



Ending Discrimination in Campus Mental Health

Monica Porter &
Allisa Fernandez

MHIA
Mental Health America
B4Stage4

Presenters



Monica Porter



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Introduction

Monica Porter
Staff Attorney
(she/her/hers)

A note on language



Among Higher Ed Students...

- 1 in 5 live with a mental health disability
- Suicide is the 2nd leading cause of death
- 1/2 who drop out did so because of a mental health disability



DISABILITY RIGHTS ARE CIVIL RIGHTS

- Americans with Disabilities Act
- Section 504 of the Rehabilitation Act
- Fair Housing Act
- FERPA
- HIPAA
- Case Study: *Mental Health & Wellness Coalition, et al. v. Stanford University*

Americans with Disabilities Act



ADA: Findings and Purpose

Findings

“[M]ental disabilities in no way diminish a person’s right to fully participate in all aspects of society”

“[H]istorically, society has tended to isolate and segregate individuals with disabilities”

“[D]iscrimination against individuals with disabilities persists in such critical areas as...education”

ADA: Findings and Purpose

Purpose

“[T]o provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities”



ADA: Definitions

“Disability”

“A physical or mental impairment that substantially limits one or more major life activities”

MLAs include, but are not limited to, learning, concentrating, thinking, & caring for oneself

“Mental health conditions like major depression, [PTSD], bipolar disorder, schizophrenia, and [OCD] should easily qualify”

ADA: Definitions

“Qualified Individual with a Disability”

“[A]n individual who, with or without reasonable modifications, meets the essential eligibility requirements to receive services or participate in programs”

Discrimination: ADA

- Excluded from participation;
- Denied benefits; or
- Discriminated in any way

...in services, programs,
or activities

Discrimination: ADA (con't)

- Using a policy that tends to screen out people with disabilities
- Failing to administer programs in the most integrated setting appropriate
- Imposing a surcharge on a person with a disability for the cost of accommodations

Discrimination: ADA (con't)

- Failure to make reasonable modifications to policies, practices, or procedures when the modifications are necessary to avoid discrimination

...unless the entity can demonstrate that making the modification would fundamentally alter the service, program, or activity

ADA: Defenses

- Fundamental Alteration
- Undue (financial, administrative) Burden
- Direct Threat

Fundamental Alteration

Determined on a case-by-case basis

| Not a Fundamental Alteration | Fundamental Alteration |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Extra time on a test that's meant to test subject mastery, not reading/processing speed | Chemical sensitivity in a chemistry lab, such that student can't be in the same room as the chemicals |

Undue Burden

Determined on a case-by-case basis

Consider: financial, administrative
resources

| Not an Undue Burden | Undue Burden |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| School provides lab aide or note-taker to assist student during class | School asked to provide personal aide to assist student bathing, dressing, and getting to/from school |

Direct Threat

- Legitimate Safety Requirements
- Direct Threat: Significant risk to health or safety of others that can't be eliminated by a reasonable modification
- Safety req'ts must be based on actual risk; not mere speculation, stereotypes
- Individualized assessment based on medical knowledge re: nature, duration, severity, likelihood of risk; and whether modification would mitigate the risk

Threat to Self

- Employment: Valid
- School: It's unclear (text vs. reality)
- What is clear: the determination must be based on an individualized assessment based on current medical knowledge

Fair Housing Act



Fair Housing Act

Prohibits discrimination in the terms, conditions, sale, or rental of housing
on the basis of race, religion, sex, disability,
familial status, or national origin



**EQUAL HOUSING
OPPORTUNITY**

Fair Housing Act: Higher Ed

- Residence halls and dorm rooms are covered
- Discrimination
 - Exclusion
 - Failure to allow Reasonable Accommodation

