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Embry, P., Scott, S., & McGuire, J. (2004). *The Legal Context for Postsecondary Students with Disabilities, Institutions of Higher Education, and Faculty Members*. Storrs: University of Connecticut, Center on Postsecondary Education and Disability.

## The Legal Context for Postsecondary Students with Disabilities, Institutions of Higher Education, and Faculty Members

American society is enriched by the unique perspectives and contributions of diverse individuals. Federal anti-discrimination statutes reflect our country's commitment to eliminating discrimination in our society and protecting the civil rights of all citizens. Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (1990) protect the rights of individuals with disabilities who are otherwise qualified to participate in higher education programs and activities.

### *How Does Federal Law Define "Disability?"*

A person with a disability is defined as any person who: (1) has a physical or mental impairment that substantially limits one or more life functions; (2) has a history of such impairment; or (3) is regarded as having an impairment. Life functions that are limited by a disability are described by the legislation to include such functions as self-care, walking, seeing, hearing, speaking, breathing, and learning (29 U. S. C. § 706[8][B]; 42 U. S. C. § 12102[2]; 34 C. F. R.. § 104.3[j][2][ii]).

### *What are the Obligations of Institutions of Higher Education?*

Institutions of higher education are required to make “academic adjustments and reasonable modifications” and provide “auxiliary aids and services” to students with disabilities according to the Section 504 Implementing Regulations (34 C.F.R. Part 104.44(a)). There are many kinds of “reasonable” academic adjustments and modifications that institutions can make without incurring undue costs or fundamentally altering courses or programs. For example, one of the most frequently requested accommodations is extended testing time (Brinckerhoff, McGuire, & Shaw, 2002). Providing a notetaker, books on tape, or a distraction-free test setting are also frequently used to accommodate the learning needs of students with disabilities (Scott, 2002). Course substitutions may be appropriate for some individual students, although academic supports such as tutoring, note takers, test accommodations, and study skills training may reduce the need for course substitutions for many students with disabilities (Scott, 2002). Providing these types of academic accommodations does not mean that the students with disabilities are guaranteed to achieve the same results as other students. Rather, “reasonable” accommodations are intended to give students with disabilities an equal opportunity to achieve the same results that other students have the opportunity to achieve.. In some situations where a college or university can demonstrate that a particular requirement is essential to a program, such as fine motor control as a requirement for a program in dentistry, an accommodation is not considered “reasonable”(Rothstein, 2002).

Colleges and universities may not discriminate against students with disabilities in recruitment, admissions, academic programs, physical facilities and nonacademic services such as housing, student health services and transportation systems (34 C. F. R. §

104, Subpart E). Institutions receiving federal funds were required to comply with Section 504 of the Rehabilitation Act of 1973, and in 1990, the responsibility to assure the civil right of access to higher education programs for individuals with disabilities who are otherwise qualified to participate was extended to include non-federally funded institutions under the Americans with Disabilities Act. Under federal law, equal opportunity for individuals with disabilities is now protected in employment, public transportation, telecommunications, and in the programs, goods and services provided by both public and private institutions of higher education.

*What is the Role of the Campus Office for Students with Disabilities?*

Colleges and universities have responded to Federal legislation by setting policies and procedures that establish how the provisions of Section 504 and the Americans with Disabilities Act will be implemented on their campus. These policies stipulate the responsibilities of the institution, the student, and the faculty member. Many campuses have an office for students with disabilities (OSD) to help students and faculty members understand and carry out their responsibilities.

An OSD typically provides a wide range of services to students, faculty, staff and administration. For example, when a student with a learning disability notifies the campus OSD that he is seeking accommodations, he or she will usually be required to provide the results of recent psycho-educational testing conducted by an examiner deemed to be qualified under university policy. The OSD reviews the student's documentation and determines whether any academic accommodations are necessary in order for the student to receive equal access to the institution's programs. The OSD may provide a letter explaining the student's need for accommodations, which the student can

show to instructors. In addition, auxiliary aids and services, such as assistive technology or a sign language interpreter, may be arranged by the OSD. Instructors who are notified of a student's need for academic accommodations, or that assistive technology or an interpreter will be used in the classroom, can contact the OSD for a variety of types of information. OSDs typically provide the campus community with general information about disabilities and disability services, legal obligations of faculty members to students with disabilities, strategies for teaching students with disabilities, and academic accommodations.

The OSD is also an important resource for students with disabilities who need information about other campus services. OSDs typically provide an array of services to the campus community, including consulting with instructors and staff, providing disability awareness training for faculty, staff and administration, determining appropriate academic adjustments, helping students become aware of study strategies, counseling students in self-advocacy, developing written policies and guidelines for the institution regarding students with disabilities, maintaining confidentiality of student information, program development and evaluation, and providing professional development for disability services staff (Brinckerhoff, McGuire, & Shaw, 2002).

