DOCUMENT RESUME

ED 482 310 HE 036 445

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TITLE	Students with Disabilities and Higher Education: A Disconnect in Expectations and Realities.
INSTITUTION	George Washington Univ., Washington, DC. HEATH Resource Center.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE	2003-00-00
NOTE	4p.
CONTRACT	H326H010005
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	EDRS Price MF01/PC01 Plus Postage.
DESCRIPTORS	*Academic Accommodations (Disabilities); *College Students; Compliance (Legal); *Disabilities; Federal Legislation; *Higher Education; *Legal Responsibility
IDENTIFIERS	*Individuals with Disabilities Education Act

ABSTRACT

In spite of almost 30 years of judicial and federal agency interpretation, the issues facing colleges and universities with respect to students with disabilities have become increasingly complex, in part because of the increasing number of college-ready students with disabilities and the expectations they bring to higher education. Many such students do not understand that educators in K-12 have very different obligations than those in higher education. Colleges only have an obligation to ensure that qualified applicants and students with disabilities have access to the college's program and are provided necessary academic adjustments, including auxiliary aids and services. The burden is on the student to make known the disability and to provide and pay for appropriate documentation in a timely manner. The institution, unlike K-12 education, is not required to provide programming, such as specialized tutoring. High schools are now required to counsel parents and students that the burden of identifying the student's disability and needs shifts after high school. At the same time, college and university administrators need to be aware of student expectations. Higher education administrators would be wise to anticipate and avoid challenges resulting from students' erroneous conceptions about the legal requirements of K-12 institutions compared with those of higher education institutions. (SLD)

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GW HEATH Resource Center

Students with Disabilities and Higher Education: A Disconnect in Expectations and Realities

By Laura Rothstein

On college campuses today, approximately one in eleven students has a disability—three times the number reported in 1978. What accounts for such a change over the last quarter century? For starters, federal laws prohibiting discrimination against students with disabilities by institutions of higher education have taken hold. The Rehabilitation Act of 1973 requires that programs receiving federal financial assistance (which most colleges and universities do) must not discriminate against otherwise qualified individuals with disabilities. Yet, in spite of almost 30 years of judicial and federal agency interpretation, the issues facing colleges and universities with respect to students with disabilities have become even increasingly complex.

One of the most complex issues is the question of who is actually entitled to the protections of the statutes—both Section 504 of the Rehabilitation Act and the Americans with Disabilities Act of 1990. The Supreme Court narrowed the definition of who is an individual with a disability in 1999. The Court held that if an individual uses a "mitigating measure" as a result of which the individual does not have an impairment that is currently substantially limiting, the individual is not considered to have a disability under the laws. That has raised questions about whether students with various psychological impairments, learning disabilities, and other medical conditions are entitled to nondiscrimination, and—even more importantly—to receive reasonable accommodations.

The term "reasonable accommodation" is widely used by professionals and courts in postsecondary matters. Because it is borrowed from the employment arena, and not found in the regulations pertaining to colleges and universities, it can be misleading to students and parents trying to understand what to expect in college where the proper terms are "academic adjustments" and "auxiliary aides and services." Common academic adjustments include extra time on examinations and reduced course loads for students with documented disabilities. Auxiliary aides and services are methods of ensuring that information is available to persons with sensory impairments; for example, interpreters for deaf persons and readers or adaptive technology for individuals who are blind. If necessary to attain equal educational opportunity, colleges and universities must provide academic adjustments and auxiliary aides to students with disabilities, unless doing so would "fundamentally alter" the program of the college or university.

Related to the issue of who is an individual with a disability is the question of how the disability and the need for an accommodation are documented. Who is qualified to evaluate and document a disability? How recent must the evaluation be and what information must it include?

