

The Relationship of Disability Rights Laws to Education Majors and Teachers with Disabilities

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I. What is a Disability?

Fifty-four million Americans have some form of disability. Individuals with disabilities are protected from discrimination by three major laws: the Rehabilitation Act, the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA). The Rehabilitation Act and the ADA are the most general anti-disability discrimination laws, protecting individuals with disabilities in virtually all aspects of daily life. Under the definitions of the Rehabilitation Act and the ADA, a disability is, most commonly, a physical or mental impairment that substantially limits one or more major life activities. A physical or mental impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting any one or more major body systems, such as sensory functioning or neurological functioning, and any mental or psychological disorder. A major life activity is an activity in which an individual engages numerous times, if not constantly, over the course of each day of the individual's life. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, sitting, standing, lifting, reaching, and engaging in mental or emotional processes such as thinking, concentrating, and interacting with others. A substantial limitation of a major life activity means a person is unable to perform that activity at all or can only perform the activity in severely limited fashion compared to other individuals performing the same activity.

The physical and mental impairments that do substantially limit major life activities include a wide range of conditions. Some of the more common physical disabilities include hearing impairments, visual impairments, mobility impairments, multiple sclerosis, muscular dystrophy, chronic fatigue, immune dysfunction syndrome, Crohn's disease, and cardiac problems. Some types of physical impairment can be a disability or not depending on whether a major life activity is being limited. HIV, AIDS, and AIDS Related Complex can be disabilities, but commonly are not disabilities when treatments prevent the disease from limiting any major life activities. A mental impairment, to be considered a disability, must be diagnosed by mental health professionals as a condition that constitutes impairment of a major life activity. Many mental health conditions are impairments that do not substantially limit any major life activities. Manic depression, autism, apraxia, organic brain syndrome, and schizophrenia can all be disabilities, but only if the individual with the mental impairment is substantially limited in a major life activity due to the condition. Certain conditions are deemed by the law not to constitute disabilities under any circumstances: homosexuality; bisexuality; transvestitism; transsexualism, pedophilia; exhibitionism; voyeurism; gender identity disorders not resulting from physical impairments; any other sexual behavior disorders; pyromania; compulsive gambling; kleptomania; current alcoholism; obesity; and psychoactive substance use disorders resulting from the current illegal use of drugs.

An individual can also be legally defined as disabled if the individual has a record of such impairment or is regarded as having such impairment. The first of these conditions is for individuals who have had an impairment that substantially limited a major life activity, but which no longer does. An example is an individual who has a history of cancer that is cured or in remission. Other individuals who may qualify under this condition include people with a prior history of mental illness, heart disease, or other treatable diseases. The second condition is for individuals who do not have an impairment that significantly limits a major life activity, but they have been mistakenly identified, classified, or treated as if they were disabled. Some examples of this condition include people being mistakenly treated as disabled for being a carrier of the Hepatitis B virus, having asymptotic HIV, or having minor physical ailments such as minor knee or back pains.

IDEA, as it deals specifically with the educational rights of disabled children, protects only children who are educationally disabled. IDEA specifically lists the types of disabilities recognized under that law. The list of the disabilities that are recognized under IDEA are: mental retardation,

hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.

II. What are the Rights of Individuals with Disabilities in Teacher Education Programs?

Individuals with disabilities who are students in post-secondary programs, including teacher education programs, are all protected from discrimination by the Rehabilitation Act and the ADA. These laws prohibit colleges from engaging in discrimination in any academic, research, training, physical education, athletic, or other post-secondary education program. The laws forbid discrimination in the general treatment of a student with a disability. The laws specifically state that colleges also cannot discriminate in recruitment, admissions practices and decisions, housing, financial assistance, employment assistance, nonacademic services, physical education, athletic events, counseling, placement decisions, and social activities and organizations. Students with disabilities at the post-secondary level should be educated, to the maximum extent appropriate, in integrated settings.

