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Special Education Services in Post Secondary Settings

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Research Guides

Special Education Services in Post Secondary Settings

Guide Information

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Description:	This LibGuide can assist students, parents, and practitioners navigate through the process of special education services at post-secondary schools.
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Disability Services

This LibGuide contains resources and information to assist the post-secondary student, their parents, and legal practitioners with research on disability services in post-secondary education. Disability services must be provided to qualifying students at institutions of higher learning receiving federal and/or state funding under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. An institution may not discriminate against a student with a disability, and "otherwise qualified" students may not be excluded from programs or services. A student may qualify for services and accommodations for various reasons, including, but not limited to, learning disabilities, ADD/ADHD, hearing or visual impairments, and physical impairments. Students may also qualify for services on a temporary basis under certain circumstances.

It is important to remember that the Individuals with Disabilities Education Act (IDEA) only applies to students in preschool through twelfth grade until the student reaches the age of 21. IDEA does not apply to post-secondary settings, and the requirements for accommodations of post-secondary institutions are much different than for elementary and secondary students. If you believe you are in need of services or qualify for an accommodation, you may be required to provide documentation to the institution at your own expense. Most institutions require reasonable notice for accommodations and many have established disability services offices to assist students, staff, and employees with disabilities.

About the Author

Emily Brannen will graduate from Georgia State University College of Law in July 2012. She has over eight years experience as a special education teacher, and is certified by the state of Georgia to teach pre-school thorough high school special education and general education in middle grades. She also holds a reading endorsement for both general and special education.

Ms. Brannen was an active member of the technology committee at the school where she taught. Her classroom was involved in a pilot program for assistive web-based technology, and she was an advocate for students who might benefit from such technology.

Disclaimer

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Primary Sources

Caselaw

Southeastern Community College v. Davis, 442 U.S. 397 (1979)

An individual must be otherwise qualified for admission without the institution lowering the standards or making a fundamental alteration to the program.

Wynne v. Tufts University School of Medicine, 932 F.2d 19 (1st Cir. 1991)
Wynne v. Tufts University School of Medicine, 976 F.2d 791 (1st Cir. 1992)

Reasonable accommodations requirements for students with learning disabilities.

Halasz v. University of New England, 816 F. Supp. 37 (D.Me. 1993)

Post-secondary institutions may not make pre-admission inquires as to whether applicants have disabilities; however, institutions specifically operated for students with disabilities may inquire for qualification purposes.

Mallet v. Marquette Univ., 65 F.3d 170 (7th Cir. 1995)

Standardized tests may be used for admission purposes as long as they are available in special formats or with accommodations for students with disabilities.

Doe v. National Board of Medical Examiners, 199 F.3d 146 (3d Cir. 1999)

Admissions exams of persons who receive accommodations may be flagged, and this practice does constitute denial of access in violation of Title III.

Zukle v. Regents of the University of California, 166 F.3d 1041 (9th Cir. 1999)

Institutions of higher education must make reasonable accommodations, including providing auxiliary aids and services, for qualified students with disabilities.

Guckenberger v. Boston University, 974 F. Supp. 106 (D. Mass. 1997)

An institution's accommodations policy must not create a hostile learning environment for students with disabilities.

Regulations

Department of Justice Regulatory Guidance

28 C.F.R. Part 35

28 C.F.R. § 35.190(b)(2)

The Department of Education (DOE) can regulate Post-Secondary education under ADA Title II and III as delegated by the Department of Justice (DOJ).

28 C.R.F. § 35.190(b)(3)

Regulation of post-secondary education under ADA Title II and III in schools of medicine, nursing, dentistry and other health related schools is delegated by the DOJ to the Department of Health and Human Services.

28 C.F.R § 35.130

DOJ regulations under Title II requiring equal opportunity for students with disabilities to participate in education programs and prohibiting admissions requirements that screen out those students.

28 C.F.R. § 36.301(a)

DOJ regulatons under Title III for private institutions regarding eligibilty and admission requirements

Department of Education Regulatory Guidance

34 C.F.R. Part 104

34 C.F.R. § 104.41-104.47

The Department of Education (DOE) 504 Regulations prescribe minimum standards in the areas of:

(1) admissions;

(2) student treatment;

(3) auxiliary aids;

(4) housing;

(5) financial aid and employment assistance;

(6) non-academic services;

Statutes

Section 504 of the Rehabilitation Act of 1973

29 U.S.C. § 794

Applies to all post-secondary institutions that receive federal funding

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity"
means all of the operations of -

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship -

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed
with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510,)1(! of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

Title II of the Americans with Disabilities Act (ADA)

42 U.S.C. § 12131-12165

Applies to all post-secondary institutions that are receive state funding

Sec. 12131. Definitions

As used in this subchapter:
(1) Public entity

The term "public entity" means -

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government;

and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) (!1) of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Title III of the Americans with Disabilities Act of 1990 (ADA)

42 U.S.C. § 12181-12189

Applies to private post-secondary institutions wilt exceptions for religious institutions

Sec. 12181. Definitions

As used in this subchapter:

(1) Commerce

The term "commerce" means travel, trade, traffic, commerce, transportation, or communication -

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term "commercial facilities" means facilities -

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (!1) (42 U.S.C. 3601 et seq.).