These issues seem to surface more frequently today, in part, because of the increasing number of college-ready students with disabilities and the expectations that they bring to higher education. As a result of the Education for All

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Handicapped Children's Act of 1975 (now the Individuals with Disabilities Education Act or IDEA), elementary and secondary students with disabilities are now evaluated at public expense, and if determined eligible, provided services at an early age. As a result, these students are much more prepared for the rigors of higher education.

Yet, many come to higher education not understanding that educators in K—12 have very different obligations than do educators in higher education institutions. Elementary and secondary schools have the burden of reaching out and identifying students needing special education, paying for these students' evaluations, and providing all necessary special education and related aids and services at public expense, including, if appropriate, modifying the curriculum (not just making academic adjustments) and providing an elaborate set of procedural safeguards to ensure the availability of these services.

Colleges, however, only have an obligation to ensure that qualified applicants and students with disabilities have access to the college's program, and are provided necessary academic adjustments, including auxiliary aids and services. The burden is on the student to make known the disability and to provide and pay for appropriate documentation in a timely manner. The institution is not required to provide programming such as specialized tutoring.

While the courts and the U.S. Department of Education Office for Civil Rights have provided some guidance on a variety of disability issues, there continues to be a groundswell of complaints by students with disabilities. In many cases the complaints result from the denial of academic adjustments, including auxiliary aids and services, because the institution did not find that the student had provided documentation to justify the request. The student then challenges the denial, and the dispute is often about whether the documentation was adequate or was provided in a timely manner. These cases are particularly frequent when issues of learning disabilities, ADD, and ADHD are involved. Although institutions of higher education almost always succeed in these challenges, the continued level of activity points up the need for communication to students and their parents about the difference between K—12 and higher education.

As part of the transition plan required for students now receiving services under IDEA, high schools must counsel parents and students that the burden of identifying the student's disability and needs shifts after high school. Once in college, it becomes the student's responsibility to identify him or herself as having a disability. They are expected to initiate the request for accommodations and to provide acceptable documentation to the colleges and universities. Students must also be informed that older documentation of conditions such as learning disabilities may need to be updated and that they are generally required to pay for such additional documentation. They also need to know that the level of services and procedural protections provided in postsecondary settings will differ from those afforded in high school.

At the same time, college and university administrators need to be aware of student expectations. They should be proactive in communicating the policies, practices, and procedures for students with disabilities that apply at their institutions. Unclear policies and procedures, or those that are not well communicated early and often, may result in student complaints of discrimination and failure to accommodate, creating an undue administrative and financial burden.

Higher education administrators would be wise to anticipate and avoid such challenges resulting from students' erroneous conceptions about the legal requirements of K—12 institutions compared with institutions of higher education. By instituting the proper policies, practices, and procedures, and communicating them in appropriate application and prospectus materials, incoming students will better comprehend the services they are entitled to and the procedures for obtaining them.

One additional player may also become increasingly involved in these disputes—standardized testing programs. As a result of court challenges by students with disabilities, several of these programs (not all) have decided not to "flag" test scores received under nonstandard conditions. The consequence, however, is these testing agencies will be more likely than ever to require detailed documentation. Simply providing the special education record of documentation from K-12 may no longer be adequate. As a result, parents and students may realize much earlier in the application process that their expectations for services and accommodations must change.

In the mean time, institutions of higher education may have a rocky few years until this shift in expectations occurs. Once students and their families achieve greater awareness and understanding about the differing burdens affecting their rights and responsibilities at the secondary and postsecondary levels, the number of disputes and challenges will probably decrease. Until then, all of the players—high schools, colleges, and standardized test administrators—would do well to anticipate and proactively respond to these challenges.

Laura Rothstein teaches and lectures extensively on the topic of disability law. Rothstein is the author of nine books and a number of other book chapters and articles on this topic and is the Dean of the University of Louisville Brandies School of Law.

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This Document is made possible by support from the U.S. Department of Education, Office of Special Education Programs (Cooperative Agreement # H326H010005). The opinions expressed do not necessarily reflect the views or policies of the Department of Education.

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