

Documenting the Needs of Student Veterans with Disabilities: Intersection Roadblocks, Solutions, and Legal Realities

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Abstract

Colleges and universities are currently experiencing the greatest influx of student veterans with disabilities in the past several decades. These numbers will continue to increase substantially. Student DS providers must be prepared to understand and respond to the often unique and challenging disclosure, documentation, and accommodation issues that student veterans with disabilities can present. These issues, which are often related to combat injuries, may include a failure to self-identify, disabilities that are invisible, late-developing or interrelated, and significant delays in obtaining needed documentation from U.S. government agencies, in particular the Veterans Administration. At the same time, how the recently enacted ADA Amendments Act may impact these issues is not yet fully known. This article outlines practical strategies, advice, and solutions.

Just as in the years after World War II and during the Vietnam War, for many veterans, the opportunity to return to school is an important part of their transition back into civilian life (Wasley, 2008). The world of higher education is currently experiencing the greatest influx of military veterans in the past several decades. Furthermore, the number of student veterans on campus may increase significantly when the enhanced benefits in the Post-9/11 Veterans Educational Assistance Act of 2008 (the new GI Bill) take effect August 1, 2009. Fortunately, an increasing number of colleges and universities, as well as organizations serving the interests of higher education, are developing and implementing targeted initiatives to recruit, welcome and/or assist student veterans.

It is important to recognize, however, that the transition of veterans back to college and university campuses often presents unique, difficult, and unanticipated challenges for faculty, administrators and staff, and for the veterans themselves. For many of these students, both women and men, and especially for those who have served in combat situations, their military experiences have set them significantly apart from other students. Not only can their academic, developmental, and counseling needs be very different

from those of traditional-age students, they can also be very different from those of other nontraditional students without military experience (Herrmann, et al., 2008; Waybrant, 2008).

In particular, the complexity of identifying, documenting and responding to their disability-related circumstances and needs can be daunting for Disability Services (DS) providers for a number of reasons. For example, while some of the physical disabilities of combat veterans, such as the loss of a limb or eyesight, may be readily apparent, many service-related disabilities are invisible. This is especially true of today's more prevalent combat-related disabilities resulting from the use of explosive devices by insurgents in Iraq and Afghanistan. These disabilities include traumatic brain injury (TBI), hearing loss or impairment, post traumatic stress disorder (PTSD), and various other psychological issues. Also, student veterans, as well as veterans generally, are often hesitant to self-identify these and other disabilities acquired during their military service. Additionally, certain disabilities may take time to develop, and even the student may not easily recognize the effects of such disabilities (Austin, 2008; Bleiberg, et al., 2008; Herrmann, et al., 2008; Marquez, 2008).

A particular situation can be further complicated by the fact that the academic and developmental backgrounds of certain student veterans may also point to learning disabilities or related issues that may or may not have existed prior to their military service. In certain instances, perhaps because of economic circumstances, these issues were not diagnosed and/or properly addressed when they were students previously (Dervarics, 2008; Monroe, 2008; Waybrant, 2008). These issues also may have become more significant during their military service and may now intersect in some way with other service related issues.

Furthermore, in many instances, the evaluations, diagnoses, and documentation necessary to establish a student veteran's disability issues and to review and assess their accommodation needs may be tied-up in our government's bureaucracy. For DS directors and coordinators, the roadmap for unraveling these many issues can be difficult, frustrating and time-consuming to discern.

The good news is that, with deliberation and patience, these issues can generally be sorted out and the related difficulties overcome. This article will identify certain hurdles to serving student veterans with disabilities and will place these issues into a broader context for assessment and resolution.

Disability Disclosure Requirements and Hurdles

The requirement that colleges and universities provide academic adjustments or reasonable accommodations to students with disabilities is, of course, set forth in Section 504 of the Rehabilitation Act of 1973 and/or Title II of the Americans with Disabilities Act of 1990 (ADA). The obligation generally to begin the interactive process required to arrive at an appropriate "reasonable accommodation" starts with a student's self-identification of her or his disability.

As the U.S. Department of Education's Office for Civil Rights (OCR) makes clear in its guidelines regarding a student's legal rights under the Rehabilitation Act and/or the ADA, the "disclosure of a disability is always voluntary" (OCR, 2007). It has become apparent, however, that many students who volunteered for military service are not as inclined to volunteer to disclose their disabilities and related accommodation needs upon returning to the classroom (ACE, 2008). DS directors and coordinators have reported instances in which student veterans failed to identify disability and accommodation needs until after serious academic

or other issues developed (A. Ingala, personal communication, March 25, 2009).

