter went on to say, however, it is not illegal or inappropriate for colleges and universities to encourage deaf students to look into the availability of services and support through other agencies, including Vocational Rehabilitation. There is something in that paragraph to the effect that any expenses not picked up by the Vocational Rehabilitation agency would be the responsibility of the college to provide. Now, that says to me that the Justice Department thought that there would be some expenses that would be picked up by the Vocational Rehabilitation agencies if they took them on as clients.

In policy statements like the one I mentioned from the State of Washington, the reasoning is that since the Norma Cantu letter says that colleges and universities may not require students to go through VR for services, we are no longer going to provide these services. They are, in fact, threatening to withdraw services from students who are already clients of the Vocational Rehabilitation system because the letter says you cannot force students to go through VR if they are not clients of the system. I don't think that's what the letter intended.

It is important to understand that what we are really in the middle of is a standoff that is logically, and not inappropriately, motivated by concerns about spreading your resources as far as possible. Those of you who are working at colleges and universities know that money is tight these days. Colleges and universities are not looking forward to assuming the financial responsibility for interpreter services

On the other hand, the Vocational Rehabilitation system only has enough money, as I understand it, to serve about 20% of the individuals who are, in fact, disabled and therefore potentially part of their eligible population. VR would like to garner those resources and hang onto that money to be used for as many people as possible. If they weren't picking up these sometimes costly tabs for interpreter services, they would have more money to spend on other clients.

I am not faulting the reason that either side is looking to someone else to cover the costs. My concern is that students who are deaf and hard of hearing will be caught in the middle and will potentially be denied services either for a short time or for a longer period of time while we get in a spitting match with each other about who's going to pay the tab!

It has been made very clear that institutions may not require a student to go back to VR. You may not withhold services until you've said see if there is somebody else out there you can get to pay for it and only then agree to pick up the tab. Colleges and universities have been told in no uncertain terms that this is their responsibility. But by the same token, I have seen nothing that indicates to me that the case law precedent set in *Jones v. IIT* back in 1978 has been changed. If the student is a client of Vocational

Rehabilitation, then I think Vocational Rehabilitation has the responsibility for paying for the interpreters. If VR wants to get out of the business of funding interpreters for higher education, it may be that the only way they can do that is by not taking those students on as clients of the VR system--if they are not clients of VR, it is clear that VR has no responsibility for them. The deaf students are still going to get their interpreter services. They will get them from the colleges and universities, but they will be missing out on all of the other services that could be theirs if they were clients of the VR system--the career counseling, the advising, the tuition, the money for books, and the support that goes with it. VR does not provide just interpreter services for their clients. That is only a piece of what is available in support of such individuals. If, in order to resolve this issue, VR agencies decide that "if we don't take them on as clients, then it's clear who's got the responsibility for paying for interpreters," our deaf students run the risk of losing out on a lot more availability of support services.

Now let me play the devil's advocate. The reason that it was necessary for the Norma Cantu letter to be written and then disseminated is because there were colleges and universities across the country who had traditionally perceived their best course of action to be, "Stall as long as you can, try and get the student to go through some other route, and if you can get someone else to pay for it, better still. In other words, don't pay for it unless you have to!" I think there were students who were being left out and who were missing out on appropriate services because institutions did not have clear direction in this matter. There was not a clear statement on record that said, "This is not a choice. This is an obligation." The Norma Cantu letter has put that statement on record, hopefully to the benefit of deaf students in higher education.

Perhaps the resolution of the "Who should pay for interpreters" debate lies somewhere in between "us" and "them". Maybe the two parties--Vocational Rehabilitation and higher education--should be talking to each other about what pieces are appropriate for one group to pay and what pieces are appropriate for the other group to pay. When Vocational Rehabilitation supports a student to attend college, they are supporting the student in receiving the training needed to pursue an occupation; that way the student can get a job and will eventually become a tax-paying member of our society. Anything that has to do with access to the classroom and the educational opportunities are, in my mind, part of the training that is moving them towards VR's goal. On the other hand, when the student attends an institution, that student is a full participant within that institution, and has the right to all of the other opportunities and privileges that go with it, including the extracurricular activities, the graduation ceremonies, and so on. Perhaps Vocational Rehabilitation has a good point in saying, "Those things are not part of the education that we are funding the student to get." Perhaps the cost of interpreters for those activities should be the college's responsibility. Maybe what we need to do is stop arguing about whose job it is and start discussing who is going to do what. Until we get to the point where we open up that kind of dialogue, the potential for students to be left out, or to get less than they should, is all too real.

The Fourth "Pig"

Once you get past the roadblock created by concerns about money, the fourth pig in the road seems to be focusing our attention on the issue of backlash against special populations. When college administrators talk about students with disabilities these days, they see increasing numbers and, therefore, increasing costs and then, all too often, they see red! There is also the potential for some backlash philosophically regarding equal access for people with disabilities. I started out by trying to make a strong pitch for saying people who are deaf need to be part of the disability community as a whole because it offers them protection. It also offers them a certain amount of danger. There is danger in being part of a group that is open to slings and arrows from a variety of circumstances. The situation that arose regarding students with learning disabilities at Boston University earlier this Spring poses a very real threat to the credibility of our students and the legal protections we maintain are theirs. On the other hand, the recent decision by the Department of Justice against the NCAA lends credence to the idea that students with learning disabilities are clearly included in the protections provided by the law. I think we need to be proactive and make sure that we are facing the criticism and the concerns that are raised not in an aggressive stance, but rather in an assertive stance. We need to be prepared to say, "These laws are all about civil rights, and equal access for people who are full citizens in the U.S. We will settle for nothing less than equal access. The reason we make accommodations is because not to do so would be discriminatory." In this day and age you would not find Boston University advocating that African-Americans not be allowed to sign up for certain courses because they didn't think they were smart enough to participate. But, in effect, what the Provost at B.U. said was that he didn't think that these people with disabilities were smart enough to have really gotten into B.U. on their own merit--it was only because they used their special status to skirt the rules. We wouldn't allow that kind of attack on any other group protected under our civil rights statutes. We can't allow it to happen to individuals with disabilities.

I think as we face the future, if you are concerned about students who are deaf and hard of hearing, you need to be concerned about all students with disabilities at the postsecondary level and what is happening for them and to them. In the end impact on all of us. If they pick off the LD students today, and those others who are easy targets, sooner or later they'll get down to the rest of us.

I started out with a barnyard analogy. I want to finish with a similar one. The story is about the barnyard animals who were sitting around one morning having a very high level discussion about philosophical concepts, like freedom and independence, involvement and commitment, and so on. In the end, the pig put an end to the discussion when he turned to the chicken and said, "When Farmer Brown has bacon and eggs for breakfast, you're involved--I'm committed." By virtue of being here today and sitting in these seats, you have declared yourself as being involved and concerned about the future of students who are deaf and hard of hearing in higher education. The question that you need to ask yourselves is, "How committed am I to seeing to it that we don't lose the gains we've made and that we continue to move forward?" I believe each of us can make a difference.

Thank you.