

News, Views and Careers for All of Higher Education

Aug. 6

## Access Denied

In a discrimination case that is still crawling through the Louisiana court system after seven years, McNeese State University's president has asserted that it is not a "high priority" for disabled students to access the university's student union.

The case, which stems from a 2001 accident, was brought by a student who — while in a wheelchair — was injured trying to pry open a bathroom door in the union. The door was not made accessible for disabled people, according to the suit.

In a 2005 deposition, McNeese President Robert Hebert acknowledged that the institution was "not in 100 percent compliance" with the Americans With Disabilities Act. With limited funding, McNeese has had to make tough choices about how to spend its money on federal compliance, he said. This being the case, Hebert said, academic buildings have reasonably taken priority over the student union, which houses offices, cafeterias, and the student newspaper, among other services.

"Whether or not it's fundamental for [disabled students] to get into that student union annex or that it's fundamentally important for them to obtain an education, I would question that," Hebert said in the deposition, which is now making the rounds on Youtube. "I'm not sure I would regard it as a high priority."

Under the harshest interpretation, Hebert's words could mean that he simply doesn't view giving disabled students an "education" as a "high priority." In the broader context of his deposition, however, Hebert noted that McNeese was confronted with something of a Sophie's Choice. Forced to choose between making classrooms accessible and making the union accessible, he said, McNeese chose the classrooms. Whether McNeese lacked the funds to do both, however, is disputed in the lawsuit.

Asked to clarify or expound upon his remarks, Hebert responded in an e-mail Tuesday:

"Accessibility to all facilities is important, but accessibility to academic buildings is critical for classroom instruction," he wrote. "We have made great progress toward making the campus accessible to all students, employees and visitors. It is, and will be, an ongoing project and one that we take very seriously."

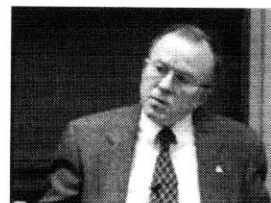
As of Tuesday, however, the lone women's restroom in the student union was still not compliant with the Americans With Disabilities Act — seven years after a student was injured there.

The law does not require that every bathroom in a building constructed prior to the act's 1990 passage meet the standards, but it does require that all services and programs be made available to disabled people.

### No Lower Standard for Student Unions

Even if comments from Hebert's deposition are viewed in the most charitable light, he's likely to draw criticism — or even more legal challenges. The ADA, which applies some of its most stringent rules to public universities, does not have lower standards for dual-use facilities that have recreational and academic functions.

Chai Feldblum, a professor at Georgetown University Law Center, notes that all services — including cafeterias and student



Robert Hebert during a 2005 deposition

## Related stories

- Making Room at the 'Big House' and Beyond, Nov. 6, 2007
- Suggestions on Mental Health, May 17, 2007
- The Price of Disability, March 19, 2007
- Enforcing the Disabilities Law, July 19, 2006
- Disabilities and the Medical Student, Nov. 8, 2005

government offices — have to be accessible under the law. University officials don't have the option to choose which buildings to make accessible, unless they can establish that new construction would constitute an "undue burden," Feldblum said. Even in the case of an undue burden, universities have to find another way to ensure that disabled people aren't prevented from accessing programs, activities and services.

"The law is saying people with disabilities should be able to come and get an education in the totality of the program," Feldblum said.

The case against McNeese was brought by Collette Covington, a former student who is epileptic and was using a wheelchair in the spring of 2001, following a string of surgeries on her knee, according to court documents.

When Covington tried to exit the bathroom in the student union, known locally as "the Old Ranch," she couldn't leverage the door and was wedged into a position that caused her arm to "pop so severely that she thought she had broken it," according to a brief filed by her lawyer.

In a 2007 summary judgment, a Louisiana district court ruled that McNeese had failed to meet its obligations under the federal disabilities law. The act required that the Old Ranch be equipped with an accessible bathroom because the building had been renovated after 1990, the court found.

McNeese is now appealing the judgment, arguing that Covington — who didn't absolutely need a wheelchair, according to McNeese officials — isn't entitled to coverage under federal law. Covington had started using the wheelchair about a week before the accident, not because she couldn't walk, but because she wanted to get around campus "at a faster pace," according to statements attributed to Covington in court documents.

"It is reasonable to assume, then, that Covington could have stepped out of her wheelchair temporarily in order to use the restroom," McNeese's lawyer wrote in an appellate brief.

McNeese officials concede in court documents that the lone women's restroom in the Old Ranch did not comply with federal regulations at the time of the accident. The university contends, however, that McNeese was still not denying students any services or programs — even though the Old Ranch houses McNeese's debate team, the yearbook, student government offices and the university's only two major cafeterias, according to President Herbert's own 2005 deposition.