There can be a number of reasons why student veterans with disabilities are hesitant to self-identify, even when faced with significant limitations and obstacles. Student veterans may simply want to blend in with other students. Disability service directors and counselors in the State University of New York System were queried on a professional listserv about their experiences serving veterans with disabilities (because they were guaranteed confidentiality, their names are not shared). One director shared an especially compelling story about a veteran who recently arrived on her campus. He was the sole survivor of his Special Forces unit in Iraq and had great difficulty walking because shrapnel had destroyed most of the muscle in one thigh.

When the semester began, the student was in such pain that he could not walk from the parking lots to class without stopping several times. However, he would not use a cane and refused to take pain medicine, because he feared becoming addicted. It was only after the Director pointed out that the University's disability parking tags were removable that she was able to convince him to start using disability parking spaces closer to the classroom buildings (Personal Correspondence, July 7 and September 16, 2008).

Issues in Self-Disclosure

In many instances, the failure of student veterans to come forward and self-identify is largely the result of cultural norms carried over from their experiences in the military. They had quickly learned that acknowledging, discussing, or reporting a personal problem or vulnerability would most likely prompt a negative reaction from superiors, as well as peers in their unit. Furthermore, while for both women and men, acting "macho" may be a desirable trait in a combat related situation, it can later prove to be a significant hurdle to addressing disability needs and securing appropriate accommodations (Ingala, 2008; Waybrant, 2008).

A student veteran with a disability may choose not to self-identify when the existence and extent of a disability is hidden from others. This is often true in cases involving TBI. Other invisible, service-related disabilities, such as PTSD, may be the source of significant embarrassment and depression for the student, and she or he does not want to disclose and talk about what they are experiencing to others.

Additionally, because of the unique situations they have encountered, student veterans may have other psychological or physiological disabilities, the effects of which they themselves may not have yet recognized or comprehended (Bleiberg, et al., 2008; Herrmann, et al., 2008).

Such disclosure issues and hurdles can clearly add to the frustrations of faculty members, student affairs staff, DS providers, and others who are involved in responding to the problems a particular student veteran is experiencing. In dealing with such situations, all of us need to understand that the student veteran with a disability who has failed to self-identify did not intend to create problems for herself or himself or others. Disability service providers and other campus faculty and staff need to be prepared to approach such matters with that insight and a great deal of patience.

Lastly, DS providers need to keep in mind that there is one possible exception to the requirement that students with disabilities self-identify. This may occur when the disability is obvious to an observer in a classroom or otherwise. Recently, in a case that arose in an employment context under the ADA and New York state law, the U.S. Court of Appeals for the Second Circuit held that an employer may have a duty to provide reasonable accommodations to an individual with a disability if that "disability is obviously known to the employer" (*Brady v. Wal-Mart Stores, Inc.*, 2008).

It is likely that this same outcome would be reached by the OCR or another court in a similar situation involving a student at an institution of higher education. As will be discussed, this may be especially true in view of the refocus regarding what will be required to establish a disability and the need for a reasonable accommodation under the recently enacted ADA Amendments Act of 2008.

Evolving Legal Obligation to Accommodate Student Veterans with Disabilities

On September 25, 2008, the President signed into law the ADA Amendments Act of 2008 (ADAAA). The Act expands the protections of the Americans with Disabilities Act of 1990 and took effect on January 1, 2009. Furthermore, while not a subject of significant attention, discussion and/or analysis to date in the legal press or by a number of related professional organizations and their publications, the ADAAA also amends and expands the protections of the Rehabilitation Act of 1973. Specifically, the Act

amends the terms "disability" and "individual with a disability" set forth in Section 7 of the Rehabilitation Act of 1973 to conform with the new definitions provided under the ADA.

The stated purpose of the ADAAA is to redefine the scope of protections provided by the ADA in accordance with the original intent of Congress when it conceived and enacted the Rehabilitation Act of 1973 and the ADA. The Act specifically rejects two Supreme Court decisions that more narrowly construed and applied the definition of disability and related terms.

In *Sutton v. United Air Lines, Inc.* (1999), the Court held that whether an "impairment substantially limits a major life activity" is to be determined with reference to the ameliorative effects of mitigating measures, such as "medication and other measures" (Id. at 482). In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, (2002), the Court applied a strict, narrow construction to the definition of "disability" and what is required to "substantially limit" a "major life activity" (Id. at 198). The Act expressly rejects and eliminates these requirements and provides new definitions for these terms and new rules by which they are to be applied.

