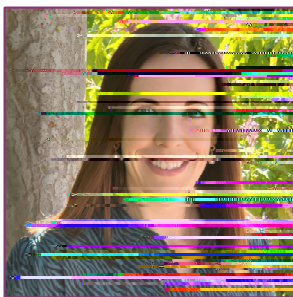


Post-Pandemic Accommodations for Students with Disabilities

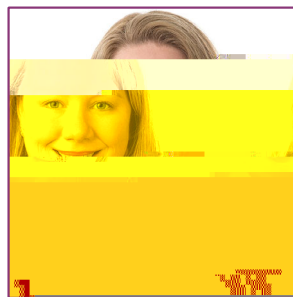
Sherry H. Culves, Partner, Nelson Mullins Riley & Scarborough, LLP
Kathryn Fernandez Lafrentz, former Executive Director For Campus
Accessibility & ADA/504 Coordinator, Tulane University
Sara H. Potter, Associate General Counsel, University of Central
Florida

1

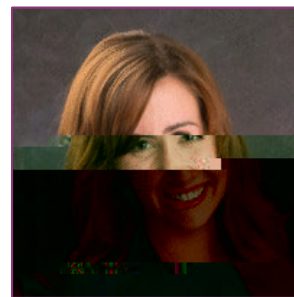
Introductions



Sara
Potter



Sherry
Culves

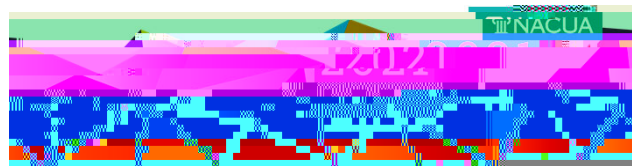


Kathryn
Fernandez Lafrentz

2

Road Map

Overview of federal law



Standard for Analysis

- 1) Is the student disabled?
- 2) How does the disability impact this individual student?
- 3) Is a reasonable accommodation necessary for equal access?
- 4) Does the student's proposed accommodation:
 - Impose any undue financial or administrative burden?
 - Require a fundamental alteration to the nature of the program?
- 5) Is there an alternative reasonable accommodation?



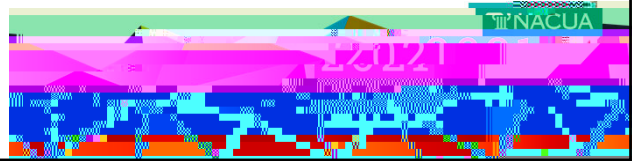
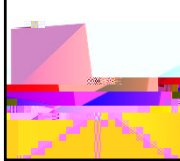
5

Federal Guidance

- OCR: COVID-19 has not changed the legal standard.

“Whether an institution serves students in a brick-and mortar or an online environment, the institution must ensure that students with disabilities have an equal opportunity to access educational programs, consistent with protecting the health and safety of the student and those providing that education to the student.”

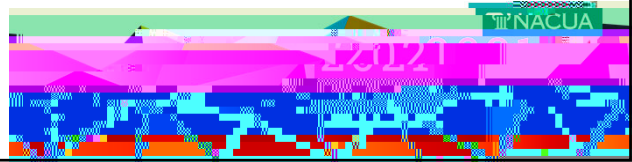
Office for Civil Rights, U.S. Dep't of Educ., *Questions and Answers for Postsecondary Institutions Regarding the COVID-19 National Emergency* (May 2020).



6

Federal Guidance (cont.)

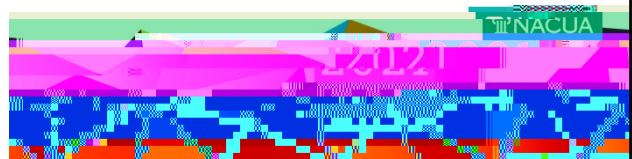
- *Colleges, universities, and other postsecondary institutions are not required to modify academic requirements that the school can demonstrate are essential to the program of instruction the student is pursuing or to any directly related licensing requirement. For example, a school would not be required to provide modifications that would lower the school's academic standards.*
- Office for Civil Rights, U.S. Dep't of Educ., Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment (May 13, 2021).



7

Federal Guidance (cont.)

- OCR Short Webinar on Online Education and Website Accessibility
 - <https://www.youtube.com/watch?v=DCMLk4cES6A>



8

Recent Cases

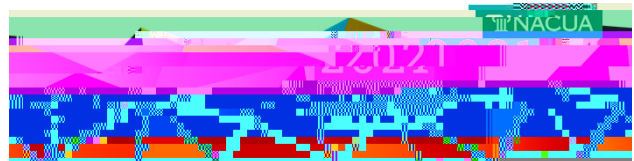
- ***Shank v. Carleton Coll.***

- No. 19-3047, 2021 WL 1228068, at *7 (8th Cir. Apr. 2, 2021)
- Student victim of sexual assault sought excusal from in-person class, extended time on assignments, leniency on absences.
- Case highlights interactive process, open communication, and value of offering alternative accommodations when not granting preferred accommodation.

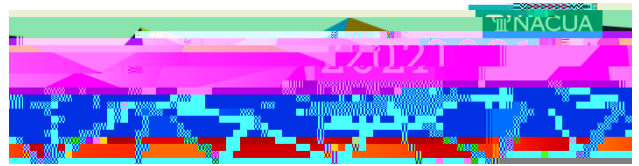


Recent Cases (cont.)

-

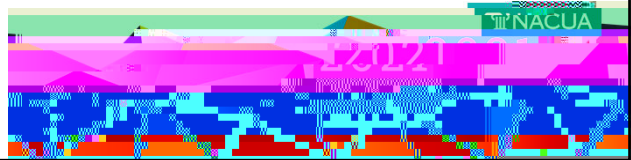


Recent Cases (cont.)



Recent Cases (cont.)

- ***Jain v. Carnegie Mellon Univ.***
 - No. 20-1637, 2021 WL 840928, at *2 (3d Cir. Mar. 5, 2021).
 - Student who failed class claimed undisclosed disability and lack of accommodations was the cause.
 - Case highlights importance of documentation and a “catch-all” question during interactive process.



13

Digital Accessibility

- Regulation status
- Prevailing standards
- Website accessibility v. digital accessibility
- History of OCR enforcement actions
- Standard resolution agreements



14

NACUA materials, PowerPoint slides and recordings available as part of this program are offered as educational materials for higher education lawyers and administrators. They are prepared by presenters and are not reviewed for legal content by NACUA. They express the legal opinions and interpretations of the authors.

Answers to legal questions often depend on specific facts, and state and local laws, as well as institutional policies and practices. The materials, PowerPoint slides and comments of the presenters should not be used as legal advice. Legal questions should be directed to institutional legal counsel.

Those wishing to re-use the materials, PowerPoint slides or recordings should contact NACUA (nacua@nacua.org) prior to any re-use.

