

OCR Rulings Under Section 504 and the Americans with Disabilities Act: Higher Education Student Cases

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Abstract

This study provided a quantitative analysis of a random sample of 167 National Disability Law Reporter-published letters of findings by the U.S. Department of Education's Office for Civil Rights in response to higher education student complaints under Section 504 and the Americans with Disabilities Act. Inasmuch as each letter of findings contained, on average, two issues, a total of 346 issue rulings were the basis of the analysis. The number of these rulings per year was lower during the last five years of the 1990-98 period of the study. The outcome of the rulings favored the institutions of higher education, over the student complainants by a 2:1 ratio; however, the ratio in favor of institutions was lower for letters of findings as a whole because each letter covered approximately two issues. Type of the disability and type of the issue were significant outcome-related factors. More specifically, the success rate was significantly higher for students with mobility or hearing impairments and for complaints regarding general institutional requirements and facilities accessibility than for students with other disability or issue categories.

During the past two decades, the number of students with disabilities attending institutions of higher education (IHEs) in the U.S. has increased dramatically (Thompson, Bethea, & Turner, 1997). For example, in 1998, slightly more than 9% of entering freshmen (Henderson, 1999) self-identified as having a disability compared to less than one percent in the early 1970s (Cook & Laski, 1980).

One of the reasons for this increase has been the passage of federal legislation to prevent discrimination of "qualified" students with disabilities in the United States. The two U.S. statutes that provide protection for such students are Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (ADA). Section 504 applies to all programs and activities, including facilities, transportation, and academic offerings, at all colleges and universities that receive federal financial assistance. The ADA reinforces the requirements of Section 504 at such institutions and extends them to the

relatively few private IHEs that do not receive such federal assistance.

Prior or alternative to resorting to lawsuits, students may seek enforcement of Section 504 or the ADA by filing a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). In a study of the published letters of findings (LOFs) issued by OCR in response to student complaints in elementary and secondary education from 1978 to 1995, Zirkel (1997) found that starting in 1991 the frequency of the rulings declined and the balance of outcomes shifted from the students to the school districts. Although the professional literature provides an adequate review of the pertinent published court decisions (Milani, 1996; Rothstein, 1998; Zirkel & McMenamin, 1999;), it does not provide corresponding coverage of the published OCR rulings.

The literature lacks systematic study of OCR's rulings in response to college and university student complaints. For example, information on frequency or outcomes would assist IHEs in assess-

ing the extent of their vulnerability to such complaints and would help students decide whether to pursue lawsuits. In addition, it would help researchers determine related areas in need of empirical study.

The primary purpose of this study was to determine the frequency and outcomes for published OCR rulings in response to complaints filed by students against IHEs under Section 504 and the ADA. The independent variables for the cases were year of the ruling, institution type, disability type, and case issue. The dependent variable of outcome was classified into two categories – student prevails and IHE prevails – on an issue-by-issue basis for each published LOF.

Method

Inasmuch as our efforts, including a Freedom of Information Act (FOIA) request, were unsuccessful in obtaining a comprehensive sampling of cases from OCR, the accessible population for the study consisted of all 294 OCR LOFs published by the *National Disability Law Reporter* (NDLR) from 1990 through 1998 concerning IHE student complaints under Section 504 and the ADA. Published by LRP Publications, NDLR is a primary source for full-text LOFs in education and other sectors. LRP published NDLR for the first time in 1990; earlier IHE cases only appeared infrequently in LRP's elementary/secondary-oriented *Individuals with Disabilities Education Law Report*. The sample consisted of a random selection of 167 LOFs, the requisite number for representativeness according to Krejcie and Morgan's (1970) sampling formula. Each of these 167 LOFs contained, on average, 2.07 issues. Per the model of Zirkel's (1997) study in elementary/secondary education, the ruling for each issue was the unit of analysis. Thus, the sample consisted of 346 issue rulings.

