



March 9, 2017

Office of General Counsel

Student Affairs Hot Dish

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OUTLINE OF TODAY'S PRESENTATION

- Recent Student Government Case;
- Service Dogs and Emotional Support Animals;
- Pregnant and Parenting Students Guidance;
- OCR DCL rescinding previous DCL on Transgender Students;
- Update on Responding to Sexual Violence;
- Student Media; Libel;
- Case Update.



RECENT STUDENT GOVERNMENT CASE

Jamaal Abegaz v. Sean Duckworth, et al., File No. 14-CV-16-1336 (Clay Cty. Dist. Ct. Sept. 22, 2016).

Allegations: MSUM Student Government:

1. Violated Open Meeting Law;
2. Failed to comply with MGDPA;
3. Violated Minnesota Election Law;
4. Violated MSUM Student Government Constitution.



RECENT STUDENT GOVERNMENT CASE ,
CONTINUED

- Result: Clay County District Court rejected all claims – case dismissed.
- Student Government:
 - Not Public Body for Open Meeting Law;
 - Not Government Entity for MGDPA;
 - Not subject to Minnesota Election Law;
 - No private cause of action for MSUM Constitutional Claim (adequate internal remedies)

This doesn't mean that student government should not operate in a fair, open manner. **But:** decision recognizes educational purposes of student government.



SERVICE DOGS AND EMOTIONAL SUPPORT ANIMALS

- Service Animal = dog individually trained to work or perform tasks for an individual with a disability. Task performed must be directly related to the person's disability.
- Examples:
 - Person with diabetes – dog trained to alert when blood sugar too high or low.
 - Person with epilepsy – dog trained to detect onset of seizure.

SERVICE DOGS, CONTINUED

- Do service animals have to wear a vest, patch, or special harness identifying them as a service animal?
 - No.



SERVICE DOGS, CONTINUED

- What questions can you ask to determine if a dog is a service animal?
 - If not obvious that the dog is a service animal, can ask:
 - Is the dog a service animal required because of a disability?
And
 - What work or task has the dog been trained to perform?

SERVICE DOGS, CONTINUED

- Who is responsible for care and supervision of a service animal?
 - The handler is responsible for caring for and supervising the service animal, including toileting, feeding, grooming, and veterinary care.



SERVICE DOGS, CONTINUED

- When can service animals be excluded?
 - Fundamental alteration;
 - Legitimate health and safety requirements (direct threat to health and safety; individualized assessment);
 - If particular service animal is:
 - Out of control.
 - Not housebroken.



EMOTIONAL SUPPORT ANIMALS

- Emotional Support Animal (sometimes called an assistance or companion animal) – not a service animal.
- Fair Housing Act.
 - Is a dorm subject to the Fair Housing Act?
 - Yes per some recent authority (Nebraska-Kearney case).
- Emotional Support Animal = animal designated by a qualified medical provider as affording an individual with a disability an equal opportunity to use and enjoy a dwelling. (Essentially an Accommodation Request).

EMOTIONAL SUPPORT ANIMALS, CONTINUED

- When can assistance animal be excluded from dorm?
 - Fundamental alteration;
 - Legitimate health and safety requirements (direct threat to health of safety; individualized assessment);
 - If particular assistance animal is:
 - Out of control.
 - Not housebroken.



RESOURCES ON SERVICE AND EMOTIONAL SUPPORT ANIMALS

- Resources

- United States Department of Justice, Frequently Asked Questions about Service Animals and the ADA.
https://www.ada.gov/regs2010/service_animal_qa.pdf.
- Minnesota State University Moorhead, “Service Dogs and Emotional Support Animals Policy.”
<https://www.mnstate.edu/policies/servicesupportanimals.aspx>.

PRACTICE POINTER: Your Disability Services Office will have resources.