Fair Housing Act: Reasonable Accommodations

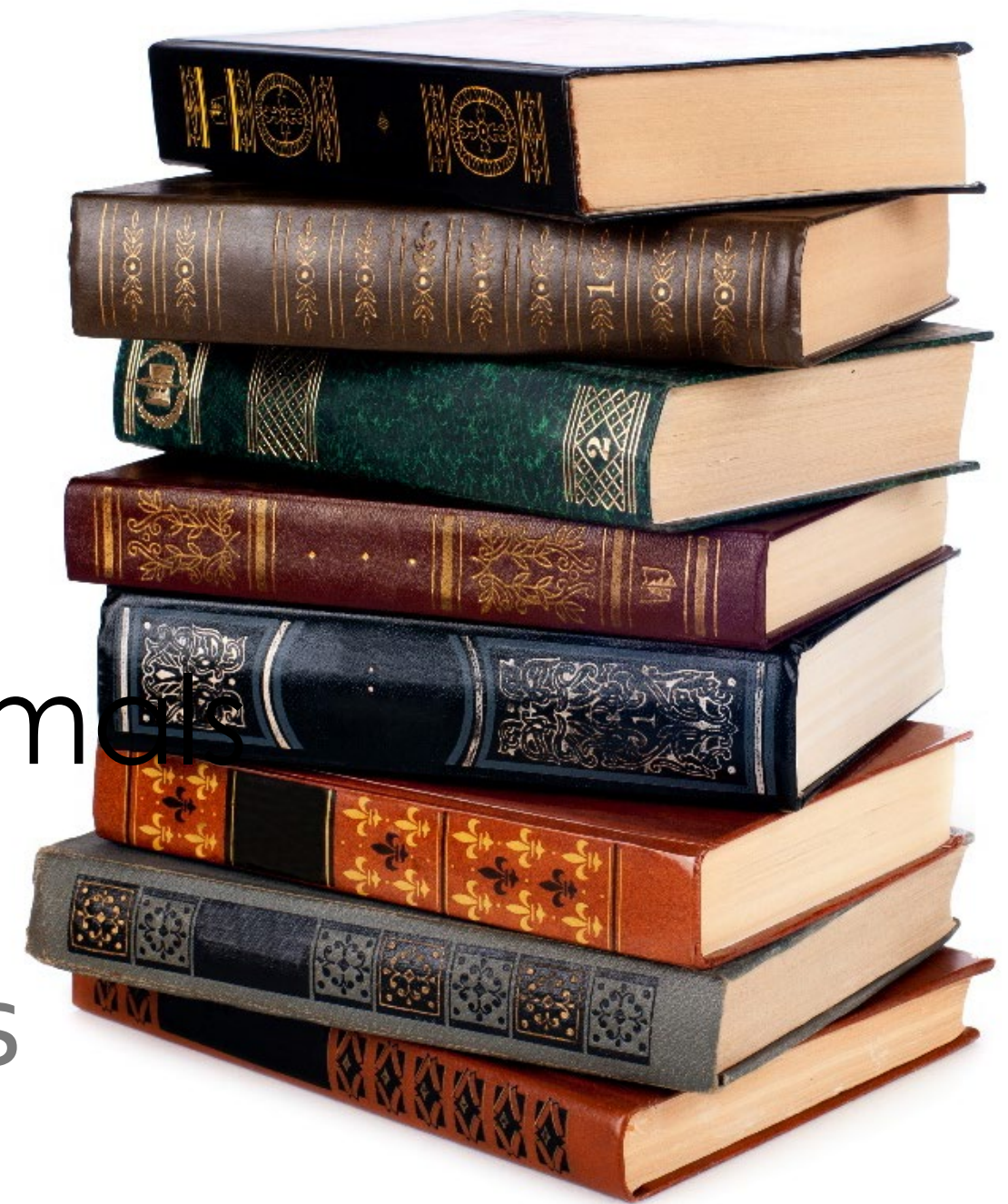
- Discrimination includes refusal to make reasonable accommodations in policies or practices
- Disclosure + Request → Duty → Interactive Process
- Recall: fundamental alteration, undue burden, direct threat

Fair Housing Act: Reasonable Accommodations

- Reassignment (different, single room)
- Emotional Support Animals

Civil Rights Laws in Higher Ed

- Leave of Absence
 - Voluntary
 - Involuntary
- Housing
 - Emotional Support Animals
 - Eviction
- Reasonable Accommodations
 - Academic
 - Housing
 - Administrative, etc.