Paralleling Zirkel's (1997) study, the coding instrument was a set of operationally defined variables specific to the context of higher education. A spreadsheet and accompanying protocol, or coding guide, identified five variables for which information was generally available in the LOFs. First, the year of ruling was the year that OCR issued

the LOF, from 1990 to 1998. Second, the institution type was public or private, based on the "affiliation or control" status listed in the *Higher Education Directory* (1998). Third, the disability type consisted of seven broad categories: learning disability, hearing impairment, visual impairment, mobility impairment, psychological disorder, multiple disabilities, and miscellaneous (including ADD/ADHD). Fourth, the case issue categories – guided by the Section 504 and ADA regulation sections applicable to IHEs – were as follows: general requirements (e.g., 504/ADA coordinator and grievance procedure); facilities (e.g., existing and new); admissions; treatment of students (e.g., dismissal and retaliation); academic adjustments (e.g., accommodations for courses/examinations and auxiliary aids/services); and miscellaneous other issues (e.g., financial aid and extracurricular programs). Finally, the outcome was either student prevailed or IHE prevailed.

After a pilot phase where the two authors finalized the coding protocol, they independently coded 15 randomly selected LOFs, yielding a 95% interrater reliability in terms of an average agreement level across the five variables. One of the coders, the principal author of this article, then coded the 346 issues rulings for the 167 LOFs in the sample.

After coding, the data were compiled in terms of frequency and outcomes both on an overall basis and for each independent variable (e.g., institutional type). In addition to the descriptive statistics, such as percentages, chi-square analysis was used to determine whether there were statistically significant associations between the selected independent variables and the outcomes.

Results

For the total sample (N = 346), the IHEs prevailed in 228 (65.9%) of the rulings, whereas the students prevailed in the remaining 118 (34.1%). Thus, the defendant-institutions were successful overall on a 2-to-1 ratio in comparison to the complainant-individuals.

The frequency of the issue rulings for the total sample seemed to form, with some variation, two

successive levels. That is, the first four years of the period under study (1990 - 28; 1991 - 67; 1992 - 64; 1993 - 66) accounted for 65.7% of the rulings, whereas the second five years (1994 - 27; 1995 - 38; 1996 -16; 1997 - 17, 1998 - 23) generally represented a lower level of published activity.

On the other hand, the outcomes for these rulings remained relatively consistent for the entire nine-year period of the study. IHEs prevailed in a majority of rulings for each year except 1992, which was evenly split. For the years other than 1992, the percentage in favor of IHEs ranged from 55.6% in 1994 to 93.7% in 1996. The chi-square value of 19.57 evidenced a statistically significant association, at the .05 level, between outcome and year of

ruling. The post hoc analysis, using the Bonferroni method of adjustment (Glass & Hopkins, 1970), revealed no significant difference between any two years, including pairwise comparison of 1992 and 1996. Thus, the differences among the years may be attributable to the combination of other years in comparison to either of these high and low years.

Separating the frequency and outcome compilations into the two broad types of IHEs revealed that public IHEs accounted for almost three quarters of the rulings. However, chi-square analysis showed that the outcomes did not differ significantly between public and private IHEs. In both types of institutions, students prevailed in approximately one third of the issues they raised.

Table 1

Distribution of OCR Rulings by Disability Type

Disability type	Student prevailed	IHE prevailed	Total no.
Learning disability	17 (21.8%)	61 (78.2%)	78
Mobility impairment	39 (63.9%)*	22 (36.1%)	61
Multiple disabilities	9 (17.6%)	42 (82.4%)	51
Psychological disorder	6 (16.2%)	31 (83.8%)	37
Hearing impairment	18 (50.0%)*	18 (50.0%)	36
Visual impairment	2 (8.7%)	21 (91.3%)	23
Miscellaneous disabilities	10 (30.3%)	23 (69.7%)	33
Not specified	10 (37.0%)	17 (63.0%)	27

*** $p < .001$.

The frequency and outcomes for the various categories of disabilities are provided in Table 1. As illustrated, students with a learning disability constituted the most common disability type, accounting for 78 (22.5%), of the issue rulings, followed by students with a mobility impairment (17.6%) and those with multiple disabilities (14.7%). Visual impairment was the least prevalent identified disability type, accounting for 23 (6.6%) of the rulings.

As for outcomes, the chi-square analysis ($\chi^2=61.70$) revealed a significant association with disability type at the .001 level. The post hoc analysis found that this significant association was attributed to the outcome distributions for the mobility impairment and hearing impairment categories. More specifically, students with mobility impairment were significantly more likely to prevail than were students in every other identified category

except hearing impairment, and those with hearing impairment were significantly more likely to prevail than students in every other identified category except mobility impairment and miscellaneous disabilities.

