

Access versus success: Services for Students with Disabilities in Postsecondary Education

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Increasingly, students with disabilities are pursuing postsecondary education at two-year and four-year universities as well as vocational schools (OCR, 2011a). According to the National Center for Educational Statistics (1999), during the 1995-1996 academic year, approximately 6 percent of the undergraduate population reported having a disability. By 2007-2008, approximately 11 percent of the undergraduate population reported having a disability (NCES, 2013). The National Center for Special Education Research (2005) reported that nearly a third of students with disabilities pursued some form of postsecondary education (e.g., four-year colleges, two-year colleges or vocational schools) within two years of leaving high school. It should be noted that these statistics are likely to underrepresent students with disabilities on campus, as they reflect only those who elect to disclose that they have disabilities.

According to one longitudinal study, individuals in certain disability categories were more likely to pursue postsecondary education; 78% of youth with visual impairments, 72% of those with hearing impairments, 58% of students with autism, 55% of those with speech/ language disabilities, 55% of those with deaf-blindness, 55% of those with other health impairments, 54% of individuals with orthopedic impairments, and 52% of youth with traumatic brain injuries enrolled in education beyond high school (NCSER, 2005). By comparison, fewer youth with emotional disturbances (34%), multiple disabilities (35%) or intellectual disabilities (27%) enrolled in postsecondary educational opportunities (NCSER, 2005). As the postsecondary student population diversifies with regard to presentation and need, it is critically important to examine the rights of these students as well as the legal obligations of those who work in higher education. Without a clearly developed understanding of such, many of us who serve in the capacity of postsecondary educator may not only be putting ourselves and our employing institutions at risk for litigation, but also underserving our students.

Relevant Educational Laws

Those who work with students with disabilities in the public (K-12) schools should be familiar with the laws related to the provision of services therein. Chief among those federal laws commonly referenced is the Individuals with Disabilities Education Act (IDEA, 1994; IDEA, 2005), with other laws such as Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), and No Child Left Behind (NCLB) also informing practices within the K-12 setting (Osborne & Russo, 2014). Mooney (2014) suggests that the IDEA is the “principal source for the legal responsibilities of boards of education with respect to special education” (p. 469). Thus, within the public elementary/ secondary educational system, educators are primarily concerned with adherence to the IDEA as it pertains to the legal responsibilities of the school in its provision of appropriate services to students with disabilities.

The IDEA recognizes 13 disability categories and ensures that children with disabilities are provided a “free and appropriate public education” (FAPE) through the provision of services, accommodations and modifications specifically designed to meet these children’s unique needs. It requires that students meet four criteria in order to qualify for services: (1) they must be between the ages of 3 and 21, (2) they must have specifically identified disabilities, (3) they must be in need of special education (i.e., they must require specially designed instruction in order to receive a free and *appropriate* education), and (4) they must be in need of related services when necessary to benefit from their special education (Osborne & Russo, 2014). The IDEA protects the rights of children with disabilities and their parents through a system of procedural safeguards that place extensive responsibilities on school officials (Osborne & Russo, 2014). For example, schools must provide written notice and obtain parental consent before testing students, assigning placements to students, or altering

placements for students. Additionally, parents must be included in the process of developing individualized education plans (IEPs) for their children, students' progress must be reviewed at least annually, and students must be reevaluated at least once every three years (IDEA, 2005).

Postsecondary Settings

While IDEA offers protections to elementary and secondary students, it (and its Individualized Education Program provisions) does not apply to postsecondary institutions (OCR, 2011a). The high number of prescribed practices associated with IDEA in which elementary and secondary schools must partake does not exist for postsecondary educational institutions; there is no comparable legal requirement for postsecondary schools to identify students with disabilities, nor is there an equally detailed system of procedural safeguards related to special education services. There is no similar educational law under which postsecondary institutions are legally required to provide students with disabilities individualized educational programs as IDEA requires of elementary and secondary schools, nor are there legal requirements obligating postsecondary schools to review the progress of students with disabilities toward established educational goals. Rather, antidiscrimination legislation is the primary source used to inform decisions regarding how postsecondary educational institutions address the needs of students with disabilities. As such, there are two primary laws to which institutions of higher education must attend: (1) Section 504 of the Rehabilitation Act of 1973 (Section 504) and (2) the Americans with Disabilities Act (ADA, 1990) and its amendments (ADAA, 2008).

