

Transitioning Students with IEPs and Section 504 Plans to Postsecondary Institutions

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Private School Administrators*

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Today's Topics

- Laws that apply to high school students
 - Section 504
 - ADA, Title II
 - IDEA
- Laws that apply to students in higher education
 - Section 504
 - ADA, Title II
 - ADA, Title III
- Focus on Accommodations

Laws Applicable in High School

- Section 504 of Rehabilitation Act of 1973
 - Prohibits discrimination on basis of physical or mental disability
 - “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, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance” 29 U.S.C. § 794

Laws Applicable in High School

- ADA, Title II
 - Prohibits discrimination in provision of governmental services, programs and activities, regardless of whether Federal financial assistance is received
- IDEA (Individuals with Disabilities Education Act)
 - Entitles “children with disabilities” to an Individualized Education Program (IEP)

Laws Applicable in High School

- IDEA requires districts to provide a “free appropriate public education” (FAPE)
 - All students, regardless of nature or severity of disability
 - FAPE – regular or special education and related aids and services designed to meet the student’s individual education needs as adequately as the needs of nondisabled students

What is a Disability?

- The Section 504 regulations define “physical or mental impairment” as a “physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” 34 C.F.R. § 104.3(j)(2)(i)

Who is a “Child With a Disability”?

- Under IDEA, a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities

IEPs

- Who is eligible?
 - Student who, by reason of disability, needs special education and related services
- IEP Goals:
 - Set reasonable learning goals
 - Identify the services that the school district will provide
- Who decides? IEP team
 - Parents, teachers, school staff

IEPs

- What?
 - Present levels of academic achievement and functional performance
 - Goals
 - Special education and related services to be provided
 - How modifications will be provided
- When? Within 30 days

IEPs

- “Supplementary aids and services”
 - Supports to address environmental needs
 - Levels of staff support needed
 - Specialized equipment
 - Pacing of instruction
 - Presentation of subject matter
 - Materials needed
 - Assessment modification needed

IEPs

- “Program modifications or supports for school personnel”
 - Attending a conference or training
 - Getting help from others
 - Aide in the classroom
 - Special equipment or teaching materials

IEPs

- “Related services”
 - Related services help children with disabilities benefit from their special education by providing extra help and support in needed areas, such as speaking or moving
 - speech-language pathology and audiology services
 - interpreting services
 - psychological services
 - physical and occupational therapy
 - orientation and mobility services
 - medical services for diagnostic or evaluation purposes
 - parent counseling and training

Section 504 Plans

- For students who don't qualify for IEPs
- Two requirements:
 - Child has a disability, which can include learning or attention issues; and
 - The disability must interfere with the ability to learn in a general education classroom

Section 504 Plans

- No specific format; doesn't need to be a written document
- But it must:
 - Identify specific accommodations, supports, or services
 - Identify school professionals that will provide services
 - Identify person responsible for ensuring the 504 Plan is implemented

Section 504 Plans

- Who? 504 Committee
 - General education teachers
 - Special education teacher
 - Principal
 - Parents
 - Child (depending on age and maturity)

Section 504 Plan

- 504 Plan meeting
 - Plan must be reviewed by committee every year
 - Parents not entitled to attend review meetings, but they may be permitted
 - Considers whether accommodations are helping

Section 504 Plan

- Other differences between IEP and 504 Plan:
 - Doesn't allow parents to ask for an IEE
 - School must notify parent about evaluation or a “significant change in placement”
 - Notice doesn't have to be in writing

Transitioning to Higher Ed

- IDEA – Transitioning to adulthood
 - Transition planning must start by age 16
 - IEP must include:
 - Postsecondary goals
 - Steps needed to achieve goals
 - Transition services that student will receive

Transitioning to Higher Ed

- IEP identifies “transition services needed”
 - Selecting relevant courses
 - Community experiences
 - Development of employment and other post-school adult living objectives
 - Acquisition of daily living skills and functional vocational evaluation

Laws Applicable in Higher Ed

- Section 504 of Rehabilitation Act of 1973
 - Applies to “...any program or activity receiving federal financial assistance”
- Americans With Disabilities Act, **Title II**
 - Applies to state and local governments, including public colleges, universities, and graduate and professional schools
- Americans With Disabilities Act, **Title III**
 - Applies to privately-funded schools

Laws Applicable in Higher Ed

- **Section 504** applies to ALL recipients of federal funding, public or private, including postsecondary vocational education and adult education programs
- **Section 504 and ADA Title II** are enforced by the Office for Civil Rights in the U.S. Department of Education (OCR)
- **ADA Title III** is enforced by the Department of Justice (DOJ)

IDEA – Not Applicable in Higher Ed

- The world *after* IDEA
 - Limited parental involvement under Family Educational Rights and Privacy Act (FERPA)
 - No more Free Appropriate Public Education (FAPE)
 - Focus shifts to accommodations
 - Concept of undue hardship applies for first time
 - More extensive documentation required
 - Student has substantially more responsibilities

IDEA vs. ADA

- **IDEA** - child is entitled to a free appropriate public education
- **ADA** - prohibits disability discrimination
- **IDEA** - every child is covered
- **ADA** – students must be “otherwise qualified”
- **IDEA** – law provides for “due process”
- **ADA** – must follow school grievance procedure, then file complaint with OCR

IDEA vs. ADA

- **IDEA** - School district responsible for identifying students with disabilities, providing evaluations and paying costs
- **ADA** – student must self-identify, provide requisite documentation and, if required, obtain, at student's expense, an evaluation demonstrating the disability and the need for any requested accommodation