The Old Ranch is now slated for more renovations, and university officials say they'll upgrade the restrooms in compliance with federal standards. McNeese plans to use approximately \$30,000 in auxiliary funds to renovate the facility's restrooms in the fall, making them "fully ADA compliant," according to Candace Townsend, a university spokeswoman.

### **Feds Required Compliance by 1995**

The Americans With Disabilities Act was passed in 1990, and public entities like universities were given until 1992 to achieve "program accessibility." In cases where structural changes were required to meet the federal requirements, the act allowed universities to work as "expeditiously as possible" to fulfill the requirements, "in no event later than January 26, 1995."

At McNeese State, 25 percent of the restrooms on campus are still not compliant with the Americans With Disabilities Act, university officials say.

Mike Shuttic, president of the Association on Higher Education and Disability (AHEAD), said universities have a difficult time proving that it's an "undue burden" to accommodate the disabled. Since universities readily tap into funds for various projects, and often have endowments to draw upon, higher education officials are hard-pressed to prove the mandates of federal law are too onerous, Shuttic said.

"I'm unsure, at least in the education realm, where that has ever been a defense that's appropriate," said Shuttic, coordinator of student disability services at Oklahoma State University.

### **Plaintiff Aims to Help Future Students**

Covington, now 47, hasn't returned to the world of higher education since her accident. An aspiring teacher, she says she tried to re-enter McNeese several years ago, only to be told that the standards for her degree had changed dramatically and that she would lose significant amounts of credit.

"They added so much to the curriculum, and it was just too much for me," Covington said.

Covington, who lives alone in southwest Louisiana near McNeese, collects disability payments and is unemployed. She says she struggles with neurological problems and epilepsy, and still uses a wheelchair.

Covington's lawyer, Seth Hopkins, says he "stupidly" agreed to break Covington's case into separate trials. The summary judgment establishes that McNeese violated the Americans With Disabilities Act, but Hopkins says he would have to move forward with new litigation in order to force the university to change anything on campus or to collect damages for Covington.

Covington says she has modest goals.

"I hope that [the case] helps every other person that ever comes on that campus that has any kind of difficulty," she said.

Covington, who once attended local functions as a formal "ambassador" of McNeese, says she's disappointed with the university's response to the case.

"When I think about it, they just sound so ignorant," she said. "They don't have a justifiable answer to anything — that I could tell. But I don't have a college education, do I."

— Jack Stripling

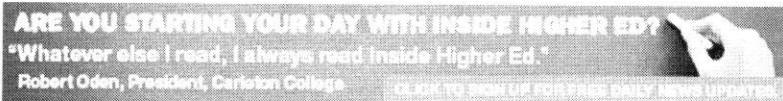
Got something to say? [Add a comment.](#)

Want it on paper? [Print this page.](#)

Know someone who'd be interested? [Forward this story.](#)

Want to stay informed? [Sign up for free daily news e-mail.](#)

Advertisement



**ARE YOU STARTING YOUR DAY WITH INSIDE HIGHER ED?**  
"Whatever else I read, I always read Inside Higher Ed."  
Robert Oden, President, Carleton College

## Comments

McNeese's arguments, that 1) the student didn't really need a wheelchair; and 2) the school did not have enough money to make all school programs accessible, demonstrate an incredible lack of insight, both into the problems faced by students with disabilities, and into the requirements of federal law. Blaming the victim is never a good defense. If McNeese had simply said that the college made a bad call when it came to the choice of not making the student union bathroom accessible, much of this issue would have simply gone away. Instead, McNeese has painted himself into a corner that will be very difficult to get out of.

**Richard Linn**, at 9:10 am EDT on August 6, 2008

### Access Denied

I feel Covington's frustration. I am hard of hearing and started college before the advent of the ADA so didn't have as good communication access as others. There were other issues involved, but I did end up returning to college at Gallaudet University where I graduated with top honors. I believe it is due to the fact I had better communication access in the classroom.

There are many other students at Gallaudet with other disabilities than deafness, including those that require the use of wheelchairs. There are a few buildings at Gallaudet that are inaccessible, but that is changing as new buildings go up, with designs that ensure bathroom accessibility, along with other areas, such as classrooms, open study areas, et al.

No one should have to go through what Covington did. Completely idiotic...

