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Postsecondary Students with Disabilities: The History of Higher Education

Legislation

The National Center for Education Statistics (NCES) revealed that of the 20.2 million students enrolling in colleges, 2.42 million (11.1%) of these students have a disability (NCES, 2018). IES National Center for Education Statistics (2019) found that 88 percent of SWDs who have self-disclosed their disabilities, attend postsecondary institutions in the United States. In the initial stages their postsecondary programs, it is this population, postsecondary SWDs, that are at risk for departure. According to the National Center of Education Statistics, (2020), 72% of all students with disabilities (U.S. Nationally) have departed or dropped out of postsecondary academic settings (college and universities) including online and distance learning.

The Rehabilitation Act. The Rehabilitation Act mandates federal protection against discrimination to people with disabilities from any program that receives federal funds, including school boards. This act mandates federal protection against discrimination to people with disabilities from any program that receives federal funds, including school boards. Section 504 of the Vocational Rehabilitation Act of 1973 ensured that people with disabilities, but not specifically students, who had previously been denied access would receive legislative support (Rao, 2004). However, Section 504 is outcome neutral, with no specific academic plan to ensure each student with exceptionality's success and graduation (Madaus & Shaw, 2004).

Americans with Disabilities Act. The Americans with Disabilities Act strengthens the Rehabilitation Act with broader protections against discrimination of people with disabilities, but is loosely defined (Madaus & Shaw, 2004). Originally, Congress passed the ADA, and therefore, everyone gained equal access and opportunity unhindered by prejudice (Gordon & Keiser (Eds.),

2000). The implementation of the Americans with Disabilities Act (1990) mandated that all institutions of higher education provide full accommodation services to students with disabilities, regardless of whether the program received federal funding (Kraska, 2003). Furthermore, the ADA extended its protection of people with disabilities in the areas of employment, activities of state and local governments, transportations, and telecommunications (Rao, 2004).

As nearly every postsecondary institution receives federal funds, they must comply with section 504 (Hawke, 2004). Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability, including higher education. Moreover, it is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met. According to Grant et al., (2004) the definition of a learning disability (LD) is a discrepancy between intellectual ability and actual school achievement, and it was confirmed that persons identified with LD are covered under the ADA (Grant et al., 2004).

Section 504 covers postsecondary SWDs and defines disability more broadly than the IDEA. Consequently, this law may not protect postsecondary SWDs, students who do not meet the acceptable coverage requirements may still be eligible to receive accommodations under Section 504. For example, a student with Asperger's Disorder would typically be defined as having a disability, but not meet the specific eligibility criteria for the category of Autism under Section 504. As a result, even though SWDs with Autism are guaranteed rights for coverage of a disability, they may not receive the same and necessary services and accommodations in higher education (Adreon & Durocher, 2007).

Under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, all qualified students with a disability (as defined under the law) are eligible for reasonable

accommodations in the academic environment that enables the qualified individual to enjoy equal access to the college's programs, services or activities. The college is not required to provide any aid or service that would result in a fundamental alteration to the nature of the program (North Central Missouri College, 2019). These laws protect students with disabilities in general terms, yet they did not specifically address specific accommodations and modifications to instruction by higher education faculty.

The Individuals with Disabilities Education Act. The Individuals with Disabilities Education Act was enacted in 1975 and was amended in 2004 detailing the needs for SWDs be taught in (a) a least restrictive environment or mainstreamed with non-disabled peers, (b) receive a free, appropriate public education (FAPE), and (c) be provided funding and related services to their disability, along with other specific measures (Smith, 2005). The Individuals with Disabilities Education Act defines the rights of students and the responsibilities of schools and districts (Adreon & Durocher, 2007).

