Addressing the Academic and Environmental Factors Impacting Success of Students with Disabilities in Higher Education

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Moving In Day

Alt: Three pictures of students and parents carrying moving boxes into dorms at unidentified universities.
To Do List

- Find accommodation paperwork
- Meet with Disability Support Services
- Meet Professors to review accommodations
- Ensure accommodations are in place
- Testing Schedule
• K-12 Schools responsibility to provide accommodations
• Higher Education-Students responsibility to initiate accommodations

Alt: Picture of a street sign, with the words Changes and Challenges written across it.
In longitudinal study only 35% of students receiving services in K-12 self-identified for accommodations at University

Disclosure

Many students struggle with communicating the nature of their disability, not always clearly understanding it themselves. Some students leaving high school said that no one had ever explained to them what their disability was, and how it might impact them academically.

Marshak et al., (2010)
Student chooses not to identify (Stigma/Denial)

Student fails mid/end semester

Graduation delayed/Poor Retention

Financial Aid and GPA impacted

Student suspension. Grade losses
Are You Ready for the Next Step? K-12

• Actively engaging students in their transition plan.
• Packet of assessments and evaluations that determined their disability and eligibility for services and their Individual Education Program
• Differing language ADA vs. IDEA
• Accommodations Provided
• Self Determination
Integration

Social integration, along with access to counseling services, and tutoring have been demonstrated to aid student retention and success.
Faculty

Faculty attitude and responsiveness towards addressing disability issues and accommodations is a determinate for student’s willingness to disclose (Murray et al., 2009).

Alt: Classroom with students sitting at desks with laptops and a male professor at the center front of the classroom lecturing.
How is disability defined by the ADA?

The American with Disabilities Act defines an individual with a disability as any person who:

- Has a physical or mental impairment which substantially limits one or more major life activities (including walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, or performing manual tasks).
- Has a record of such an impairment
- or is regarded as having such an impairment.
“Disability” is Construed Broadly Under the ADA Amendments Act

- Section 3(4)(A) of the ADAAA provides that the definition of disability “shall be construed in favor of broad coverage of individuals under this Act to the maximum extent permitted” by the terms of the ADA as amended.
- If in doubt, it is safest to assume that a medical condition is or may be a disability under the ADAAA.
  - EEOC Training Institute
Title II

- Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
Title II: Public Services

Public entities:
• Use public funds to operate
• Have employees who are considered government employees
• Receive property or equipment from the government
• Are governed by an independent or elected board
Title III

• Request for documentation should be narrowly tailored to ascertain the individual's need for the requested modification or auxiliary aid.
• Entity must respond in timely manner to requests.
AHEAD Guidance (2012)

Acceptable sources of documentation for substantiating a student’s disability and request for particular accommodations can take a variety of forms:

• Primary Documentation: Student’s Self-report (when structured by interview or questionnaire and interpreted)
• Secondary Documentation: Observation and Interaction
• Tertiary documentation: Information From External or Third Parties
Eligibility requirements

- Public entities must adjust policies, practices, or procedures relating to eligibility requirements.
- They cannot use eligibility requirements that screen out people with disabilities.

For example: A community college cannot refuse a student in a wheelchair from enrolling in a pharmacy class. In contrast it would be appropriate for a scuba diving class to require a participant to pass a swim test as a requirement of participating in the class.
A “qualified individual with a disability”

An individual with a disability who;

a) with or without reasonable modifications to rules, policies or practices, or

b) the removal of architectural barriers, communication barriers, or transportation barriers; or

c) the provision of auxiliary aids and services;

meets the essential eligibility requirements for receipt of services or the participation in programs or activities by a public entity.
Auxiliary Aids

• Communications must be “as effective as” communications with non-disabled persons.
• Public entity must furnish “appropriate” auxiliary aids and services where necessary for equal opportunity.
• Public entity must give “primary consideration” to requests of person with disability but is not required to honor preference if effective alternative available.
Not Required

• College is not required to change academic requirements that are essential to
  • The instruction being pursued by the student; or
  • Any directly related licensing requirements.

