

Obtaining Accommodations for College Students with Disabilities

By

Matt Cohen, Esq.
Monahan & Cohen
225 W. Washington St.
Suite 2300
Chicago, IL. 60606
312-419-0252

www.monahan-cohen.com

mcdspedlaw@earthlink.net

Although some children with disabilities may have impairments that are so severe that college is not a realistic option for them, many others have the potential to be highly successful in college and beyond, particularly if provided the appropriate accommodations that they need to function within the college environment. However, the procedures for obtaining accommodations are very different in relation to getting into and participating in higher education than they are in elementary and high school. In the public school system, the responsibility lies with the school district to identify children suspected of having disabilities, to evaluate them (with parent consent), and to develop and implement individualized educational programs (IEPs) or Section 504 plans designed to meet their unique needs. Unfortunately, the law governing special education, the Individuals with Disabilities Education Act (IDEA) does not apply to higher education.

Further, while Section 504 applies to many colleges and universities, the rules for how it applies are different than within public elementary and high schools. Eligibility under the IDEA or Section 504 in public school does NOT automatically ensure that a student will be eligible for accommodations in college or, if eligible, will automatically qualify for the same services or accommodations. In order to maximize the likelihood that the student will receive appropriate accommodations in college, planning by the parents, the student, and the school district must begin well before the child applies for college. Some of these steps will be briefly highlighted below.

The Right to Accommodations

Two different federal laws govern the right to accommodations in relation to higher education. The first is the Americans with Disabilities Act of 1990 (the ADA), which has two different sections that are relevant to higher education. Title II of the ADA regulates local and state governmental entities, which includes public colleges and universities. Title III of the ADA regulates what are called places of public accommodation. All private colleges and universities are places of public accommodation. However, those schools that are religiously controlled are exempt from the coverage of the ADA.

In addition to regulating the provision of “reasonable accommodations” within colleges and universities, the ADA also provides the right to reasonable accommodations

from agencies that administer the tests that are used for college and graduate admissions and for licensing upon graduation. Thus, the ACT, SAT, MCAT, LSAT and the like are all operated by organizations that are required to comply with the requirements of the ADA.

The second law which governs the right to reasonable accommodations in higher education is Section 504 of the Rehabilitation Act of 1973. Section 504 provides very similar protections as the ADA, but has one significant difference. In order for Section 504 to be applicable, the organization must be a recipient of federal financial assistance. While most colleges and universities do receive federal financial assistance, and are therefore governed by Section 504, not all do. Thus, the non-discrimination laws apply to all colleges and universities except those that are religiously controlled and do not take federal financial assistance.

What Needs to Happen during High School?

First, all students in special education should have a transition plan in place starting at the age of 16. This plan should include the student's input about their long-term goals, assessment of the student's continuing needs, and the development and implementation of a plan to facilitate the student's accomplishment of realistic post-secondary goals. This plan, when done right, can often provide important support for the student to prepare them for college, before they even get there. Notably, the transition plan can address not only academic and vocational goals, but life skills, organizational or executive functioning needs, social deficits and a variety of other issues that may impact a student's ability to function successfully in college even if they meet the college's admissions criteria.

Second, the student needs to identify what schools may be appropriate, given the student's disability (ies). The K&W Guide and consultation with college counselors can be invaluable in helping to determine whether particular schools or even types of schools are realistic for the student, with or without the provision of accommodations. If the student is going to take the SAT and/or ACT, the school and the family must take the necessary steps to secure accommodations on those tests as well. For those students who do badly on such tests, it is worth investigating schools that place less emphasis on those tests or don't require them at all, a trend which has been gathering momentum recently.

Third, before a student in special education graduates, the school district is now required to complete a document called a Summary of Performance. This document is supposed to identify the nature of the student's disability (ies), what has been provided for them, their progress to date, and services and/or supports they continue to need. This document, which only became a requirement in 2005, can be of enormous value both in documenting the nature of the child's disability and in providing support for the provision of particular accommodations. It is so new that not all schools are fully familiar with it, so parents should be sure that this is provided before the student graduates.

Who is Entitled to Accommodations Under the Disability Rights Laws?