**Jill Porco**, at 9:20 am EDT on August 6, 2008

From the article, it appears that both Covington's lawyer and InsideHigherEd missed the obvious in this case. The ADA was passed in 1990, but the Rehabilitation Act of 1973 (with its Section 504 regulations) was implemented in 1977. While the Rehab Act had somewhat less stringent requirements for architectural access than does the ADA, basic access to restrooms has always been... basic! McNeese State, as a public institution has had more than 30 years to respond appropriately to federal mandates for equal access for persons with disabilities. Moreover, it appears that McNeese has resorted to an Appeal to Spite (<http://www.nizkor.org/features/fallacies/appeal-to-spite.html>) in its denial of wrongdoing. Covington asserted that she was injured because the bathroom door was not in compliance with access requirements. McNeese responds that because Covington didn't NEED to be in a wheelchair (an "iffy" assertion, at best), the fact that they failed to meet their 30+ year responsibility for access shouldn't matter. Huh? Meantime, InsideHigherEd also seems to need a refresher course on disability law. The article states that, "The ADA, which applies some of its most stringent rules to public universities..." There is simply no basis for this bald statement unless the suggestion is that the Title II regulations (which apply to public entities of all kinds, including colleges and universities) are among the "most stringent rules" of the ADA. If that were the intent of the comment, it still misses the mark, as the requirements for architectural access (ADAAG) under discussion in this case appear in Title III of the ADA. While the letter of the law for both the ADA and Section 504 focuses on legal requirements for \*access\* to programs and facilities, the spirit of the law has always suggested that independence, safety, and dignity are important issues in assessing how well those legal mandates for access are met. It would appear that McNeese State has lost sight of all three.

**Jane Jarrow**, President at Disability Access Information and Support, at 10:30 am EDT on August 6, 2008

### **Stupidly absurd!**

Hm, lets see, \$30,000 to fix the ONLY womens restroom in the entire building seven years later equals \$4,286 (with rounding) per year.

I wonder how much they have paid the attorneys to defend against the litigation? Or how much the Presidents raises have been over that same period.

I am willing to bet that either number will be greater. Any takers?

Poor leadership always costs more.

**Bob**, at 10:35 am EDT on August 6, 2008

### **access demoed**

Lawd help us!! I direct student disability services for a Texas community college and have had this type of fight with the executive administration here. Recently a building was renovated to the tune of 1 million dollars to provide a good practice environment for our chorus/choir, but this same administration complains about 300,000 for sign language interpreters for deaf students. I just don't get it...I wonder how much money McNeese spent in attorney fees attempting to defend what cannot be defended....alot more than the \$30,000 to renovate a bathroom, I bet....

**pat**, Director, Disability Services at Blinn College, at 10:35 am EDT on August 6, 2008

### **Access Denied**

It is too bad this guy cannot be charged with ignorance! This is exactly the attitude Congress intended to redress with the passage of The Americans With Disabilities Act 1990. As a women with a life-long disability, I was fortunate to attend institutions of higher education, from Tidewater Community College to William and Mary Law School, that valued me as a student. I cannot imagine what this woman has been through, but I would urge her to try another college, because thankfully, most are ready and willing to accommodate her needs.

**Linda Harris**, Disability Coordinator at Tidewater Community College, at 10:40 am EDT on August 6, 2008

### **Access Denied why?**

This story is unbelievable! The comments of McNeese's president proves the depth of the ignorance that is embedded in our society. Also the amount of thought and funds needed seem to be too much for many places to want to submit to. BUT it's the LAW! A person with disabilities has the same right as a person without disabilities to do whatever they want. To get an education, to travel to have kids and have any occupation they desire! People think because accomdations are needed disabled people should not do things or they "don't need" them. More untrue words were never spoken!

**Antoinette Adkins**, at 12:45 pm EDT on August 6, 2008

### **Education Denied**

The university President's position that ADA compliance in academic classrooms take precedent over non-academic facilities (like the student union) flies in the face of research that shows much learning occurs outside the classroom in informal learning environments — like student unions.

**Phillip Waite**, Assoc. Prof. at Washington State University, at 1:35 pm EDT on August 6, 2008

### **Access Denied Is Justice Denied**

I had an uncle who was wheelchair bound due to polio. I grew up in the 1960's watching my aunt struggle to move him from place to place because a\*\*holes like Hebert lacked empathy. I recall that it was a vicious fight to get the first access ramps and wider door jambs installed in public buildings.

In 2002, I spent some time in a wheelchair due to a pinched nerve in my lower back. I could not stand up for more than a few seconds at a time so I could only stand long enough to pee, then beat a hasty agonizing retreat back into the wheelchair. I suppose in Hebert's opinion, I didn't really need a wheelchair either.

It doesn't take a rocket scientist to prioritize limited resources by need. My guess is that the most frequented places on campus by disabled students are the student union and the restrooms. Classrooms do need to be retrofitted, but classrooms can be scheduled around a student's needs.

Shame on Robert Hebert and shame on the Louisiana State University System.

**John B.**, at 3:30 pm EDT on August 6, 2008

### **Priorities**

Wonder if his priorities might suddenly change if students with disabilities decided not to pay tuition? ADA or not, the attitude described reflects the president's own lack of education.

**H. Lewis**, at 12:00 pm EDT on August 7, 2008

### **Deposition**

If one looks closer at some of the Depositions from this case one may read where a representative of the University unfamiliar with the term discriminate said that this student couldn't be discriminated against as she was not black...I think this speaks even more to the mind set involved.

**Nick**, at 5:35 pm EDT on August 7, 2008

© Copyright 2008 *Inside Higher Ed*