Privacy Laws in Higher Ed

- FERPA
- HIPAA

FERPA

- You have the right to...
 - Access, Seek to amend, and Control disclosure of educational records
 - File a Complaint with FPCO w/in 180 days
- Exceptions (to disclosure control) include:
 - Parents of “dependent” students (IRC)
 - Parents, if health/safety emergency
- For more info (videos, FAQs), visit <https://studentprivacy.ed.gov>

HIPAA

- You have the right to...
 - Inspect and have copies of your medical information
 - Share your medical information with a third party or mobile application
- This is useful to...
 - Transfer records across medical providers
 - Become more informed about your health
- For more info (videos, infographics, etc.), visit www.healthit.gov/access



Case Study

*Mental Health & Wellness Coalition, et al.
v. Stanford University*

Legal Claims

- American with Disabilities Act: Title III
- Section 504 of the Rehabilitation Act
- Fair Housing Act
- (and CA state corollaries)

Rewritten ILOA & Return Policy

- ILOA is a last resort
 - Mandatory consult re: reas. accommodations
 - Significant weight given to student's doctor
- Notice: Basis, appeal, timeline, resources
- During Leave: May petition for housing
- Return
 - Assessment: Ready to return with or without reasonable accommodations
 - No personal statement requirement

Settlement Agreement

- VLOA revocation period
- Increased staffing and annual staff training
 - LOA process, procedures
 - Reasonable accommodations
- Increased information on disability services website re: reasonable accommodations
- JED Campus
- Monitoring



Q&A

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Campus Advocacy for People with Psychological Disabilities

Allilsa Fernandez

Peer Mental Health Alliance founded Spring 2017



Visibility Matters

- Stigma is a barrier in obtaining information and resources
- We went outside the box attending basketball games, baseball games, carnivals and dance marathons.
- Normalize speaking about mental health openly in diverse spaces

Advocacy on Campus



Activism/ Medical leave policies



Stanford

≡ The Stanford Daily

TIPS
▼

A closer look at Stanford's leave of absence policies

Students who have faced suicide report
that the University defaults to
temporary campus withdrawal



Lawsuit against Stanford

*Feeling Suicidal, Students
Turned to Their College.
They Were Told to Go
Home.*



Harrison Fowler is part of a class-action lawsuit
against Stanford.

Michael Starghill Jr. for The New York Times

Yale



Yale DAILY News

Alumna sues Yale for forced medical leave

JEVER MARIWALA

&

ALICE PARK

2:14 AM, NOV 16, 2018



Lucas Holter

A Yale College alumna is suing Yale and Yale-New Haven Hospital for placing her on mandatory medical leave after she

Hunter College



CUNY settles mental health case

NEWS By Ryan Holeywell

Aug 30, 2006 12:00 AM

New York's Hunter College settled a lawsuit last week with a student who alleged that the school barred her from her dormitory after she tried to commit suicide. The student's suit resembles that of former GW student Jordan Nott, who filed a discrimination lawsuit against the University in October 2005.

The Hunter College student, known as Jane Doe in the suit due to privacy concerns, called 911 and admitted herself to a hospital after taking a large number of Tylenol pills in June

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October 31, 2006

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SHARE

**JOINT STATEMENT FROM THE GEORGE WASHINGTON
UNIVERSITY
AND THE BAZELON CENTER FOR MENTAL HEALTH LAW
REGARDING THE LAWSUIT BY FORMER STUDENT JORDAN NOTT**

The George Washington University and one of its former students, Jordan Nott, today announced that they have reached an agreement to resolve the lawsuit filed by Mr. Nott last fall against the University and several other entities regarding his October 2004 mental health hospitalization, the University's interim suspension, and his subsequent withdrawal from GW.

"I hope that this difficult experience will result in positive changes in how student mental health issues are handled at campuses across the country," said Mr. Nott. "And I certainly hope that other universities will not discipline their students for seeking mental health treatment."

"This was a very difficult situation. We were attempting to serve the best interests of Mr. Nott while also considering the well being of all of our students," said Dr. John F. Williams, GW provost and vice president for health affairs. "While we recognize that some steps in the process may not have been perfect, we stand by the result. We appreciate Mr. Nott's support in resolving this matter, and we wish him continued success."