Section 3(4)(E)(i) of the Act states that the determination of whether an impairment substantially limits a major life activity "shall be made without regard to the ameliorating effects of [certain] mitigating measures." Such measures specifically include, but are not limited to, "medication, medical supplies, equipment, or appliances, low-vision devices ..., prosthetics, ... hearing devices, mobility devices, ... oxygen therapy equipment and supplies; ... assistive technology; reasonable accommodations or auxiliary aids or services; or ... learned behavioral or adaptive neurological modifications."

By more broadly interpreting these terms, the ADAAA imposes a less onerous requirement for someone seeking to establish that she or he has a disability. In addition to the related effects of these changes, there are other issues addressed in the ADAAA that may have particular resonance for student veterans with disabilities. First, the Act specifically adds "concentrating" and "thinking" to its expanded, non-inclusive listing of "major life activities." This may be particularly important in situations involving student veterans with combat related disabilities such as TBI that may include significant cognitive impairment. The legislative history of the ADAAA makes clear that a

student who has “performed well academically” may still be substantially limited and disabled with regard to related academic activities such as “learning, reading, writing, thinking, or speaking.”

Second, the ADAAA places a greater focus on “whether entities covered under the ADA have complied with their obligations” to provide required accommodations. In focusing on this issue, the Act specifically states that “the question of whether an individual’s impairment is a disability … should not demand extensive analysis.” At this point, it is not clear whether this provision may be interpreted in such a way that it will have an impact on existing institutional standards and requirements for disability related documentation (Shackelford, 2008).

In fact, there are presently a number of unanswered questions regarding issues related to the ADAAA. To date, neither the Department of Education (DOE) nor the Equal Employment Opportunity Commission (EEOC) has introduced conforming regulations, interpretations and/or enforcement guidelines to respond to the changes mandated by the ADAAA (DOE, 2008; EEOC, 2008). Therefore, it is not yet clear how the ADAAA will be interpreted and applied generally regarding student-related disability and accommodation issues by the OCR and other applicable federal agencies. Readers will need to follow these issues on the web sites of the DOE and the EEOC and in various professional publications, as they relate to students with disabilities generally and to student veterans with disabilities in particular.

Documentation Sources and Requirements for Student Veterans with Disabilities

A college or university may establish reasonable standards and requirements regarding the scope and timeliness of documentation needed to establish a student’s disability and related accommodation needs pursuant to the Rehabilitation Act of 1973 and/or the ADA. Meeting these requirements can, of course, become an issue for any student with a disability.

However, as most DS directors and coordinators have discovered, obtaining copies of the documentation required by their institution to respond to disability and accommodation scenarios of student veterans can be especially daunting. Most often the source of such documentation is the bureaucracy of our federal government, usually the Department of Veterans Affairs (VA). Unfortunately, it is not unusual to discover that

a student veteran’s records have been misplaced, improperly filed, lost or inexplicably destroyed (Michel, 2008). At the very least, the delay in obtaining a response from the VA can be problematic.

The above-referenced student at the SUNY system university first came to the attention of the Director of Student DS because his VA paperwork was delayed and his benefits had not been approved. This created issues for a number of offices on campus, including the registrar, the business office, the bookstore, student affairs, the department chair of his major, and DS. The Director persuaded the Dean of Students to contact the VA to verify the student’s status and benefits, and the university made an exception to allow him to continue as a student and respond to his disability needs while waiting to receive his VA paperwork. As the Director insightfully stated, “bureaucracy cannot compensate for a caring attitude and common sense” (Personal Correspondence, September 16, 2008).

The following is a roadmap and checklist that identifies specific, relevant government forms and outlines the sources of such documentation to assist veterans requesting DS and accommodations. It is a roadmap that can require deliberate attention to detail, coupled with patience and the aforementioned caring attitude and common sense, to reach the goals and obligations of the student veteran, the institution and the DS providers involved in a particular situation (Shackelford, 2008).

- *DD Form 214, Certificate of Release or Discharge from Active Duty.*

Some colleges and universities have experienced instances in which a student falsely claimed to have served in the military. This form is issued when a service member completes active duty. The information it contains will verify a student’s military service. If a student veteran does not have a copy of this form available, she or he can obtain it by submitting a Standard Form SF-180 as indicated below.

- *Standard Form SF-180, Request Pertaining to Military Records.*

A student veteran may submit this form to The National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, Missouri 63132-5100 to obtain missing military records. It is important to note that for students who were separated from active duty prior to April 1,

1998, depending on their branch of service, their medical records and related health information may be stored at this location instead of at the Veterans Administration. The SF-180, which is available online, may be mailed or faxed (1-314-801-9195) or submitted using the eVetRecs request system (<http://www.archives.gov/veterans/>).