PREGNANT AND PARENTING STUDENTS

- “Supporting the Academic Success of Pregnant and Parenting Students.” Office for Civil Rights, June 2013.
<https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.
- Title IX includes a prohibition on discrimination against pregnant and parenting students.



PREGNANT AND PARENTING STUDENTS,
CONTINUED

- Some recent litigation activity.
 - OCR complaints;
 - *Varlesi v. Wayne State University*, 2016 WL 860326 (6th Cir. 2016) (pregnancy harassment at clinical site).
- **PRACTICE POINTER:**
 - No discrimination;
 - Flexibility around accommodations – generally treat students the same way you would with other medical absences.

TRANSGENDER STUDENTS

- May 13, 2016 DCL on Transgender Students.
 - Based on Title IX;
 - Non-Discrimination.
 - Specific Guidance on bathrooms, residence halls, etc.
- February 22, 2017 DCL withdraws and rescinds the May 13, 2016 DCL. <https://www.justice.gov/opa/press-release/file/941551/download>.
- “this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment.”

TRANSGENDER STUDENTS, CONTINUED

- Regardless of DCL changes:
 - Title IX Litigation;
 - [Minnesota Human Rights Act](#);
 - [Board Policy 1B.1](#).

PRACTICE POINTER: No Change in Practice at our Institutions at this time.

RESPONDING TO SEXUAL VIOLENCE

- Will the OCR change its approach?
 - DCLs?
 - Enforcement?
- But:
 - VAWA
 - [Minnesota Stat. § 135A.15.](#)
 - [Board Policy 1B.3.](#)

PRACTICE POINTER: No Change in Practice at our Institutions at this time.

RESPONDING TO SEXUAL VIOLENCE, CONTINUED

- Trend = Respondent Litigation.
 - Legal Theories:
 - Due Process;
 - Reverse Title IX;
 - Negligence, Breach of Contract, etc.

PRACTICE POINTER:

- Follow process
- Decision-makers consult with OGC
 - Send investigation report; and
 - Draft decision letters.

STUDENT MEDIA

- Distinguish Student Media from Institutional Media such as an alumni magazine or department publication.
- Student Media
 - Editorial control by student editors and writers – not institution.
 - [Board Policy 3.1.](#)



STUDENT MEDIA, CONTINUED

- *Lewis v. St. Cloud State University*, 693 N.W.2d 466 (Minn. Ct. App. 2005) (university not responsible for alleged libel in the student newspapers because First Amendment prohibited university from exercising editorial control over the student newspaper).

PRACTICE POINTER: Refer complaints about content to the student editor of the publication. Dealing with complaints is part of the educational experience.

Keefe v. Adams, 840 F.3d 523 (8th Cir. 2016) (affirming dismissal of student from nursing program for Facebook posts that demonstrated a lack of professionalism in relation to the nursing code of ethics).

Writ of Certiorari filed to United States Supreme Court.

PRACTICE POINTER: Make reasonable academic decision.

STUDENT RELIGIOUS ACCOMMODATIONS

- Institution may choose to make adjustments for student religious observance in recognition of student relations, sense of fairness, accommodating diversity, limiting potential liability if the accommodation does not violate the Establishment Clause.
 - Does student have bona fide belief that conflicts with an educational policy or requirement?
 - Will student suffer some adverse action for failing to comply with the conflicting policy or requirement?

STUDENT RELIGIOUS ACCOMMODATIONS,
CONTINUED

- Would an accommodation be an undue hardship;
- Would an accommodation fundamentally alter the academic requirements of the educational program?
- Are other students allowed to bypass the policy or requirement for nonreligious reasons? (E.g., missing class because of death in the family).

Example: *Aaran Alzman v. Saint Paul College*, MDHR Case No. 65760, December 6, 2016.

ADDITIONAL RESOURCES

- [OGC Webinar](#), “Managing Classroom Conflict,” January 19, 2017.
- [OGC Webinar](#), “Speech on Campus: Selected Student Speech Issues,” March 10, 2016.



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