

# Transitioning to Postsecondary Education: New Opportunities and Lost Protections

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Students with disabilities (SWD) achieve a major educational milestone when they graduate from high school. They also change legal status at graduation because they lose the guarantees and protections of the IDEA (Scott, 1997b). Nevertheless, they continue to manifest their disabilities and often require accommodations at work or at school.

Those who choose to enter postsecondary education and training face new, yet somehow familiar, challenges. SWD are often surprised and frustrated when they encounter increased requirements and standards coupled with reduced services in higher education. They may assume, or were even told, that services listed on their IEPs are binding on the postsecondary institution. Recognizing the importance of advocacy in obtaining services in public schools, SWD often believe asserting their rights to various campus offices or administrators will result in restoration of those benefits (Heyward, 1999). However, services received in high school do not transfer to postsecondary settings because they were granted under the IDEA and that law is no longer relevant (McGuire, 1998).

## Relevant Legislation

Federal legislation, including the Rehabilitation Act of 1973, the Education of All Handicapped Children Act (PL94-142) of 1975, the Americans with Disabilities Act (ADA) in 1990 and the Individuals with Disabilities Education Act (IDEA) in 1997, opened the doors of American education and employment to individuals with disabilities. As civil rights legislation, they guaranteed protection from discrimination on the basis of disability and provided equivalent access to school (Section 504) and work (ADA) (McGuire, 1998; Scott, 1997a, 1997b; Jarrow, 1993). All four laws affirmed the right of qualified persons with disabilities to access and participation in programs and activities – they are *nondiscriminatory*.

The IDEA entitles children with disabilities access to a free, appropriate public education emphasizing special education and related services and ensuring the effectiveness of educational efforts, especially those related to employment and independent living. Because it provides services in addition to protection and access, the IDEA is also an *affirmative action* law (Heyward, 1999).

There are critical differences between the special education legislation of the IDEA, which is in force during students' elementary and secondary years, and the civil rights legislation of the ADA and Section 504, which guide delivery of services to students with disabilities enrolled in higher education. The major legal and practical difference between the laws as they apply to educational settings is whether they are *nondiscriminatory* or *affirmative* (Heyward, 1999). In essence, high school graduates with disabilities who are *entitled* to participation and assistance in the elementary and secondary grades may not be *eligible* for matriculation into postsecondary education or the interventions found on their secondary school IEPs. Thus, even words such as *eligibility*, which are familiar to SWD, have new meaning. These differences are felt most acutely when SWD graduate from high school and lose the benefits of the IDEA and then matriculate into postsecondary education and assume the protections of the ADA and Section 504.

Another important difference between the IDEA and the ADA and Section 504 is the role of advocacy for SWD (Heyward, 1999). When implementing the IDEA, advocacy involves mandating services for children with disabilities who meet diagnostic criteria, even when those services are expensive or require considerable inconvenience to the district. However, advocacy in higher education has two directions that are carefully balanced (Heyward, 1999). The first direction is advocacy for the right of SWD to *equal access and participation* in the programs and activities of the postsecondary institution. The second direction involves advocacy for the right of the institution to *protect those programs and services from lowered or substantially altered standards* (McGuire, 1998; Wells & Hanebrink, 1997a). According to Wells and Hanebrink (1997b) and Heyward (1999), the Office of Civil Rights (OCR) has consistently supported the right of institutions to set and adhere to reasonable standards, even though SWD may assert that those standards are discriminatory.

Entering an institution of higher education is the realization of one of the major goals of the IDEA: participation in the regular curriculum with students who are not disabled. In postsecondary settings, the education of SWD is compared to that of nondisabled students to ensure that their educations are equivalent and that there is no separate programming or discrimination based on disability (Jarrow, 1993; Rosenfeld, n.d.).

## Practical Implications of the 504 and the ADA

Higher education institutions comply with both Section 504 and the ADA in providing services to SWD. Although there is considerable discussion of the supposedly new obligations imposed by the ADA, it should be noted that

postsecondary schools have been required to serve SWD for over 20 years (Heyward, 1999). As Heyward (1999) pointed out, the ADA focused intense public attention on the rights of persons with disabilities although these rights had been protected since the passage of 504. Additionally, Section 504 is more pertinent to postsecondary settings and the ADA is more focused on disability in the workplace. The language of the two laws is largely the same with the exception of vocabulary changes such as *handicap* becoming *disability*. Finally, where there are differences in protections, the regulations of the ADA, the more stringent law, applies (Scott, 1997a).