Under both the ADA and Section 504, a person is entitled to reasonable accommodations if they meet a number of criteria. First, the person must have a physical or mental impairment which substantially limits a major life activity. There are a variety of different major life activities, but one of the most important, for purposes of accommodations in college, is the major life activity of learning. Second, the person must meet the general qualifications for participation in the program or activity that they are applying for, either with or without accommodations. Third, they must establish that they need specific accommodations and that these accommodations are “reasonable.”

These criteria are very different than those used under the IDEA for children in special education. Equally important, unlike the public schools, where the responsibility lies with the school to identify, evaluate and plan a program for children suspected of having a disability, the ADA and Section 504 give the responsibility for establishing the presence of a disability to the student seeking the accommodation. In other words, if the student wants reasonable accommodations, they must come forward, identify that they have a disability, document the disability and the need for accommodation and specifically request the provision of such accommodations. The burden is on the student, not the school. In fact, under these laws, the colleges may not ask questions about disability in the application/admissions process and the student need not disclose the existence of a disability at that stage.

Students seeking information about how a particular school will respond to the student’s disability and whether it will have appropriate services to meet the student’s needs can and should contact the school’s Office of Disability Services (different schools use different names). The Disability Services staff will be able to share information about the types of services that are provided, the types of students that are effectively served by the college or university, and help the student to determine when and what information to share (pre or post-application) in securing accommodations.

Although this is less often an issue, it should also be pointed out that under both laws, students are protected from discrimination if they have a history of disability or are perceived to have a disability. Thus, a school could not discriminate against an individual who is HIV Positive but has no symptoms, simply because of their HIV-Positive status. This would be discrimination based on the student being regarded as having a disability, even though they were not at that time actually disabled.

The Need for Documentation

Because the burden rests with the student to document that they actually have a disability, it is important that the student carefully document the existence of the impairment. This requires several different kinds of documentation. First, the colleges and universities are interested in the student’s history in relation to their disability. Clinical reports which first provide the diagnosis and which track the progression of the

diagnosis are useful in establishing that the disability has been present on a long-standing basis. Second, schools are interested in current evaluations, typically at least within the past three years if not more current. Often, evaluations can be obtained from the school districts during this period, which may provide the necessary information. However, under some circumstances, the student may need to obtain outside clinical evaluations. This may be necessary for several reasons. First, if the student does not have a current school district evaluation, the outside evaluation may be the only option for obtaining current diagnostic material. Second, and particularly for students who are high functioning or even gifted, or who have more subtle disabilities, more sophisticated private testing may provide data that offers support for the presence of a disability that is not present in the public school's testing.

In addition to clinical material, the colleges and universities are very interested in whether the student has been receiving special education and/or Section 504 services. Schools tend to be more receptive to the provision of accommodations when the student has a history of having received special education or Section 504 accommodations for a long period of time. Schools tend to be more skeptical of the student's entitlement to accommodations if the student went through most or all of school without assistance and only became eligible for services late in high school. Unfortunately, there is a sense that some students deliberately seek eligibility around the junior year of high school for the primary purpose of obtaining accommodations on the SAT and ACT and for purposes of accommodations in college. While this may sometimes happen, there are also many students whose disability does not become a major problem or become obvious until the rigors of high school expose the problems that the student had previously been able to cope with successfully. Nonetheless, providing documentation of a prior history of accommodations is very useful in establishing both general eligibility for accommodations and justifying the need for the particular accommodations being requested. The graduate exam administrators (for the MCAT, LSAT, etc.) also look closely at whether there is a history of accommodation in high school and college, so these processes have a domino effect as the student progresses through school.

While students with late – diagnosed disabilities are not excluded from being considered for accommodations, either for college board testing, or once admitted, there is no question that those students are viewed with greater scrutiny and may need even more documentation to establish that they have a real impairment and require accommodations. Notably, recent research has suggested that the criteria for diagnosing AD/HD may be modified to allow for diagnosis based on symptoms that manifest themselves in adolescence, rather than in childhood, because of growing information that suggests that not all students with AD/HD meet criteria in elementary school. This may make it easier for some late-diagnosed students to make the case for eligibility.

Obtaining Accommodations After Admission

As indicated, the school may not ask questions that directly or indirectly seek to identify whether a student has a disability during the application process. However, some students may choose to share information about their disability during the

application process or even use the disability as material in application essays for sharing ways that they have coped with adversity or otherwise. Whether and what to share in the application process is a difficult decision, which typically should be made with the benefit of consultation from parents, college counselors and even the disabilities services staff at the school the student is interested in.