For student veterans who were separated from active duty more recently, their medical records are maintained by the VA. Those records may be requested by submitting one of the following forms, both of which are available online at http://www.va.gov/vaforms/search_action.asp:

- *VA Form 10-5345 (May 2005), Request for and Authorization to Release Medical Records or Health Information.*
This is the form to use if the student is authorizing a campus professional to obtain medical records on her or his behalf.
- *VA Form 105345a (May 2005), Individuals' Request for a Copy of Their Own Health Information.*

This is the form to use if the student is making the request for her or his medical records. Submit either of these requests to the Department of Veterans Affairs, Records Management Center, P.O. Box 5020, St. Louis, Missouri 63115-5020, unless the student has recently received treatment at a VA Hospital or has filed a disability claim related to injuries received while on active duty. If so, her or his records are most likely located at the particular hospital or at the VA Regional Office nearest the student's home of record. If there is any question regarding the location of such health records, contact the VA at 1-800-827-1000.

Suggestions for Addressing Vets' Disclosure, Documentation and Accommodation Issues

To respond to the often unique and difficult issues facing student veterans with disabilities as they transition back into civilian life and begin to pursue their higher education ambitions, it is important that applicable institutional policies, procedures and protocols incorporate the evolving best practices for meeting the needs of these students. Key points to consider include the following concepts and requirements:

1. Take a creative and flexible approach to looking at the options and alternatives that may be available to address the needs of student

veterans with disabilities. Keep in mind that their interrelated needs can be very different from those of most other students.

2. Ensure that disability-related policies, procedures and protocols are made available to prospective student veterans in a user-friendly format that explains the role and specific responsibilities of students in the disability disclosure, documentation and accommodation process.
3. Look for creative ways for the institution and DS Office to establish rapport with student veterans on campus. Because of their experiences in the military and dealing with the VA, they may be suspicious of any administrative bureaucracy and its requirements. Also, veterans often have a very personal bias that "to talk-the-talk, you must have walked-the-walk." They have a tendency to be more open and willing to talk about their problems and needs with someone whom they view as having shared a common experience. To address these issues, your institution may wish to establish a veterans support group and/or an administrative office of veterans affairs. Within the DS area, consider identifying someone who has served in the military or has a family history of military service and can relate and talk to student veterans on a personal level.
4. Become familiar with the health benefits provided to student veterans through the VA and other options that may be available through state and local agencies if the VA is not doing what it is supposed to do in a timely fashion. For example, in the SUNY system example, the VA failed to arrange for physical therapy to address the student's pain and mobility issues. The Director of Student DS advised the student to inquire whether such therapy might be available under the health insurance plan at his part-time job. It was, and he received the necessary treatment (Personal Correspondence, July 7, 2008).
5. Understand that the military's standards for determining that someone is disabled for the purpose of discharging them from service or for awarding benefits, as well as the VA's standards for determining disability claims, are

- different from the standards that define a person with a disability under the Rehabilitation Act of 1973 and the ADA. Therefore, institutional evaluations and determinations need to be done separately.
6. Anticipate that it will generally take at least three or four weeks to receive copies of records requested from the VA. A counselor in the Student Success Services office at a SUNY system university pointed out that records concerning mental health diagnoses have been significantly delayed, in large part, because of the VA's recent prioritization and focus of resources on TBI and related issues (Personal Correspondence, July 3, 2008). If there is delay longer than four weeks in obtaining records from the VA, the student should contact the VA at 1-800-827-1000 to follow-up.
 7. As with all students, employ a comprehensive risk-management perspective when considering reasonable accommodations. If there is some issue in a student veteran's background which suggests that certain potential risks to the health and safety of the particular student or others need to be considered, analyze such risks. Consult with other offices on campus, as appropriate, to review and consider how best to respond under the circumstances.
 8. Familiarize yourself with the variety of programs being developed at various colleges and universities, as well as by various higher education organizations, to serve the special needs of student veterans. For example, review the specific programs that have been developed by the American Council on Education (ACE). Information regarding these programs is available at the ACE web site. Another program that has received significant attention recently is the "Combat2College" program developed by Montgomery College, also available at the college's web site.
 9. When new regulations, interpretations and guidelines are issued by the OCR and EEOC in response to the ADAAA, review applicable institutional policies, procedures, protocols and related forms to ensure that the language is consistent with the stated requirements. Revise these policies as necessary and alert students, faculty, administrators and staff to

the changes.

10. Provide training for faculty and student affairs and residence life staff about the unique circumstances and needs of student veterans with disabilities. Emphasize their institutional, academic and legal responsibilities in this area.