Schools may not discriminate against students with disabilities in recruitment, application, testing, interviewing, or decision-making. A student with a disability cannot be denied admission to a school or program unless that disability prevents the student from successfully performing the goal of the program without unnecessary risk to others. Admissions committees may not hold standard tests taken with accommodations to be of lesser value than standardized tests taken under normal circumstances. A school cannot make use of any test or criterion for admission that has a disproportionate or adverse effect on students with any type of disability, unless the test or criterion has been demonstrated to be a valid predictor of success in that particular program and no alternate test or criterion with a lesser disproportionate, adverse effect exists. In cases of late diagnosis of a disability, admission decisions should account for the late diagnosis and time to adapt to treatment in making decisions regarding readmission. A school should not make pre-admission inquiry as to whether an applicant for admission has a disability but may make post-admission inquiries on a confidential basis to determine if accommodations are needed. A school may not require a person with a disability to identify the disability as a requisite for admission, unless the school or program is specifically designed for individuals with disabilities. Also, any school may make a pre-admission inquiry as to disability if the reason is to redress past discrimination. Students with disabilities, of course, have the right to self-identify the disability. If the student has not self-identified a disability during the admission process, the disabled student, upon acceptance, has the responsibility to notify the administration of the need of accommodations or services. The school has the right to ask the student to provide proper evidence of the disability.

A college student with a disability must receive any necessary academic adjustments to accommodate their disability, which can include modifications of academic requirements, course examinations, auxiliary aids, and other rules and policies. Auxiliary aids must be provided without expense to the student. Post-secondary schools are supposed to accommodate students with disabilities by modifying academic requirements when it is necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability. These modifications can include changes in the length of time permitted for the completion of a course of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted or course materials are distributed. Examinations must reflect the aptitude and achievement of a student with a disability, rather than be biased against the individual's disability, by employing appropriate modifications such as extended time for testing, use of

alternate formats, or adaptation of the manner of the examination. However, any academic requirements that the post-secondary institution can demonstrate to be fundamental or essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory.

Disability discrimination cannot occur in the non-academic areas of the college experience, either, such as physical education, athletics, housing, and transportation. Classrooms, libraries, dorms, student unions, and the numerous other buildings that are a part of any college should be accessible to students with disabilities. Schools must remove barriers in existing facilities to an extent that is readily achievable and so that the program, as a whole, is accessible in its entirety. New buildings, when constructed, must comply with the detailed specifications to ensure accessibility. School funded or sponsored social organizations and functions both on and off campus, including sororities and fraternities, must be accessible as well. Official off-campus events also must be accessible; when schools contract with outside providers for services or locations, these providers must be in compliance with the disability laws.

A school must provide personal, academic or vocational counseling, guidance, and placement services at the same level to students with disabilities and to non-disabled students. In counseling, the school must make sure that students with disabilities are not counseled toward more restrictive career objectives than other students with similar interests and abilities. A school should not try to persuade a student with a disability not to pursue particular academic and career choices because of the disability. Schools, however, should provide factual information about licensing and certification requirements that may present obstacles to individuals with disabilities in their pursuit of particular careers so that the students can make informed career choices. When recommending or placing students with potential employers, schools and individual professors must be careful not to reveal private information about the student's disability and should not reveal information about a student's disability in letters of recommendation or other documents sent to outside organizations, such as employers or professional licensing organizations. Letters of recommendation cannot be negative, or even qualified, solely based on a student's disability.

Internship placements cannot reflect disability discrimination and the school must ensure accommodations during the internship. Schools must ensure that internships are accessible and accommodations are being provided during the internship, just as they would in standard academic courses. An internship supervisor must provide needed accommodations to interns with disabilities. A school must inform an internship supervisor of a student's disability and the internship supervisor should be adequately informed, prepared, or trained to assist the student. Interns in a wide variety of academic fields have had problems during internships, from social work to the law. Students with disabilities doing student teaching assignments have faced particularly serious problems with finding internship placements and with receiving needed accommodations during those teaching internships.

III. What are the Rights of Teachers with Disabilities in Schools?

Teachers with disabilities are protected against discrimination in the hiring process and in the workplace. School districts, in making all interviewing, hiring, and firing decisions, are bound by the rules of Section 504 of the Rehabilitation Act and the ADA that forbid the discrimination against an otherwise qualified individual with a disability on the basis of that disability. An individual is otherwise qualified for a job is someone who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. As there are professional guidelines, certification requirements, and job requirements for teachers, a person who has graduated from an accredited college