IDEA vs. ADA

- **IDEA** - IEP developed by a team; typically provides for curriculum modifications and special programs for individual child
- **ADA** – reasonable accommodation, including auxiliary aids/services, must be requested by student; academic adjustments that equalize opportunity for participation are required, but substantial modifications to curriculum and/or lowering standards not required

IDEA vs. ADA

- **IDEA** - Personal devices (e.g., wheelchairs, hearing aids, personal care attendants) are provided by school district (if necessary and included in IEP)
- **ADA** – colleges not required to provide personal devices
- **IDEA** - parents required to be included in decision making
- **ADA** – students over 18 are “adults” and no parent consultation required

Section 504 and ADA Obligations

- **School's** obligations under Section 504 and ADA are to provide accommodations for students with disabilities, including appropriate academic adjustments and auxiliary aids and services necessary to afford the individual with a disability an **equal opportunity** to participate in the school's programs

Section 504 and ADA Obligations

- **Schools** are not required to make adjustments or provide aids or services that would result in a **fundamental alteration** of their academic program or impose an **undue financial or administrative burden** on the postsecondary institution's programs
- Not required to provide personal aids and services

Section 504 and ADA Obligations

- **Student's** obligations are to
 - Follow college's policies and procedures
 - Self-identify/provide notice of disabling condition and provide documentation
 - Assist in identifying appropriate and effective auxiliary aids/accommodations
 - Follow agreed-upon procedures for using accommodations/aids
 - Provide notice when accommodations/aids are not effective

Disability Services and Policies

- Disability resources should be available and appropriately communicated
 - Must have assigned Section 504 Coordinator
 - Contact information must be published in school's notice of non-discrimination and on website, etc.
 - Develop and communicate other policies
 - Communicate available services and resources
 - When in doubt, contact counsel!

Disability Services and Policies

- Disability-related policies and procedures
 - Nondiscrimination and diversity statements
 - Availability of general disability resources
 - Eligibility for accommodations
 - Availability and types of accommodations
 - Process for self-identification
 - Process for seeking accommodations
 - Academic adjustments
 - Auxiliary aids

Disability Services and Policies

- Transportation
- Overcoming architectural barriers
- Service animals
- Therapy and emotional support animals
- Disability harassment
- Grievance policy
- Appeal rights
- Other resources and services

Accommodations Process

- Pre-application meeting
 - Some students may ask for a pre-application meeting to determine services and accommodations available
- Post-application meeting
 - This is when the student will most likely request an accommodation

Accommodations Process

- Documentation
 - IEP
 - MDT
 - Test results
 - Prescriptions
- New evaluation required - student pays

Academic Adjustments

- Appropriate academic adjustment based on student's disability and individual needs
- Not required to lower or substantially modify essential requirements
- Not required to make adjustments that would fundamentally alter the nature of a service, program or activity, or that would result in undue financial or administrative burden

Auxiliary Aids

- Auxiliary aids and services must be provided where necessary to afford an individual with a disability an **equal opportunity** to participate in/enjoy the benefits of, a service, program or activity
- Auxiliary aid must be **effective**
- Student with a disability may not be required to pay part/all of the aid/service

Auxiliary Aids

- Examples of auxiliary aids include
 - Taped texts
 - Notetakers
 - Interpreters
 - Readers
 - Videotext displays
 - Television enlargers
 - Talking calculators
 - Electronic readers

Auxiliary Aids

- Examples of auxiliary aids include
 - Braille calculators, printers, typewriters
 - Telephone handset amplifiers
 - Open and closed captioning
 - Voice synthesizers
 - Reaching devices for library use
 - Assistive listening devices
 - Telecommunications devices
 - Numerous other aids

Auxiliary Aids

- Not required to provide most sophisticated aids available; however aids provided must **effectively** meet the needs of the student
- School has **flexibility** in choosing the specific aid or service so long as it is effective
- Aids should be selected only after **consultation with student**

Auxiliary Aids

Section 504 Regulations state that to be **effective**, auxiliary aids, benefits and services are not required to produce the identical result or level of achievement for disabled and nondisabled persons, but must afford disabled persons **equal opportunity** to obtain the same result, gain the same benefit or reach the same level of achievement in the most integrated setting appropriate to the person's needs

Personal Aids and Services

- Personal aids and services – provide help with bathing, dressing, personal care
 - These are required as part of a FAPE
- **Not required** as an accommodation in higher education
 - “Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.” 34 C.F.R. § 104.44(d)(2).

Housing accommodations

- Recipient shall provide comparable, convenient, and accessible housing to disabled students
- Student cannot be charged extra for an accommodation in housing
 - Examples: central location, kitchen, elevator, air conditioning, private room, comfort animal
 - Causes: allergies, mobility, insomnia, anxiety

Animals on Campus

- Service animals (ADA Titles II and III)
 - Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability
- Other support or therapy animals – not considered service animals under ADA
- Handler is responsible for behavior of animal

Real Life Scenarios

- Dealing with students with hearing impairments
 - Facts related to request
 - Considerations
 - Outcome

Real Life Scenarios

- Extra time for testing
 - Facts related to request
 - Considerations
 - Outcome

Real Life Scenarios

- Quiet study area
 - Facts related to request
 - Considerations
 - Outcome
- Other students in the testing space
 - Facts related to request
 - Considerations
 - Outcome

Other Real Life Examples

- Reduced course load
- Substituting one course for another
- Providing note takers, recording devices, or sign language interpreters
- Priority registration for classes
- Equipping school computers with screen-reading, voice recognition, or other adaptive software

Even More Real Life Examples

- Key is flexibility and case-by-case analysis
 - Distraction reduced setting
 - Breaks as needed
 - Use of computer for essay test
 - No penalty for spelling errors
 - Use of calculator
 - Visual support – written instructions
 - Flexible attendance / no penalty for tardiness

Questions?



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