#### *What are the Student's Responsibilities?*

The student is responsible for obtaining an evaluation that documents the presence of a disability, and must provide a copy of the examiner's report to the institution. On most campuses, the student gives the examiners' report to the campus office for students with disabilities (OSD), where it is reviewed for evidence of eligibility for academic adjustments and accommodations. If eligible, the student is responsible for

notifying instructors of the accommodations he or she will be using, although the OSD may choose to offer assistance in this matter by providing a letter for the student to give to a professor, to help explain the situation. Accommodations and academic adjustments, such as providing a note-taker, a sign language interpreter, or extra time on an exam, are determined according to the individual needs of the student. The purpose of accommodations is to provide the same opportunity to achieve in higher education programs that other students have, by removing a specific barrier that is created by a particular disability (Scott, 2002). Students with disabilities must meet the same academic standards that other students are held to. Reasonable accommodations afford them equal opportunity to do so.

Although it is their responsibility to notify instructors of their need for academic accommodations, college students may be reluctant to come forward and discuss their disability. One reason college freshmen with disabilities often experience challenges as they learn to become self-advocates is that in high school they had very different responsibilities in regard to their right to equal educational opportunity. The civil rights of students with disabilities in American high schools are protected under the Individuals with Disabilities Education Act, which stipulate the responsibilities of schools, parents and students in a very different manner from Section 504 and the Americans with Disabilities Act. Wolanin and Steele (2004) described this difference by noting that for high school students school is compulsory and no student with a disability can be rejected, whereas participation in postsecondary education is voluntary and many students, with and without disabilities, are rejected from higher education if their academic performance is substandard.

The transition process from high school student to self-advocating college student is complex for most students in higher education, and it can be especially so for college students with disabilities. Significant challenges to their adjustment may be present if students with disabilities do not understand how their disability impacts learning in a higher education setting, if they are not aware of their rights and responsibilities under Section 504 and the ADA, and if they are inexperienced at advocating for themselves (Brinckerhoff, McGuire, & Shaw, 2002). To help students adjust to their new responsibilities, an OSD may counsel students and offer opportunities for practicing these important conversations with professors.

*What are the Faculty Member's Responsibilities?*

According to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, institutions of higher education may not discriminate against people who have disabilities and must provide reasonable academic adjustments that do not compromise the essential requirements of a course or program (34 C.F.R. Part 104.44). As institutional employees, faculty members are responsible for providing an equal opportunity for students with disabilities, to maintain institutional compliance with federal law. This means that individual faculty members are responsible for making academic adjustments available, such as extended time to complete degree requirements, course substitutions, modifications in how courses are conducted, and exams that measure student achievement rather than measuring the area of a student's disability ( 34 C.F.R. Part 104.44(a); 34 C.F.R. Part 104.44(c)).

Faculty members are responsible for meeting with the student to establish how the accommodations will be provided, in order to give the student the opportunity to achieve

the intended outcome of the course. A teaching assistant who is serving as instructor-of-record acts as a faculty member and may be regarded as sharing in these responsibilities. On some campuses, the OSD offers assistance to faculty members, through reviewing and maintaining student's disability documentation, determining appropriate accommodations. Other services offered by OSDs to assist faculty members with their legal responsibilities to students with disabilities may include providing information about teaching students with disabilities and assisting with accommodations such as providing a proctor for a student who requires extra time on an exam, or providing a quiet test setting for a student who must minimize distractions in the testing environment.

Federal law does not specify how academic modifications are to be implemented for college students with disabilities, or how to maintain academic standards when instruction, course requirements, or assessment methods are adjusted to meet individual needs. Case law on this issue has supported the expertise of faculty members in defining essential requirements of a course or program, but has also required faculty members to use nondiscriminatory procedures by treating each student's case individually and maintaining the institution's policies and procedures (Scott & Gregg, 2002).

#### *Where Can Faculty Members Find Answers to Questions About Legal Requirements?*

Federal legislation regarding the rights of qualified students with disabilities in higher education concerns access requirements of both public and private postsecondary educational institutions. There are many different types of postsecondary institutions. All of them, except for the U. S. Military Academies, must not discriminate against qualified

students with disabilities in courses or programs and have therefore designated someone on campus to be responsible for overseeing the provision of equal access.

The disability contact person for your particular campus may have a different title or work in an office with a different name than is used on another campus. Varied institutions distribute responsibilities in unique ways, and use different kinds of organizational charts and titles. Faculty members who have questions about legal requirements on some campuses can find answers in a faculty handbook, or by contacting the campus office that serves students with disabilities. Others may want to try searching the campus web site by entering terms like “ADA Compliance” or “Students with Disabilities”, if the institution provides that form of access. Here are some examples of the different ways in which information about legal requirements is made available on a variety of types of campuses.