These measures include Specially Designed Instruction, with an emphasis on one-on-one instruction between students and special education teachers (DeMartino & Specht, 2018). During K-12 school, a student with an exceptionality is given an Individualized Education Program (IEP) specifying goals and objectives for learning and behavior, and school personnel is held accountable for documenting the student's progress toward mastering these goals. Furthermore, the IEP contains specified exceptionality categories, for which students must meet certain criteria to be considered eligible to receive services (Adreon & Durocher, 2007). The reauthorization of IDEA in 2004 resolved the complaints made by teachers and staff regarding the copious amounts of paperwork for Individualized Education Plans and the numerous meetings that they were expected to attend (Smith, 2005). IDEA (2004) mandated accommodations and solidified

Specially Designed Instruction for *all* SWDs Pre-K-12 (DeMartino & Specht, 2018). However, students with disabilities who transition to postsecondary settings are posed with the issue of having to request accommodations every time they need an accommodation.

Under IDEA, assistive technology can be used as an accommodation for students with disabilities (Zhang, et al., 2010). There are many assistive technology products available to help K-12 SWDs. Yet, requesting accommodations in higher education has proved more difficult than in K-12 settings (Zhang, et al., 2010). Any accommodation or modification an IEP team chooses must be based on the individual needs of the student, including program modifications and accommodations should be discussed by the IEP team. Services must be requested through the DS office. SWDs must request specific in-class accommodations from professors, such as preferential seating or the ability to submit a draft prior to their final grade (DuPaul, Dahlstrom-Hakki et al., 2017). Yet, since each college and university policy vary if the request poses a hardship to the university, the request may be denied (Madaus, Kowitt, & Lalor, 2012).

No Child Left Behind. In 2001, No Child Left Behind was passed into law requiring that every child should receive an education, including those with special needs (Smith, 2005). No Child Left Behind provided all students K-12 with highly qualified teachers (Tran, 2009). NCLB was far more specific with educational expectations by holding K-12 school districts accountable for its students' (All students including SWDs) academic progress. NCLB deals directly with testing and measures the adequate yearly progress K-12(AYP). IDEA ensures that K-12 SWDs receive appropriate tests outlining the details in Section K: Participation in State and District-wide Assessments (Welligent, 2020). NCLB also promotes K-12 school choice, teacher quality, and paraeducator quality, which included the quality of credentialed education specialists (Ralabate & Foley, 2019).

NCLB/IDEA OVERLAP FOR SWDs



Figure 1. Representation of No Child Left Behind (2001) which overlaps with the Individuals with Disabilities Education Act (1990/2004).

In addition to No Child Left Behind, it is explicitly written in the reauthorization of IDEA (2004) that all K-12 teachers would be required to be trained to be highly qualified, particularly special education teachers (Smith, 2005). However, this strict national mandate does not pertain to higher education faculty. Moreover, it is implied that their level of degree makes higher education faculty highly qualified, and therefore, they bypass special education training.

Higher Education Opportunity Act (HEOA-2008). In 2008, the Higher Education Opportunity Act was enacted with the purpose of providing postsecondary SWDs the legislative rights and protection they deserved (Newman, Madaus, Lalor, & Javitz, 2019). The terms of the 2008 reauthorization of the Higher Education Opportunity Act (HEOA) include specific definitions of postsecondary programs for students with intellectual disabilities and the components of the degree they would receive at postsecondary institutions (Lee, 2009). In addition, the HEOA mandates 24 topics which include simplifying the federal aid application, campus safety plans, and rules regarding relationships between higher education institutions and student lenders (Lee, 2009).

Currently, universities face challenges with providing services and accommodations that involve specialized knowledge (Augustine, 2010). Although HEOA mentions the necessary

transition of SWDs, there is nothing explicitly written to address postsecondary accommodations, academic program adjustments, or disability services provided (Madeus, 2012). Disability-related litigation is a trending concern for institutions of higher education (Stevens, 2018).