Once the student has been admitted, however, if the student wants accommodations, they must contact the Office of Disability Services, present their documentation of disability and formally request accommodations. A wide variety of accommodations are available, from preferential seating to extra time for assignments or tests, to use of a note-taker, to use of a tape recorder or word processor for completion of assignments. The nature of potential accommodations is at one level limitless, in that there is no specified list. Instead, accommodations are developed to respond to the needs of the particular individual. On the other hand, just because a student seeks a particular accommodation, or even received that accommodation previously in public school, does not mean that the college or university is obligated to provide it.

Unlike special education, the college or university is not obligated to provide individual tutoring or 1-1 aides. If they elect to do so, as some do, they may charge extra for those services. The colleges must make their own judgment as to whether a request for a particular accommodation is “unduly burdensome,” rather than reasonable. That determination will be based on a variety of factors, including but not limited to the quality of the student’s documentation supporting the need for the accommodation, whether the student has a history of receiving the accommodation, the size of the school and its ability to provide the accommodation, and whether the school feels the accommodation simply goes beyond what is reasonable for the student to be accommodated.

In addition, the school has the right to refuse requested accommodations if the school believes and can establish that the proposed accommodation will “fundamentally alter,” the basic mission, organization or mode of operation of the school. This comes up most often in circumstances when the student is requesting a total waiver of a particular requirement for graduation, such as exemption from math or foreign language requirements. Under some circumstances, alternatives to these requirements can be agreed upon which will work for the student and satisfy the school, but this is not always the case.

What to do if the accommodation is not being provided?

Unlike public school, where the school district is charged with the responsibility for insuring compliance with the IEP or 504 plan, there is less direct responsibility for enforcement placed on the college or university. At the outset, schools handle the process of alerting faculty of the accommodation plan in a variety of ways. In some, the Office of Disability Services takes initial responsibility for notifying the faculty, while in others the burden is put on the student to bring the accommodations plan to the attention of the faculty member. Once the plan has been presented, the staff person is supposed

to carry the plan out, but implementation often varies with the personality, understanding, and sensitivity of the individual staff member. Where there is a problem with compliance, the student generally is well advised to follow a series of steps:

- 1) Try to work it out directly with the faculty member
- 2) Seek the help of the Office of Disability Services staff
- 3) Seek to work things out with higher ups in the particular department or Dean's Office
- 4) Determine what the school's internal grievance procedure is. Typically, schools have two sets of grievance procedures, a general grievance procedure relating to any problem involving a student, and a specific grievance procedure for handling disability related complaints. In consultation with the Office of Disability Services staff, parents, and perhaps private counsel, the student may opt to file exclusively via the disability grievance route, the general grievance route or both. In either event, the student should be aware that there are typically specific timelines and documentation requirements contained in the grievance procedures.
- 5) If these efforts are unsuccessful, or if the problem is sufficiently severe to warrant more serious action, the student may file complaints with the US Department of Education, Office for Civil Rights or the US Department of Justice, for violation of Section 504 or the ADA respectively.

Obviously, these are last resort measures and students are best off resolving matters informally and amicably within the school structure wherever possible.

When seeking to obtain reasonable accommodations, documentation is critical. Unfortunately, the standards for qualifying for accommodations are generally getting tougher, rather than easier, so parents and students should be thorough in gathering as much information about the student's difficulties, both historically and currently, as possible. School records, clinical data, anecdotal information and evidence of the actual impact of the impairment are all critical to receiving recognition as a person with a disability and obtaining the desired accommodations. Once the accommodations have been secured, the student must develop and judiciously implement self-advocacy skills to insure that the accommodations are provided as intended and as needed. When in doubt, students should seek assistance from their Office of Disability Services, or if necessary,

from outside agencies such as OCR, (www.ed.gov/about/offices/list/ocr and www.hhs.gov/ocr) or from knowledgeable lawyers. Students and parents can obtain more information about disability rights in higher education and the process of securing accommodations at two excellent websites: www.heath.gwu.edu and www.ahead.org.

Matt Cohen has represented children and adults with disabilities in regard to public and higher education for approximately 25 years. He regularly writes on

disability law topics and lectures regularly on these subjects throughout the United States. His law firm, based in Chicago, has represented children, college students and adults throughout the United States.