The frequency and outcome distribution of published rulings are reported in Table 2 in terms of the issue category. Table 2 shows that academic adjustments (N=121) and treatment of students (N=73) constituted the two most common categories, accounting together for more than half (56.1%) of the issues. The chi-square analysis ($\chi^2=107.72$) revealed a significant association between outcome and issue category at the .001 level. The post hoc analysis pinpointed two categories as significantly different from the others; students prevailed more often in the general requirements and facilities categories than in the other four issue categories.

Table 2

Distribution of OCR Rulings by Issue Category

Disability type	Student prevailed	IHE prevailed	Total no.
Academic adjustments	23 (19.0%)	98 (81.0%)	121
Treatment of students	9 (12.3%)	64 (87.7%)	73
Facilities	45 (70.3%)*	19 (29.7%)	64
Admissions	7 (18.4%)	31 (81.6%)	38
General requirements	31 (81.6%)*	7 (18.4%)	36
Other issues	3 (25.0%)	9 (75.0%)	12

*** $p < .0001$.

Discussion

Two overarching limitations serve to qualify the results of this study. First is the representativeness of the sample. Similar to frequency and outcomes analyses of published court decisions (e.g., Lupini & Zirkel, in press), the inevitable question is whether the NDLR-published decisions are representative of the much larger body of unpublished decisions. However, unlike judicial cases, for which there is no centralized database of unpublished decisions, OCR rulings are presumably on file at the headquarters office in Washington, DC. Yet, as mentioned, our repeated efforts to obtain from OCR either the entire population or a comprehensive random sample of the LOFs in response to higher education student complaints were unsuccessful.

The second overarching limitation is that OCR is not a monolithic entity. For enforcement purposes, complaints are raised and resolved at the regional level. Although OCR's central office in Washington, DC, attempts to foster uniformity, there are perceived differences among the regions with regard to the resources, priorities, and aggressiveness of enforcement. Changes in the personnel, including the leadership, of the regional offices and even in the organization of the regions contribute to this intervening source of variance.

For these reasons, the findings merit caution in interpretation. The following summary and analysis is tentative rather than definitive, being subject to further systematic research. Recommendations for such research are included in the conclusion of this discussion.

Frequency Trend

The first finding was that the majority (65%) of the issue rulings occurred in the first four years, whereas the five years subsequent to 1993 represented a markedly lower level. There are three primary possible explanations for this decline. First, perhaps the plethora of publicity accompanying the 1990 passage of the ADA accounted for a high volume of higher education student complaints in the first three years, followed by increased compliance and, thus, decreased complaints during the

subsequent years. However, the outcomes analysis does not clearly support this hypothesis. An even stronger contraindication is that, according to data from an OCR representative (T. Ciaspusci, personal communication, March 2, 1999), the level of student complaints increased, rather than declined, during the second segment of the nine-year period of this study.

A second possible explanation is that the reduction in published LOFs may be due to the editorial selections of NDLR. According to the chief editor of the publication (T. D'Agostino, personal communication, January 11, 1999), OCR periodically provides copies of its decisions in response to an ongoing FOIA request, and NDLR's editorial staff selects a sample of the LOFs based on a variety of criteria, such as practical interest in the subject matter, regional diversity of the IHEs, and space available in the two-week issue of NDLR.

The third and probably strongest explanation for the decreased frequency of LOFs since 1993 is a change in OCR policy. Specifically, in mid-1993, the agency officially moved from enforcement based on formal LOFs to an emphasis on "early complaint resolution" (U.S. Department of Education, 1993), recently renamed "resolution between the parties" (U.S. Department of Education, 1998). In addition, other more subtle policy changes, such as changes in budgetary resources, staff allocations, and enforcement priorities, may also have contributed to the lower level of IHE disability-related LOFs.

Outcomes Trend

The second major finding of this study was that the overall outcomes favored the IHEs, over the students by a 2-to-1 ratio. The 66% of the 1990-98 OCR rulings in favor of IHEs was in line with the 55% in favor of school districts that Zirkel (1997) found for 1978-95. Moreover, for the five-year period in common between these overlapping studies – 1991 through 1995 – the percentages for the prevailing educational institutions were a matching 62%. In any event, inasmuch as there were approximately two issues per LOF in this IHE sample, the students were at least partially successful in the majority of the cases. For IHEs, the

message appears to be that more needs to be done to achieve compliance with the student-related requirements of Section 504 and the ADA. For student complainants, one of the lessons appears to be that they need to raise multiple issues where viable. Another is that, at least as compared to published judicial decisions (Zirkel & McMenamin, 1999), OCR tends to be not only a less expensive but also a more hospitable forum than the courts for students' Section 504 and ADA claims.