Section 504 provides that, “no otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...” (29 U.S.C. § 794). Section 504 and the Americans with Disabilities Act are nearly identical with regard to the nondiscrimination requirements as they apply to public entities (see <http://www.wrightslaw.com/info/sec504.summ.rights.htm>).

These laws prohibit postsecondary educational institutions from denying admission to students on the basis of their disabilities (OCR, 2011a). That said, postsecondary schools have the right to establish criteria for admission and may deny

admission to any prospective students, with or without disabilities, who do not meet the essential requirements for admission (OCR, 2011b). Insofar as students with disabilities meet the essential requirements for admission, they should expect to be granted admission in the same manner and at the same rate as nondisabled peers. Further, once admitted, these laws assert that students with disabilities may be entitled to receive “reasonable accommodations” based on their disabilities. That which defines the term “reasonable accommodations” will be discussed later herein.

Broad Legal Definitions

An individual with a disability is defined by Section 504 as someone “who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment” (29 U.S.C. § 794). Physical and mental impairments are defined somewhat broadly, and thus, while a list of representative examples is provided within the law, it is noted that the list is not exhaustive, as the definition may include a vast number of impairments. Further, Section 504 defines “major life activities” to include actions such as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working” (Russo & Osborne, 2009). The ADA provides the same definitions for an “individual with a disability” and “major life activities” as does Section 504. Because these definitions allow for some degree of interpretation, the piece requiring individuals to “have a record of such an impairment,” often appears to be the critical component upon which the receipt of services hinges within postsecondary settings. This point will be explored later herein.

Though Section 504 protects elementary, secondary, and postsecondary students from discrimination, these protections are afforded only to those enrolled in “programs or activities that receive federal financial assistance” (29 U.S.C. § 794). For this reason, it could be argued that Section 504 may be less relevant in postsecondary settings as compared with the Americans with Disabilities Act; however, it has been suggested that financial aid to students, which nearly all postsecondary institutions receive, qualifies as “federal financial assistance” and therefore nearly all institutions meet this criterion (G. Adele, personal communication, March 10, 2015). Only some of the requirements set forth by Section 504 apply beyond the high school years. For example, the required provision of a free and appropriate education (FAPE) to children with disabilities pertains only to the elementary and

secondary public schools, as does the requirement that schools “must identify [students] with educational needs and provide regular or special education and related aids and services necessary to meet those needs” (OCR, 2011a). The ADA extended to the private sector the provisions afforded to individuals with disabilities through Section 504, with the purpose of providing a more global mandate against the discrimination of individuals with disabilities (Osborne and Russo, 2014; Russo & Osborne, 2009). Taken together, these points may more practically speak to the reason why the Americans with Disabilities Act (1990; ADAA, 2008) is commonly considered the more relevant law when considering individuals with disabilities in postsecondary settings. Nonetheless, both laws aim to improve access to accommodations for students and adults with disabilities (Hachiya, Shoop & Dunklee, 2014).

Access Versus Success

The IDEA aims to serve the inherent function of providing supports for students with disabilities to succeed and NCLB promises consequences to school districts wherein the *all* students are not making Adequate Yearly Progress (AYP). It seems the spirit of the laws specifically pertaining to students in elementary and secondary educational settings (e.g., IDEA, NCLB) aims not only to aim to *protect*, but also to *support* students’ success in education through the requirements of evaluation, placement, review and the associated strict timelines. By contrast, the laws relevant to postsecondary educational opportunities do not appear to reflect the same goals. Whereas IDEA places the burden of responsibility on the public elementary and secondary schools, the burden of finding and advocating for services at the postsecondary level largely rests with the student with a disability (Newman, Wagner, Cameto, & Knokey, 2009).