Title VII of the Higher Education Opportunity Act (2008) seeks to provide technical assistance or professional development for faculty, staff and administrators in institutions of higher education to support SWDs with quality postsecondary education. This law states that faculty in higher education will employ innovative, effective, and efficient teaching methods and strategies, institutions will provide postsecondary faculty, staff, and administrators with the skills and supports necessary to teach and meet the academic needs of students with disabilities, in order to improve the retention of such students in, and the completion by such students of, postsecondary education (Higher Education Opportunity Act Reauthorization, 2008).

As national legislation for postsecondary SWDs has improved throughout the decades, enrollment has increased in colleges and universities, yet with these triumphs, complications have developed. Faculty members may refrain from providing the necessary assessment accommodations and academic adjustments, regardless of the SWDs request (Madeus, 2012). Higher education laws, such as the Higher Education Opportunity Act of 2008, addresses postsecondary accommodations, academic program adjustments, and teacher training in Section D. (Madeus, 2012). However, there is remarkable evidence demonstrating the lack of faculty knowledge in the area of special education and HEOA, effective teaching strategies, and their implementation of appropriate testing accommodations (West, Novak, & Mueller, 2016). Furthermore, higher education institutions are under no mandate to honor a student with an exceptionality's specific request.

Although it has been more than a decade since the HEOA (2008) was written and enacted, there is still evidence that not all higher education faculty are trained properly, not all resources are being provided to postsecondary SWDs, and not all student accommodations are being met. This evidence strengthens the need to capture faculty's experiences to gain insight about appropriate accommodations and policies in higher education institutions.

The current federal legislation lacks sufficient transitional support to students with disabilities to higher education settings, which directly affects their departure (Kurtz, 2011). Based on the HEOA, Title VII, colleges and universities should acknowledge SWDs who provide valid documentation and provide reasonable academic and classroom accommodations to them upon request (Kraska, 2003). National special education laws were not enacted until the 21st century, and proper enforcement of these written acts may take longer upon evaluation.

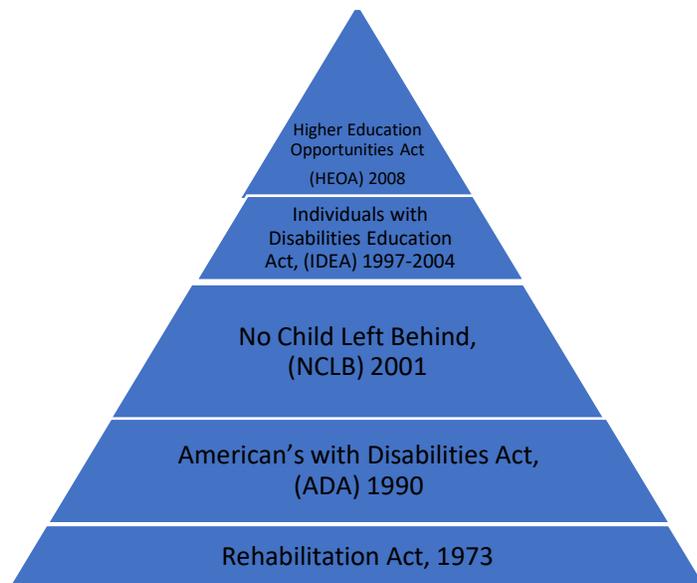


Figure 2. U.S. Special education legislation framework. This figure illustrates the main components of each special education law.

Higher education faculty may be uneducated in higher education laws and policies that pertain to SWDs (West, Novak, & Mueller, 2016). Since much of recent special education law

reflects the need for instructional accommodations in all educational settings, it would be beneficial for faculty to have an understanding of these laws.

It has been noted that there are positive interventions and creative strategies for postsecondary SWDs used by faculty. However, higher education faculty members are faced with the tasks of providing appropriate accommodations and adjustments, accepting any inconveniences to the current academic program, and complying with the policies of the institutions, as well as the national laws that allow postsecondary SWDs equal access to higher education programs (Office of Civil Rights, 2019). There is evidence that increasing faculty awareness of special education laws may help both, faculty and students (Rao & Gartin, 2003).

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