"We are pleased that GW is reviewing and revising its policies, and hope that Jordan's case and others will prompt universities to adopt policies that do not penalize students for seeking mental health treatment and that are not linked to the disciplinary process. It is important that any policy provide for individualized determinations of whether a student can remain on campus based on an objective medical evaluation after discharge from a hospital, without rigid rules based solely upon the fact of hospitalization," said Karen Bower, from the Bazelon Center for Mental Health Law, one of Mr. Nott's attorneys.

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HUGE problem!

- Homelessness
- Abusive Household
- Low Income/ Poverty

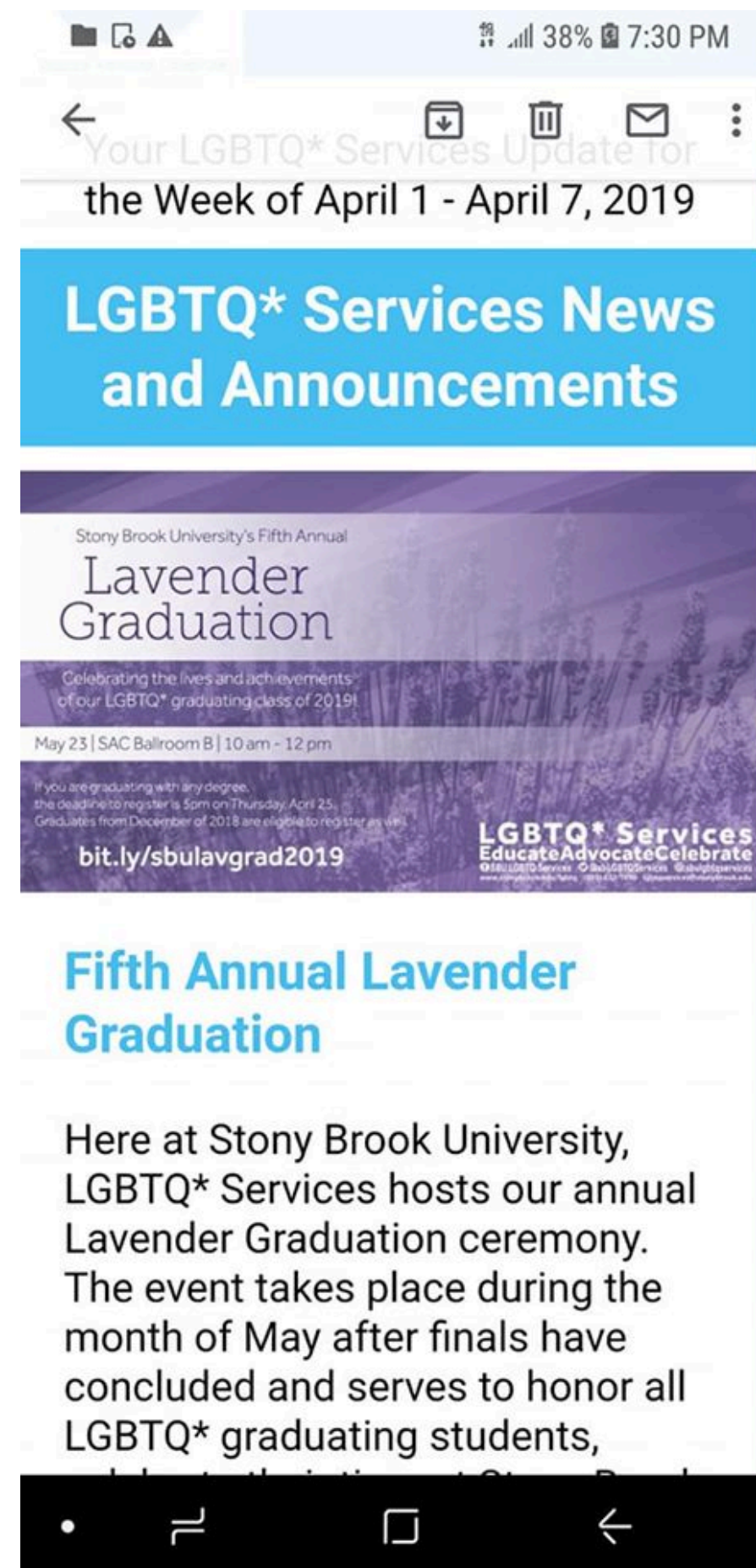
Findings

- BIPOC (Black, Indigenous, People of color)
 - LGBTQTA+
- People who identify as women
 - People with Disabilities