Section 504 and ADA prohibit discrimination against individuals with disabilities on the basis of their disabilities, and allow that they may receive accommodations and modifications that are not available to non-disabled peers. Unlike IDEA, which entitles children ages 3-21 to free and appropriate public education specifically designed to meet their individual educational needs and in a manner from which they derive educational benefit, Section 504 and ADA offer no safeguards that serve to guarantee that one will derive educational benefit (<http://www.wrightslaw.com/info/sec504.summ.rights.htm>). While these federal laws require that postsecondary educational settings ensure that no

discrimination based on disability interferes with students’ rights to *access* their education, these laws only establish a minimum standard in terms of that which universities must offer with regard to supports/academic adjustments. In other words, the ADA requires only that institutions permit students with disabilities proper *access* to these opportunities in a nondiscriminatory manner, but does not promise *success* in the form of educational gains. As such is the case, postsecondary institutions may face legal ramifications if it is found that they have discriminated against a student with a disability. However, unlike the consequences likely to ensue when public elementary or secondary schools fail to assist students in making progress through the provision of best practices, it is unlikely that postsecondary institutions would face any consequences if the accommodations or modifications provided to a student were not optimal or if they did not result in the student’s academic success.

Reasonable Accommodations

As aforementioned, postsecondary schools are not legally required to lower their admission standards, nor are they required to provide anything more than reasonable accommodations or academic adjustments (Russo & Osborne, 2009). Section 504 (29 U.S.C. § 794, 2005) defines academic adjustments as:

modifications to academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability against a qualified applicant or student [with a disability]. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

A reduced course load, extended time on tests, and the provision of auxiliary aids and services may also be included as academic adjustments (OCR, 2011b). Auxiliary aids and services are defined by Section 504 and Title II of the ADA (28 C.F.R. § 35.104).

Common examples include: note takers, readers, recording devices, sign-language interpreters, screen-readers, voice recognition and other adaptive software or hardware for computers (G. Adele, personal communication, March 10, 2015; OCR, 2011b).

There are circumstances wherein exceptions to the provisions afforded by ADA are permissible and students may be denied accommodations and/ or modifications; they are: (1) if an undue financial burden will be incurred by the university, (2) if an administrative burden will result (i.e., if many people are required to accommodate the student such that it becomes a multi-layered and administratively cumbersome process), and (3) if the accommodations or modifications alter the nature of the academic program (i.e., if a program requirement were to be waived due to a student's disability in that domain, this would alter the requirements in a way that would create different expectations for students with disabilities versus those without) (OCR, 2011b). The first among these points is often difficult for universities to prove in that the budget that must be considered is that of the institution, not that of the office providing services to students (G. Adele, personal communication, March 10, 2015). However, it is permissible that if a student with a disability requests an auxiliary aid or service that might create a financial or administrative burden to the school, and the school believes that an effective alternative exists, the school may provide the student with the alternative aid or service (e.g., an audio recorder for lectures as opposed to an individual note-taker) (OCR, 2011b). With regard to the third exception listed above, it is important to note that once admitted, students with disabilities must meet the standard requirements for advancement in their programs without modifications that would alter these fundamental requirements (Russ & Osborne, 2009). Interestingly, most courts "defer to school officials to determine whether requirements are essential to the nature of their programs" (Russo & Osborne, 2009, p. 56).

According to the Director of the Disability Resource Center at my employing institution, it is at the discretion of the university to offer more support to students than those which are established by the minimum standards of the law; often this depends on that which the university (or its office of disability services) has established as its overarching mission related to student success, (G. Adele, personal communication, March 10, 2015). Consequently, the provision of disability services in postsecondary educational settings has the potential to vary greatly

from school to school (OCR, 2011b). Universities often base decisions on practice standards (current operating practices within the industry or movements/ changes within the industry) as well as that which can be gleaned from the advisory letters provided by the Office for Civil Rights' "Dear Colleague" letters (G. Adele, personal communication, March 10, 2015).