To receive the protections of 504 and the ADA, there must be an individual determination by the institution that a particular student has met admission or other standards determined by the school and also has a disability (Heyward, 1999, 1993). Postsecondary schools discriminate against SWD if they make a policy stating SWD are not qualified for their programs. However, they are not obliged to accept or retain persons with a disability because they are disabled. Moreover, even when students are both disabled and qualified, 504 and the ADA assure access to higher education only, but do not extend the guarantees and services received in public school (Jarrow, 1993).

SWD must demonstrate they are *qualified* for admissions to a particular program or institution before there is consideration of the role of accommodations in reducing the impact of their disabilities (Grossman, 1997; Scott, 1997a). There is immediate determination whether SWD have or could be expected to acquire essential knowledge and skills in the short-term, rather than making admissions and continuation decisions based on SWD's employability after graduation (Heyward, 1999, 1993). If at some point in their academic careers, SWD no longer meet academic requirements, even with accommodations, then they are no longer qualified (Grossman, 1997).

SWD must demonstrate all academic and technical skills required to perform essential functions (Heyward, 1999, 1993; Grossman, 1997). Institutions are not required to alter or eliminate (waive) legitimate, essential academic and technical standards when those requirements are directly related to program goals and objectives and are applied in a nondiscriminatory fashion, even if that produces an adverse affect on students with disabilities (Heyward, 1999, 1993; Scott, 1997a; Heath, 1995).

**Technical standards** are nonacademic requirements for admission or participation in a program. They include health and strength requirements, residency or full or part-time status, letters of reference, personal traits, participation in extracurricular activities and preservice or professional experiences, and compliance with the student code of conduct, among others (Scott, 1997a; Wells & Hanebrink, 1997b).

**Academic standards** include passing all required courses, completing all requirements within classes, participating in internships and other service learning experiences, meeting GPA requirements, attending class, adhering to deadlines for degree completion, etc. From admission to graduation, SWD must remain qualified, even though standards progressively increase.

**Essential functions** are elements considered fundamental to performance of a job or academic requirement. According to Wells and Hanebrink (1997b), essential functions in higher education include learning, demonstration of skills and personal strategies, and participation in the classroom environment, laboratory activities and fieldwork. They are the basic skills required for practice and professional certification or licensure (Wells & Hanebrink, 1997b). SWD who do not meet essential functions are not otherwise qualified and are not accommodated under the law (Grossman, 1997).

SWD are held to identical technical and academic standards and must demonstrate essential functions. They rarely prevail when they argue for special consideration because of their disability (Heyward, 1999). SWD should never assume requirements (for example in math or foreign language) are waived because of their disability (Heath, 1995). Indeed postsecondary institutions do not waive essential requirements, although they may provide substitutions that meet the goals of the requirement.

To obtain services, SWD must disclose their disabilities to the appropriate campus personnel, provide all documentation required by the institution and specifically request academic accommodations (Scott, 1997b; Heath, 1995). Self-identification is a major legal change in how services are accessed and is often intimidating to SWD who were accustomed to their parents' advocacy and were passive participants in the IEP process (Heyward, 1999; Scott, 1997b). Legally, parents who had argued vigorously for their children in public school are no longer permitted to (a) register their children for disability services, (b) receive reports about their children's academic progress and use of accommodations and (c) demand new or additional services. For SWD, the need for self-advocacy and assertiveness is perhaps the first tangible change in their legal status.

The ADA and Section 504 protect only those persons who meet their legal definition of a *disability* (Grossman, 1997). Although they do not contain the categorical restrictions of IDEA eligibilities, these two laws do impose requirements for documentation, including assessment by a qualified professional, use of recognized diagnostic criteria such as DSM IV and an evaluation that is comprehensive and current (McGuire, 1998). In addition, disability determination requires a clearly identified substantial impact on major life activities such as learning (Scott, 1997a; Wells & Hanebrink, 1997b). Thus, even if a student has a history of a disability, it is necessary that they demonstrate its substantial limitations and current functional impact to warrant accommodations (McGuire, 1998). SWD must prove, at

personal expense, that they are disabled to receive the protections of the ADA and Section 504 (Heyward, 1999; McGuire, 1998).