Other ADA Problems



Accommodations



Student led activism



DRA (Disability Rights Advocates)

DRA's Cases

DRA achieves major civil rights victories on behalf of people with disabilities in areas including:

- Healthcare
- Employment
- Transportation
- Education
- Disaster Preparedness
- Technology
- Telecommunications
- Veterans' Benefits
- Housing
- Access to Public Accommodations and Government Services


About DRA

With offices in California and New York, DRA is the leading nonprofit disability rights legal center in the nation.

In the organization's 20+ year history, DRA has taken on more than 400 cases and won almost all—achieving dramatic improvements for people with disabilities nationwide.



www.dralegal.org



Know Your Rights

Accommodations at Colleges and Universities for Students with Psychiatric Disabilities

Share your experiences with DRA confidentially:
dralegal.org/CampusMentalHealth


Get Involved

To help support DRA and/or our fellows with a donation, or for more information about DRA go to www.dralegal.org.

To stay informed of DRA's most recent successes and news, sign up for our e-newsletter on our website and follow us on Facebook, Twitter, and LinkedIn.

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Students with Psychiatric Disabilities are Entitled to Reasonable Accommodations

- The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act protect people with psychiatric disabilities, such as Anxiety, Bipolar Disorder, Depression, and Schizophrenia
- The ADA and Section 504 require all public and private colleges and universities to provide reasonable accommodations
- If your school has refused reasonable accommodation, you may be able to file a complaint with your university or the Department of Education's Office of Civil Rights

Accommodations You Can Request

- Reduced course load
- Alternate work assignments
- Note taker
- Audio recorded lectures
- Excused absences
- Ability to work from home
- Extended deadlines for assignments or degree completion requirements
- Additional time for testing
- A private room for testing
- Withdrawals from courses
- Leave of absence

What You Can Do to Request Accommodations

- Register with your school's disability resource center or staff
- Disclose to the disability resource staff that you have a psychiatric disability – you may need to provide documentation from a treatment provider
- In many cases you will not need to disclose to your professors – ask about your school's policies
- Discuss with disability resource staff what your goals and challenges are, to identify the most appropriate accommodation for you



Op-ed



Protest March



Protest March



Resolution Meeting



News



THE STATESMAN



Students protest campus ADA violations

BY MIKE ADAMS APRIL 11, 2019



Demonstrators march on campus in the Disability March Protest on April 10, 2019. The march was organized by the Disability Rights Coalition, an impromptu alliance of campus activists led by former Peer Mental Health Alliance president and Stony Brook alumna Allilsa Fernandez and co-sponsored by the Graduate Student Employees

More News

Stony Brook is segregating its disabled students and needs to be held accountable

BY MIKE ADAMS APRIL 28, 2019



Students, faculty and staff protest Stony Brook University's Americans with Disabilities Act violations on Wednesday, April 10. A week later, Vice President for Student Affairs and Dean of Students Richard Gatteau spoke at an Undergraduate Student Government Senate meeting and claimed that every

Local News

Students, alumni work toward more accessibility at Stony Brook University

Stony Brook University | Village Times Herald

by Rita J. Egan - May 2, 2019



On April 10, approximately 80 students and alumni took to the campus to protest what they felt were Americans with Disabilities Act violations. Photo by Allilsa Fernandez

A student-led rally over handicapped access across campus has opened up a dialogue at Stony Brook University.