Institutional Type

The third major finding was that public IHEs accounted for almost three quarters of the rulings; yet, the outcomes did not differ significantly between public and private IHEs. The predominance of public IHEs in the frequency of rulings is higher than the 43% of these institutions in the nation (*Higher Education Directory*, 1998) but directly in line with the 78% of the students in the nation in public compared with private IHEs (*Digest of Education Statistics*, 1997). Thus, in terms of the proportion of enrollments, institutional type did not seem to be a factor in the proclivity for being subjected to a published OCR ruling in response to a student complaint. Similarly, the chi-square analysis of the issue outcomes seemed to suggest that institutional type, private versus public, was not significantly related to institutional compliance as measured by OCR's published student rulings.

Disability Type

The fourth major finding was that the disability types that cumulatively accounted for the majority of the rulings were learning disabilities (23%), mobility impairment (18%), and multiple disabilities (15%), with visual impairment the least prevalent identified category (7%): yet, students with mobility impairment and those with hearing impairment fared significantly better, with issue-winning rates of 64% and 50%, respectively, than students in the other identified categories. The first position of learning disabilities parallels that for Henderson's (1999) latest survey year, but differences in typology and periods precluded a more comprehensive, systematic comparison. For example, Henderson used orthopedic and health-re-

lated rather than mobility and psychological, and she reported percentages for each triennial year from 1988 to 1998 rather than summatively for the 1990-98 period of this study.

Issue Category

The fifth and related major finding was that the most frequent issue categories were academic adjustments (35%) and treatment of students (21%). At the same time, the two issue categories where students had significantly distinct win rates were general requirements (82%) and facilities (70%). The high proportion of successful student complaints in the general, or institutional, requirements category parallels Zirkel's (1997) findings for the published OCR rulings in response to complaints on behalf of elementary and secondary students. As with the facilities category, showing that an institution does not have an up-to-date self-evaluation, a 504 and ADA coordinator, or a disability-related grievance procedure is a relatively simple. Similarly, the most likely explanation for the significant student success in the facilities cases is the concrete nature of this category of issues. Many of the applicable regulations concerning facility accessibility provide objectively measurable specifications. In contrast, the academic adjustment category has much more ambiguous standards, subject to the traditional substantive deference in favor of the educational institution (Leas, 1991).

These findings suggest that IHEs may need to put a higher priority on reviewing and improving compliance with the general and facilities requirements of the Section 504 and ADA regulations and, conversely, that student complainants need to include such issues, where viable, in addition to their other claims.

Conclusion

This study represents a first step in analyzing frequency and outcomes of OCR and judicial student disability cases in higher education. Follow up studies may include more refined variables, such as the categorization of disability types, as well as additional variables, such as institutional level (e.g., two- compared with four-year IHEs) and size.

Further such study is also recommended for court decisions as well as unpublished and informal OCR complaint resolutions. As shown by parallel analyses of court decisions in the elementary/secondary education context (Lupini & Zirkel, in press; Mayes & Zirkel, 2001), the judicial rulings require a more sophisticated outcomes scale in light of inconclusive rulings, such as decisions denying motions for dismissal or summary judgment. Similarly, follow up studies of unpublished and informal complaint resolutions require the full cooperation and adequate databases from OCR and from other agencies, such as the Department of Justice and the Department of Health and Human Services for private IHEs solely covered by the ADA and for health-related professional schools. If OCR and these other agencies have sufficiently comprehensive and accurate databases, extending this study to both the earlier years, since the 1978 effective date of Section 504, and the most recent few years would provide for a more complete trends analysis. Pertinent qualitative research, including case studies the perspective of higher education students with disabilities, is also warranted to provide a fuller picture of both OCR and judicial dispute resolution.

Thus, supplementing the extensive scholarly and practical commentary in the literature, this study serves to stimulate efforts to the wide gaps in the related data-based research. It also serves to encourage both IHEs and students to be alert not only to the regulations and court decisions under Section 504 and the ADA but also to this alternative forum – OCR – in their efforts to eliminate disability discrimination.

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