• College is not required to alter the fundamental nature of its program.
Undue Hardship

- An accommodation request creates undue hardship if it is
  - unduly costly,
  - extensive,
  - substantial, or
  - disruptive
Application

• Provision of effective communication
  – May include auxiliary/assistive aids/services
  – Personal devices/services not required

• Removal of existing architectural and structural barriers
  – Install ramps, curb cuts, grab bars
  – Reposition shelves, telephones, furniture
Effective Communication Devices and Auxiliary Aids

• When selecting auxiliary aids, the entity must give primary Consideration to the request of the person with a disability. The entity must honor the choice of the person with a disability unless:
  • the entity can demonstrate that another equally effective means of communication exists or;
  • use of the means chosen device would not be required because of a fundamental alteration or undue burden.

• UTAH AHEAD 2010
Provisions

- Discrimination is prohibited whether it is “done directly, or through contractual, licensing, or other arrangements…” 42 U.S.C. §§ 12182(b)(1)(A)(i-iv).

- “Goods, services, … shall be afforded… in the most integrated setting appropriate to the needs of the individual.” 42 U.S.C. §§ 12182 (b)(1)(B).

- Personal devices and services are not required.
  - “… such as wheelchairs; …prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.” 28 C.F.R. § 36.306

- Great Lakes ADA Center
Physical Accessibility

Failure to provide access such as wheelchair ramps could be considered discrimination. Architectural design considerations include but are not limited to:

- walkways, sidewalks and parking facilities
- entrance ramps, handrails, hallways and elevators
- door width and threshold height, door pressure or ease of opening,
- adequate space around door to maneuver a wheelchair, and elevator accessibility
- floor surface, carpets, and rugs
- restroom facilities
Readily Achievable

Readily achievable means that removal of a barrier must be “accomplishable and able to be carried out without much difficulty or expense.” Whether any modification is “readily achievable” depends on many factors, such as:

- the nature and the cost of the modification
- the overall financial resources of the business in question
- the number of persons employed at the facility
- the impact of removing the barrier on the operation of the facility
Aggrieved Parties

• Utilize the entities’ grievance procedure
• File a federal administrative complaint within 180 days of the alleged violation with the appropriate federal agency or the DOJ
• File a lawsuit
Dudley v. Miami University (2014)

- Blind student pursuing a degree in zoology for the objective of attending veterinary school at Miami University, violated title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 by acting “with deliberate indifference” and failing to provide necessary auxiliary aids or modifications in the student’s classes and labs.
Dudley v. Miami University (2014)

- University sent a letter to her instructors suggesting that only two modifications were necessary: offering all classroom material in Rich Text Format and allowing double-time for exams and quizzes. The letter to the faculty made no mention of Braille textbooks, tactile graphics, human assistants, timely course materials or accessible learning management software -- all accommodations she stated were necessary.
Dudley v. Miami University (2014)

On June 25, 2014, DOJ advised the parties that it had found violations of Title II of the ADA at Miami University:

• Used technologies that are inaccessible to individuals with disabilities, including those with learning, hearing, and vision disabilities
• Failed to ensure, through the provision of appropriate auxiliary aids and services, that communications with individuals with disabilities are as effective as communications with others.
• Failed to reasonably modify its policies, practices, and procedures where necessary to avoid discrimination on the basis of disability.
Quinnipiac University Settlement

- Private University (Title III Complaint)
- The university placed a student on mandatory leave after she was diagnosed with depression (without first considering options for the student’s continued enrollment).
- She was placed on leave after she sought mental health counseling and the university refused to refund her tuition.
- Did not consider modifying its mandatory medical leave policy to permit the complainant to complete her course work while living off campus by attending classes either online or in person.
Quinnipiac University Settlement

• The DOJ investigation found this to be discrimination because the university failed to consider modifications to its mandatory leave policy. In addition to paying over $32,000 in damages, the university agreed to modify its policy to consider reasonable accommodations other than mandatory leave when students were seeking treatment for a mental illness.

• As stated in the DOJ’s press release, “universities like Quinnipiac cannot apply blanket policies that result in unnecessary exclusion of students with disabilities if reasonable modifications would permit continued participation.”
Useful Resources

• Cornell University Employment & Disability Institute
  www.hrtips.org

• Office of Civil Rights
  http://www2.ed.gov/about/offices/list/ocr/index.html

• National Center for College Students with Disabilities
  nccsd@ahead.org

• Association on Higher Education and Disability
  https://www.ahead.org/
Contact Me

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References


- Alejandro V. Palm Beach State College http://www.bazelon.org/In-Court/Closed-Cases/Alejandro-v.-Palm-Beach-State-College.aspx