(3) Demand responsive system-The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system-The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus-The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity-The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation-The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce -

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102(1) (!1) of title 49.

(9) Readily achievable

The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include -

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special

service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

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Secondary Sources

Law Review Articles

James Leonard, ***Judicial Deference to Academic Standards Under Section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act***, 75 Neb. L. Rev. 27 (1996).

Holly A. Currier, ***The ADA Reasonable Accommodations Requirement and the Development of University Services Policies: Helping or Hindering Students with Learning Disabilities?***, 30 U. Balt. L.F. 42 (2000).

Craig S. Lerner, ***"Accomodations" for the Learning Disabled: A Level Playing Field or Affirmative Action for Elites?***, 57 Vand. L. Rev. 1043 (2004).

Laura Rothstein, ***Disability Law and Higher Education: A Road Map for Where We've Been and Where We May be Heading***, 63 Md. L. Rev. 122 (2004).

Susan M. Denbo, ***Disability Lessons in Higher Education: Accommodating Learning-disabled Students and Student-Atheletes Under the Rehabilitation Act and the Americans with Disabilities Act***, 41 Am. Bus. L.J. 145 (2003).

Suzanne Wilhelm, ***Accommodating Mental Disabilities in Higher Education: A Practical Guide to ADA Requirements***, 32 J.L. & Educ. 217 (2003).

John D. Ranseen & Gregory S. Parks, ***Test Accomodations for Postsecondary Students***, 11 Psychol. Pub. Pol'y & L. 83 (2005).

Treatises

Rapp, Education Law

4-10C EDUCATION LAW § 10C.01 - Disability: Educational Opportunities and Discrimination

4-10C EDUCATION LAW § 10C.03 - Education Services, Programs, and Activities under ADA and Section 504

Books

- Going to College by Elizabeth Evans Getzel (Editor); Paul Wehman (Editor); James R. Patton (Foreword by)
  ISBN: 155766742X
  Publication Date: 2005-01-01
- Aquamarine Blue 5 by Dawn Prince-Hughes
  ISBN: 0804010536
  Publication Date: 2002-11-30
- Federal Disability Law in a Nutshell, 4th by Ruth Colker; Adam A. Milani
  ISBN: 9780314264619
  Publication Date: 2010-06-28
- Disability in Higher Education by Organisation for Economic Co-operation and Development Staff
  ISBN: 9264105050
  Publication Date: 2003-12-01
- College and the Learning Disabled Student by Mangrum
  ISBN: 0808919008
  Publication Date: 1988-01-01

ALR

Construction and effect of § 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) prohibiting discrimination against otherwise qualified handicapped individuals in specified programs or activities, **44 A.L.R Fed. 148**

Who is "individual with handicaps" under Rehabilitation Act of 1973 (29 U.S.C. §§ 701 et seq.), **97 A.L.R. Fed. 40**

What Constitutes Reasonable Accommodation Under Federal Statutes Protecting Rights of Disabled Individual, as Regards Educational Program or School Rules as Applied to Learning Disabled Student, **166 A.L.R. Fed. 503**

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Additional Resources

Georgia Colleges and Universities

This list has been compiled for ease of reference. Please contact the disability services office of individual institutions of higher education if you believe you may qualify for services or need additional information.

Georgia State University Office of Disability Services

http://www.gsu.edu/disability/

University of Georgia Disability Resource Center

http://drc.uga.edu/

Kennesaw State University disabled Student Support Services

http://www.kennesaw.edu/stu_dev/dsss/dsss.html

Georgia Tech Disability Services Information

http://savannah.gatech.edu/current-students/student-services/disability-services

University System of Georgia - further information on disability services

http://www.usg.edu/inst/directories/disability_service_providers/

Mercer University Disability Services (Mercer is a private institution)

http://studentaffairs.mercer.edu/disabilityservices/

Emory University Office of Disability Services (Emory is a private institution)

http://www.ods.emory.edu/

Helpful Links

- Auxiliary Aids and Services for Post-Secondary Students with Disabilities
  http://www2.ed.gov/about/offices/list/ocr/docs/auxaids.html
  From the U.S. Department of Education Office of Civil Rights
- Students with Disabilities Preparing for Postsecondary Education
  http://www2.ed.gov/about/offices/list/ocr/transition.html
  From the U.S. Department of Education Office of Civil Rights
- Americans with Disabilities Act
  http://www.ada.gov/
  Information and Technical Assistance for the ADA
- Disability Rights Advocates
  http://www.dralegal.org/index.php
  "DRA is a non-profit legal center dedicated to securing the civil rights of people with disabilities. DRA advocates for disability rights through high-impact litigation, as well as research and education."
- DREFD: Disability Rights Education and Defense Fund
  http://www.dredf.org/
- Disability.gov
  https://www.disability.gov/

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