



Quarterly Update

Students with Disabilities in Postsecondary Education: Legal Considerations

Dr. Antonis Katsiyannis, professor of special education at Clemson University, conducted a videoconference presentation for the DTN on the legal considerations of students with disabilities in postsecondary education. The presentation included legislative mandates and relevant litigation. Highlights of the presentation follow.

Section 504 & the Americans with Disabilities Act

The Office of Civil Rights in the US Department of Education enforces both Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). According to guidance provided by the US Department of Education (2006), institutions of higher education are not required to provide a free appropriate public education, but rather to provide appropriate academic adjustments. However, academic adjustments are only considered upon request of the student and are intended to ensure equal educational opportunity. Academic adjustments which lower or substantially change the essential requirements of a program are not covered.

Litigation

Admission

Southeastern Community College v. Davis (1979): A student with a severe hearing impairment was denied admission to a nursing program. The court concluded that an otherwise qualified person is one who is able to meet all of a program's requirements in spite of his or her disability and that institutions have the right to set and maintain standards unless they are arbitrary. The court further noted that though the lines between lawful refusal and illegal discrimination may not be always clear, refusal to modify an existing program might become unreasonable and discriminatory if there is no consideration given to the latest developments and advances in technology.

Doe v. New York University (1981): A medical student was denied readmission based on a history of violent and self destructive behavior. The court held that the student's psychological disorder was a disability but that her exclusion was not a violation of Section 504 because of the risk she presented to herself and others.

Pushkin v. Regents of the University of Colorado (1981): The court held that decisions based on the possible reactions of others, not on risk, violated the central intent of Section 504. Pushkin was denied admission to a psychiatric residency program-did not have the necessary emotional stability to contend with patients' reactions to his disability. Pushkin has Multiple Sclerosis and uses a wheelchair.

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Eligibility

McGuinness v. University of New Mexico School of Medicine: A student alleged that he had a disability because he had an anxiety disorder that substantially limited his "academic functioning." His disorder manifested itself when he took chemistry and mathematics tests. The court ruled that although anxiety disorder qualifies as impairment under the ADA, its manifestation in only two subjects did not result in a limitation of a major life activity. Further, even if this impairment limited a major life activity, that limitation would not be substantial. Finally, the court stated that alternate study habits may resolve the effects of test anxiety in the same manner as eyeglasses correct impaired vision so that it does not constitute a disability under the ADA.

The Average Person Standard

Another area of controversy has been the eligibility of students with learning disabilities, particularly in light of the standard applied. The ADA defines "disability" as an impairment that substantially limits a major life activity. This limitation is supposed to be determined with reference not to one's innate abilities, but to the skills of the average American citizen. In contrast, Denbo (2003) argued that courts should compare them to a similarly educated group and not to the general population. Literal application of the regulations would make it virtually impossible for anyone with a college or graduate degree to be protected under the ADA or Section 504.

Price v. National Board of Medical Examiners (1997): The court employed the "average person in the general population" formula in concluding that three medical students who were denied additional time and separate rooms for the United States Medical Licensing Examination (USMLE) were not disabled for purposes of the ADA. Consequently, unless an individual is functionally impaired as compared with the average person in the general population, he or she should not receive unfair advantages (Wilhelm, 2003).

The Sutton Trilogy

These cases stand for the principle that a person is not "substantially limited" if a disability can be mitigated (e.g., with medication) and if the disability does not limit a person in a "major life activity" (Knauff, 2001). Potentially, an individual who has epilepsy is not entitled to disability discrimination legal protection if the medication controls the seizures (Rothstein, 2004).

Sutton v. United Air Lines, Inc. (1999): The court held that the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment, including, in this instance, eyeglasses and contact lenses.

Albertson's, Inc. v. Kirkingburg (1999): The court ruled that uncorrectable monocular vision inevitably leads to some loss of horizontal field of vision and depth perception. However, monocularity does not invariably cause a substantial limitation of a major life activity.

Murphy v. United Parcel Service, Inc. (1999): The court determined that an individual was not qualified as having a disability because medication was sufficient to control his high blood pressure.

Accommodations

Alexander v. Choate (1985): The Court ruled that accommodations that fundamentally alter the nature of the benefit or program are not reasonable. The Court further established that the definition of otherwise qualified was to include the ability to meet a standard or participate in a program with reasonable modifications or accommodations

Wynne v. Tufts (1991): An institution must be able to document the legitimacy of the standard to a student's academic program, the expertise brought to bear in searching for reasonable accommodations, and how any denied accommodations would either fundamentally alter the academic program in question or present the institution with an undue hardship.