Summary

A significant number of students are currently enrolled at institutions of higher education who previously served on active duty in the military, and it is anticipated that these numbers will increase when the enhanced benefits of the new GI Bill become available in 2009. Under the best of circumstances, the transition of military veterans back onto college and university campuses can present difficult academic and developmental challenges for faculty, administrators and staff and for the student veterans themselves.

Within the ranks of these student veterans are a substantive number with disabilities, many the result of their combat related injuries. Student DS providers must be prepared to recognize and understand the often unique disclosure, documentation, and accommodation issues and circumstances of student veterans with disabilities, as well as the potentially unique aspects of the disabilities themselves. Whether it is their hesitancy to self-identify, the sometimes hidden or unknowable effects of their disabilities, or the frustrating roadblocks to obtaining needed background documentation, DS directors and coordinators must be prepared to respond to the needs of student veterans with positive, proactive solutions. By educating themselves and other professionals on campus concerning the particular issues and challenges of serving this expanding student population, DS professionals will be better positioned to assist student veterans with disabilities in achieving their life's objectives and ambitions.

References

- ADA Amendments Act of 2008, Public L. No. 110-325 (2009).
- American Council on Education. *Serving those who serve: higher education and America's veterans*. Retrieved November 11, 2008, from <http://www.acenet.edu>

- Association on Higher Education and Disability. *ADA Amendments Act of 2008, policy implications for accommodating students with disabilities*. Retrieved November 17, 2008, from <http://www.ahead.org/resources/government-relations>
- Austin, J. (2008, November 5). Life after career-ending injury: Former soldier finds hope through Veterans Employment Opportunity Act. *Herald Post*. Retrieved November 24, 2008, from <http://www.army.mil/-news/2008/11/05/13896-life-after-career-ending-injury-former-soldier-finds-hope-through-veterans-employment-opportunity-act/>
- Bleiberg, J., Leskin, G., Sachs, R., Pollack, S., Haddad, S., Reinhard, M., et al. (2008). Montgomery College. *Combat2College ("C2C"), facilitating college success for combat veterans*. Retrieved November 11, 2008 from <http://www.montgomerycollege.edu/combat2college/>.
- Brady v. Wal-Mart Stores, Inc.*, 531 F.3d 127 (2nd Cir, 2008).
- Dervarics, C. (2008). Disability bill divides higher ed groups. *Diverse Online*. Retrieved November 18, 2008, from http://www.diverseeducation.com/artman/publish/printer_11452.shtml
- Equal Employment Opportunity Commission (2008). *Notice concerning The Americans With Disabilities Act (ADA) Amendments Act of 2008*. (Last modified 2008, October 6). Retrieved November 3, 2008, from http://www.eeoc.gov/ada/amendments_notice.html
- Herrmann, D., Raybeck, D., & Wilson, R. (2008). College is for veterans, too [Electronic version]. *The Chronicle of Higher Education*, 55.
- Ingala, A. (2008). Working with military veterans in a university setting: A hidden minority. Retrieved March 18, 2009, from <http://tilt.colostate.edu>
- Marquez, K. (2008, October 23). Amputee shares story, encourages community. *Herald Post*. Retrieved November 24, 2008, from http://www.ngb.army.mil/news/archives/2008/10/102808-amputee_story.aspx
- Michel, L. (2008, August 18). Veterans fight lengthy war over benefits. *The Buffalo News*. Retrieved September 2, 2008, from <http://www.buffalonews.com/cityregion/story/417251.html>
- Monroe, S. (2008, July 25). *Dear colleague letter*, Office for Civil Rights.
- Office for Civil Rights. *Students with disabilities preparing for postsecondary education: Know your rights and responsibilities*. (2007, September).
- Office for Civil Rights. *Disability discrimination, The Americans with Disabilities Act Amendments Act of 2008*. (Last modified 2008, December 29). Retrieved January 12, 2009, from <http://www.ed.gov/policy/rights/guid/ocr/disability.html>
- Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, Title V (2009).
- Shackelford, A. L. (2008, June). Learn how to obtain documentation for vets' accommodation requests. *Disability Compliance for Higher Education*, 13(11).
- Shackelford, A.L. (2008, December). Understand that ADA Amendments Act also amends the Rehab Act. *Disability Compliance for Higher Education*, 14(5).
- Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).
- Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).
- Wasley, P. (2008). Lawmakers seek increase in GI-Bill aid for reservists [Electronic version]. *The Chronicle of Higher Education*, 53.
- Waybrant, J. (2008). Veterans returning to college. Disabled Student Services in Higher Education email, September 10, 2008.

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