**Defining disability.** Each postsecondary school translates the requirements for determining disability into institutional policy and procedures. Both the criteria and their implementation vary in stringency across schools. Because they differ in their degree of academic resources, rigor and selectivity, postsecondary institutions recognize SWD may be qualified in some settings, but not others. Thus, rather than acting in ways that are idiosyncratic or arbitrary, higher education institutions establish disability standards that reflect their mission, programs, resources, expectations and student population.

The phrase *record or history of such impairment* often confuses SWD and their parents because they presume this clause entitles SWD to both disability determination and services in postsecondary institutions that were received under the IDEA or Section 504 in public school (Heyward, 1999; Scott, 1997a). The first interpretation is often correct because high school graduates who received special education services are acknowledged as SWD. However, the second assumption is a misreading of the nondiscriminatory intent of the law. The ADA and Section 504 protect individuals from discrimination because of disability, but do not include service provision. Again, Section 504 and the ADA are *access* laws; the IDEA is an *affirmative action* law (Rosenfeld, n.d.).

### **Accommodations and services**

Under the ADA and 504, all accommodations and services are designed to promote equal educational opportunity and access to SWD. They are identified by matching specific manifestations of the disability, demands of the class or activity and potential accommodations (McGuire, 1998). Higher education institutions are required to provide accommodations only after there is a specific request, appropriate documentation is submitted and there is a reasonable amount of time to review the documentation and the appropriateness of the requested accommodations (Heyward, 1999; McGuire, 1998).

Accommodations level the academic playing field and do not provide SWD with a competitive advantage in meeting academic and technical requirements. They are selected on a case-by-case analysis of the intersection of functional limitations posed by a disability, the demands of a particular class or task, the maintenance of academic standards and potential accommodations (Scott, 1997a; Wells & Hanebrink, 1997a). Examples of reasonable accommodations include extended time on tests, specialized test location, notetakers, books on tape and e-text, sign language interpreters, captionists, enlarged print and Brailled texts.

Accommodations do not include all the services found on IEPs or are described as helpful by SWD, unless the relationship between disability and accommodation is clearly articulated and direct. SWD may not need classroom accommodations every term. For example, a student with a disability in math learning would not need accommodations during a semester in which s/he was not registered for math-related courses. Finally, accommodations are prospective, meaning there is no reverse of poor grades or other indicators of academic jeopardy accrued before accommodations were implemented or changed.

There is no guarantee under the ADA and 504 that SWD will succeed in higher education, even with accommodations (Wells & Hanebrink, 1997a). Postsecondary accommodations are *outcome neutral* (Heyward, 1999). In higher education, accommodations and services are described as *effective* when they achieve their nondiscriminatory goal and provide access to programs and activities to qualified SWD.

Postsecondary institutions are not obligated to provide accommodations of a personal nature or those needed for personal study or to enhance personal competency (Heyward, 1999). Examples of personal services include remediation, tutoring, psychological evaluation, care attendants and coaches, personal computers and software, wheelchairs, readers for personal pleasure or study, typing papers, wake up calls, monitoring academic progress or personal conduct, personal counseling, etc. (Heyward, 1999; Wells & Hanebrink, 1997a). SWD are entitled to use all services such as career advising, stress management and test taking workshops, and use of technology labs provided to the general student population. It is in general postsecondary services that SWD find personal services not provided to them by Section 504 or the ADA.

### **Summary**

Higher education institutions exceed the mandate of 504 and the ADA when they provide affirmative actions such as admitting unqualified students with disabilities, fundamentally modifying or lowering standards, or assuming a financial or administrative burden (Heyward, 1999, 1993). While it is certainly possible to identify postsecondary schools that offer services to SWD beyond those provided to students without disabilities, they may differ in mission and funding sources from most schools.

To make the best educational choice, SWD are encouraged to understand the changes in their legal rights after high school graduation and to respond to those changes proactively. Their efforts should include:

- ◆ Investigating the requirements of postsecondary institutions they might attend
- ◆ Making sure they have fulfilled admissions requirements
- ◆ Developing academic, study, self-advocacy and personal skills needed to persist in a new academic environment
- ◆ Visiting disability services of institutions they might attend to explore documentation requirements and available accommodations
- ◆ Insisting upon a complete psychological evaluation during the last year of high school that conforms to postsecondary documentation requirements
- ◆ Participating actively in transition planning and IEP meetings to develop skills in describing their disability, its impact and the effectiveness of accommodations.

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