*Campus*      The University of Connecticut,  
a public research university with 15,184 students

The University of Connecticut offers many types of academic programs and degrees, ranging from a 2-year program in agriculture to bachelors’, graduate degrees, and professional degrees. The disability contact person at the main campus of the University of Connecticut is the Coordinator of the Center for Students with Disabilities. The center provides an online guide for faculty members, located at:

<http://vm.uconn.edu/~stusr2/facguide.pdf>

*Campus*      Fort Hays State University,

a 6000-student, public, 2-year, 4-year and masters degree-granting institution with a Virtual College

Fort Hays State University, one of six public universities in the state of Kansas, has four colleges, a graduate school, and a Virtual College that delivers courses electronically throughout Kansas and beyond. FHSU provides legal guidelines for assuring equal access to web-based information, which is an important consideration for instructors who teach online. The guidelines are located at:

<http://www.fhsu.edu/accessibility/guidelines.shtml>

The disability information contact persons at FHSU are located within the Division of Student Affairs and include the Coordinator of Services for Students with Disabilities and the ADA Coordinator.

*Campus* Florida Keys Community College,  
a public community college with 4000 students.

Florida Keys Community College offers associate degrees and technical certificate programs to approximately 4,000 students from a large geographical area. At Florida Keys Community College the disability contact persons are the equity coordinator and the co-coordinators of the Office for Students with Disabilities.

*Campus* Johnson and Wales University,  
a private vocational university

Johnson and Wales University offers undergraduate, graduate and doctoral degrees in business, hospitality, culinary arts, and technology. There are many majors and programs oriented towards training for specific careers. Providing access to students with disabilities in this institutional setting, while maintaining academic integrity, presents specific challenges on a campus where some of the programs of study have unique technical standards and requirements. At Johnson and Wales University's Rhode Island campus, the Director of the Center for Academic Support is the contact person for information about providing reasonable accommodations to allow learning disabled, physically disabled, and other challenged students to succeed in the university's programs. Copies of the technical standards applicable to various programs are available from this office.

*Campus*      Bowdoin College,  
  
a private liberal arts college

Bowdoin College, with approximately 1,600 students, offers 4-year bachelors degree programs in the liberal arts. At Bowdoin, the disability information contact is the Office of the Dean of Students, where academic advising and various programs, systems and services are coordinated, in addition to the coordination of accommodations for students with disabilities.

#### *How Does UDI Relate to Faculty Member Responsibilities?*

Providing accommodations to students with disabilities can seem complicated. Approaching the responsibilities of teaching at the college level with knowledge about

Universal Design for Instruction may reduce some of this complexity. The Principles of UDI © can be used to reduce the need for many accommodations, by planning for the presence of students with disabilities and other diverse learners in the college classroom. For example, UDI Principle 2, Flexibility in Use, is defined: “Instruction is designed to accommodate a wide range of individual abilities. Provide choice in methods of use.” Instructors could apply this principle by allowing students to choose between taking an exam, presenting a project or writing a paper. By offering a choice in the method of assessment, an instructor would enable students of varying abilities to make their own decisions about the method that best demonstrates their learning (Scott, McGuire & Foley, 2003). Including an element of choice of assessment methods could reduce or eliminate the need for individual accommodations such as extended time on a final exam. Instructors who apply some of the UDI Principles in their teaching may find that they are meeting the needs of all learners in a more efficient way. For more information on the Principles of UDI, click on the link below.

[[link to UDI Fact Sheet](#)]

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*More Resources on Legal Context for the Participation of Students with Disabilities in Higher Education*

An article by Paul D. Grossman, chief regional attorney of the San Francisco office of the U. S. Department of Education's Office for Civil Rights and adjunct professor of disability law at the University of California's Hastings College of Law, describes the legal world of students with disabilities. The article is made available at the website of the American Association of University Professors, and is located at:

<http://www.aaup.org/publications/Academe/2001/01nd/01ndgro.htm>

The U. S. Department of Education Office for Civil Rights (OCR) serves students by enforcing federal anti-discrimination laws. If a student files a complaint of discrimination by an educational institution, OCR reviews the case to determine whether the institution has complied with the civil rights laws that OCR enforces. There are twelve regional OCR enforcement offices. OCR also provides technical assistance to institutions that want to prevent or address discrimination. Information about higher education's obligations under Section 504 and Title II of the ADA regarding the provision of auxiliary aids and services to students with disabilities is provided on the OCR website.

This information is available at:

<http://www.ed.gov/print/about/offices/list/ocr/docs/auxaids.html>

This document has been developed with support from the U.S. Department of Education, Office of Postsecondary Education (grant# P333A020036). It does not necessarily reflect the viewpoints or policies of the U.S. Department of Education.