with a degree in education and teaching certificate (or received an advanced degree and certification or taken all the requirements after receiving a college degree and received certification) would likely meet the otherwise qualified requirement. If a teaching position is advertised for candidates with a teaching degree who have passed the state teacher's test, and the applicant meets these criteria, then the applicant is otherwise qualified for the position. Otherwise qualified is determined at the time of the employment decision and should not take speculation on future conditions into consideration. The employer should make such a decision based on relevant information, and cannot use fear of future insurance or workers' compensation costs to decide that someone is not otherwise qualified. Individuals with disabilities can only be considered otherwise qualified if they can perform the essential functions of the position in question without endangering the health and safety of the individual or others. Safety is obviously of utmost importance in the context of education. An individual with a disability is not qualified for a job if the individual poses a direct threat, which is a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation. The personal preferences of the disabled individual can be less important than general safety concerns.

Essential functions are job tasks that are fundamental and not marginal. Employers cannot refuse to hire based on the inability to perform marginal, non-essential elements of a job. Essential functions are defined partly by the employer, especially in what is advertised in the job description, as well as amount of time spent performing the task, consequences if the employee does not do the task, and the work experiences of people in that job. How the employee performs a task is not relevant to considerations of essential function, only whether the employee can do the task at issue. Employers are not limited in what they establish as essential functions, but the essential functions must be consistently applied and cannot be used as a method of preventing otherwise qualified disabled individuals from getting a job. If an employer reasonably establishes speed or accuracy or the ability to proofread as essential functions of a job, the employer is not required to lower the standards of the job as an accommodation.

All public schools and school systems, at the local and at the state level, are subject to the requirements of the Rehabilitation Act and the ADA. A public school cannot refuse to hire, promote, or otherwise employ an otherwise qualified teacher with a disability because of the disability; further, an otherwise qualified teacher with a disability cannot be fired for the reason of having a disability. The law specifically prohibits disability-based discrimination in:

1. Recruitment, advertising of jobs, and procedures to apply for a job;
2. Hiring, terminating, rehiring, promoting, demoting, transferring, and awarding tenure;
3. Rates of pay, compensation, and benefits;
4. Assignments, classifications, position descriptions, seniority, progression, and organizational structures;
5. All forms of leave, including sick leave and leave of absence;
6. Fringe benefits;
7. Training, apprenticeships, conferences, meetings, and professional activities;
8. Social and recreational activities sponsored by the employer; and any other term, condition, or privilege of employment.

The Rehabilitation Act and the ADA do not create any affirmative duty to hire disabled individuals. However, employers cannot make adverse employment decisions against an individual with a disability due to the disability unless the individual cannot perform an essential function of the job, the employment would create undue hardship on the employer, or the employee cannot be reasonably accommodated. Employers cannot ask directly about disabilities in a job interview. To this end, employers are not allowed to ask about disabilities, need of reasonable accommodation, medical

histories, general health status, or worker's compensation history. It is unlawful to coerce, intimidate, threaten, or interfere with any disabled individual in performance of work activities. Employers are responsible to ensure that employees without disabilities are not harassing employees with disabilities.

A reasonable accommodation is generally a modification or adjustment to an environment that allows a disabled individual to have similar benefits as non-disabled individuals, so long as the accommodation does not create undue hardship. An accommodation for an individual with a disability is reasonable unless it creates a situation that would impose undue hardship on the operation of the program in question, such as significant financial strain. School systems, like other employers, may be required to make reasonable accommodations in various circumstances. Reasonable accommodations can include, but are not limited to, provision of auxiliary aids, modification of equipment, adjustment of schedules, and making existing facilities readily accessible. To receive reasonable accommodations, the disabled employee must make the employer aware of the need for accommodation and provide reasonable documentation of the disability if the employer requests. Employers should consult with the disabled employee to understand what accommodations are necessary, and employers can also seek guidance to appropriate accommodations from the EEOC, state or local rehabilitation agencies, and disability rights organizations. As long as the accommodation is appropriate and effective, the employer may choose the simplest, easiest, and least expensive method of accommodation. If the accommodations are unsatisfactory, the employee has the right to refuse the proffered accommodations and demand others.

Schools have the right to take adverse employment actions with due cause against any employee, including those with disabilities. Having a disability does not make an individual immune to discipline or dismissal, so long as the employment action is not related to the disability. A teacher with a disability can be fired or refused promotion, but only if the disability was not the reason.