Additional Obligations of Postsecondary Educational Institutions

The ADA requires that postsecondary schools designate at least one individual as the person responsible for coordinating the efforts related to compliance with Title II of the ADA. Often this person is referred to as the "ADA Coordinator," or "Disability Services Coordinator" though this is not a title specifically prescribed within the law (OCR, 2011a; also retrieved from: <http://www.ada.gov/pcatoolkit/chap2toolkit.htm>). Again, there is substantial variability with regard to how this is addressed at various postsecondary schools; at some, the efforts associated with compliance to the ADA and Section 504 are the sole responsibility of one individual, whereas other schools have large offices with many staff members orchestrating these efforts. Whether an individual or a designated office, the contact information (name, phone number, office location, etc.) must be readily available to anyone requesting it (retrieved from: <http://www.ada.gov/pcatoolkit/chap2toolkit.htm>).

Postsecondary schools must also establish grievance procedures and make those easily accessible to students. Often, these are published in documents such as student handbooks or catalogs and available on school webpages (OCR, 2011a). If students believe that an institution is discriminating against them, they may also file a complaint with the Office for Civil Rights (OCR, 2011a). Again, the burden of proof rests with the student with a disability.

Required Documentation for Services

Though "neither the ADA nor Section 504 specifically requires that individuals with disabilities have certificates from doctors or psychologists in order to be covered under its provisions" (Russo & Osborne, 2009, p. 27), the Office for Civil Rights has suggested that postsecondary schools "may set standards for reasonable documentation," as long as these standards comply with Section 504 and Title II of the ADA (OCR, 2011a; OCR, 2011b). Presumably, this is related to what was highlighted earlier herein as one of the key factors determining whether or not students

receive services in postsecondary settings. Referring back to the definition provided within Section 504 and the ADA, it reads that the individual, “has a record of such an impairment, or is regarded as having such an impairment.” Nonetheless, most postsecondary schools have a policy that requires students to provide evidence of an existing disability (OCR, 2011a). Such policies typically do require that students provide documentation that they currently have a disability and that said disability requires some form of an academic adjustment (OCR, 2011a).

Potentially Complicating Factors

It is suggested here that there are a number of factors that might potentially complicate the ability of students with disabilities to gain access to services at the postsecondary level, only several of which will be discussed below. First, if students do not have recent documentation of a current disability and the need for services, they may be denied. Requirements regarding the recency of the documentation are established at the discretion of the university. Given university policies regarding gaining access to disability services are applied in the same manner to both undergraduate and graduate students, this may result in an additional financial burden for some more advanced students. Whereas many undergraduate students may have recent documentation (e.g., a psychoeducational evaluation conducted during the latter part of high school) readily available, graduate students may be further removed from the public educational system wherein they previously received services, and thus may be required to undergo a new evaluation in order to provide evidence of a need for an academic adjustment. The expense associated with an evaluation performed by an appropriate professional may be quite costly and incurred by the student, as the university is not required to pay for such evaluations (OCR, 2011a).

Second, given the need for students with disabilities to self-identify and self-advocate, there may be some students with disabilities who do not seek assistance, even though so doing would be greatly assistive to them. There are many reasons for which some students with disabilities may not self-identify, not the least of which may be due to the stigma (or perceived stigma) associated with having a disability. This may be especially true for students with mental health challenges, given the common presence of stigma and misunderstandings associated with mental illness in our society. Additionally, some students with certain disabilities may lack the skills necessary to appropriately seek assistance.

Third, it bears noting that some students with disabilities may not be readily identified in their public secondary educational environments for a number of reasons. For example, when high schools are fairly accommodating for *all* students or have strong systems of supports (i.e., an effective execution of the Response to Intervention framework), high school students may not manifest difficulties severe enough to warrant referral and subsequent qualification for services. When these students transition to the postsecondary setting, wherein expectations change and accommodations are not readily available, they may begin to struggle.

Conclusion

Beyond that which the law compels us to do as educational leaders at the K-12 or postsecondary levels, we should embrace the shared responsibility that we have as a society to advance the learning of all persons. Whether or not one espouses the idea set forth by the African proverb that “it takes a village to raise a child,” we comprise a society wherein the betterment of one has implications for the betterment of all. *Access* is insufficient in advancing the likelihood that students with disabilities at postsecondary institutions will actualize their greatest potential. As educational leaders at any level, we should commit ourselves to ensuring that students of any age receive that which they need to derive the greatest benefit from their education and *succeed*, whether through legal channels or other forms of advocacy.

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