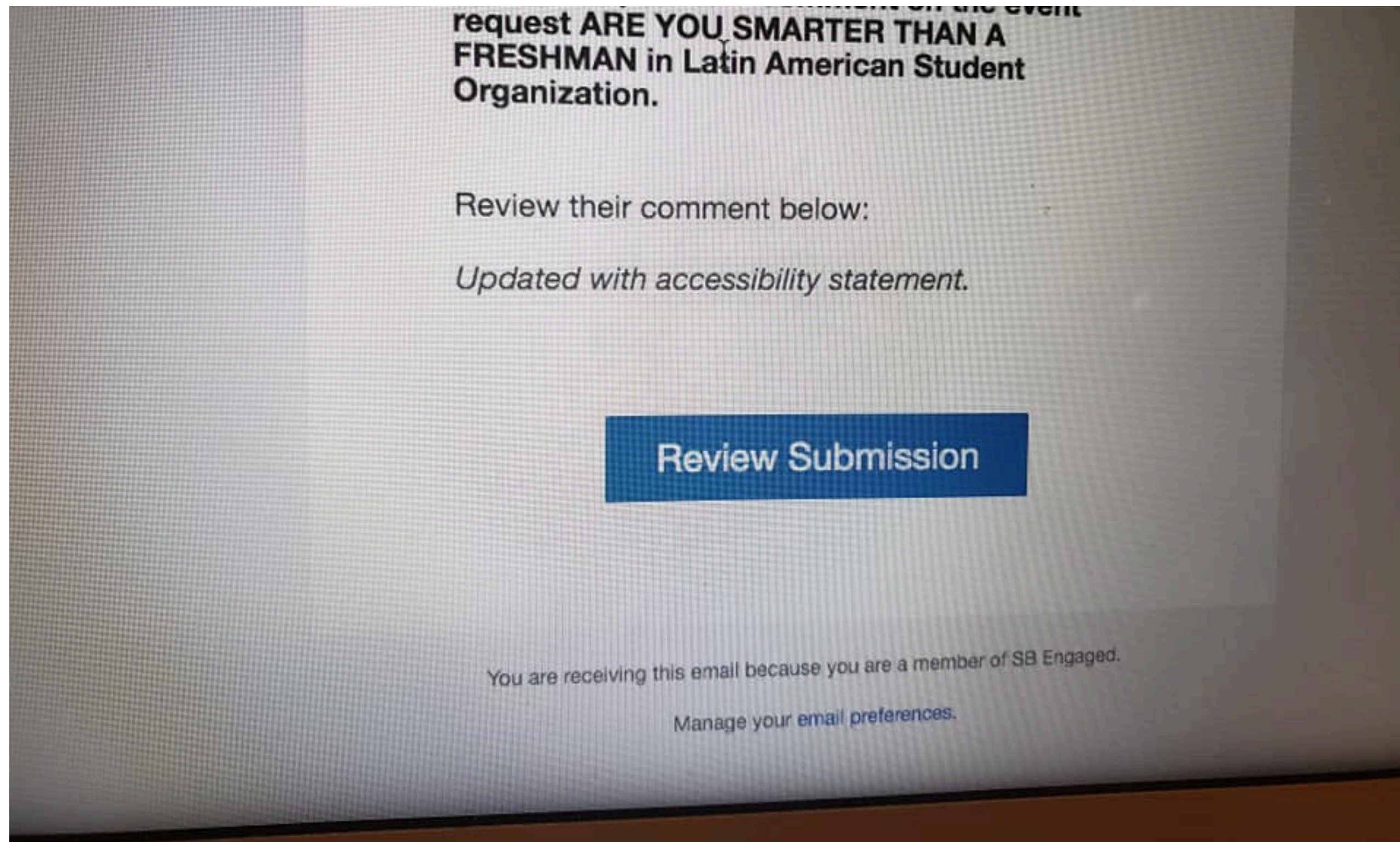
Changes to ADA buttons



Changes to announcements



Disability trainings



Still Fighting medical leave policies



Conclusion

- Imagine if instead of spending millions of dollars in lawsuits we spend it on accommodations and services for people with psychological disabilities/ mental health diagnoses
- Student advocacy/ Activism along with lawyers and policy makers can perhaps be the permanent change we long to see

Questions!

Contact Us



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🐦 Twitter.com/mentalhealtham
📺 Youtube.com/mentalhealthamerica





THANKS FOR COMING

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