

Disability and Equity in Higher Education Accessibility

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Chapter 4

Accessibility and Students With Autism Spectrum Disorder: Legal Perspectives in the United States

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ABSTRACT

This chapter contributes to important conversations about accessibility in higher education by examining legal issues that shape experiences of students with autism spectrum disorder (ASD). The chapter begins by outlining the relationship between reasonable accommodations and academic success. Then, it provides an overview of ASD in relation to postsecondary education. A substantive portion of the chapter delineates current legal topics, including federal law, case law, and Office of Civil Rights (OCR) letters. Functional limitations associated with ASD are social or sensory in nature. However, legal precedent in the United States defines the major life activity of learning in a manner that does not usually include these components, thereby limiting access to sensory and social accommodations. The chapter concludes by discussing Title IX and students with ASD that experience sexual assault, the value of neurodiversity, and future implications for accessibility as the number of students with ASD in postsecondary education increases.

INTRODUCTION

Historically, legal initiatives have played a significant role in shaping the educational experiences of students with disabilities. This topic is critical to the future of accessibility in higher education, as 11% of college students in the U.S. have a disability (Newman, Wagner, Cameto, Knokey, & Shaver, 2010). As members of this population, students with ASD are increasingly gaining access to higher education (Geller & Greenberg, 2010). A national survey of disability service professionals working at postsecondary institutions in the U.S. found that 93.7% of postsecondary institutions enrolled at least one student with ASD. On average, two-year public institutions serve 16.4 students with ASD per semester, which is a significantly greater number than four-year public institutions (12.0 students) and four-year private

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institutions (6.4 students; Brown, in press). The current rate of childhood diagnosis is 1 in 68 individuals. Therefore, the number of students with ASD in postsecondary education will increase (Centers for Disease Control and Prevention, 2014).

Literature demonstrates that reasonable accommodations are important predictors of academic success for students with disabilities (Denhart, 2008; Kim & Lee, 2015; Mamiseishvili & Koch, 2011; Stein, 2013) and, specifically, students with ASD (Van Hees, Moyson, & Roeyers, 2015). Following legal precedent, reasonable accommodations are changes in the school environment that afford equal educational access or learning opportunities to students with disabilities. There is a paucity of information regarding reasonable accommodations for students with ASD in postsecondary education (Dallas, Ramisch, & McGowan, 2015). Much of the literature related to students with ASD focuses on K-12 education (e.g., Heflin & Alaimo, 2007; Hochman, Carter, Bottema-Beutel, Harvey, & Gustafson, 2015) and the transition to college (e.g., Hetherington, Durant-Jones, Johnson, Nolan, Smith, Taylor-Brown, & Tuttle, 2010; Roberts, 2010).

Although there are several excellent legal resources for higher education scholars and practitioners (e.g., Kaplin & Lee, 2013), these text are general in nature and do not offer disability-specific analysis. Higher education legal journals (e.g., *Journal of College and University Law*) provide a more nuanced analysis. With the exception of short in-text mentions in articles on disruptive behavior (e.g., Rothstein, 2009) or accommodations within clinical programs (e.g., Babbitt & Lee, 2016), ASD is notably absent. Topics such as students with mental or psychiatric disabilities (e.g., Lee, 2014; Lee & Abbey, 2008) comprise the bulk of disability-focused articles in higher education legal journals. The functional limitations associated with ASD—sensory and social impairments—offer unique legal and social justice questions for scholars and practitioners interested in the future of accessibility in higher education.

The following questions guided this chapter:

1. How do current legal frameworks shape accommodations for students with ASD in higher education?
2. What could the functional limitations associated with ASD mean for how higher education understands accommodations within the learning environment?
3. Looking to the future, what pending legal topics may affect access to, or the experience of, students with ASD in postsecondary education?

This chapter focuses on student behavior and their postsecondary experiences, rather than a formal diagnostic process. Each student with ASD is unique and accommodations are individualized; therefore, it is important to prioritize functional limitations within the learning environment.

This chapter starts by examining the importance of reasonable accommodations in relation to academic success for students with disabilities. Then, the chapter describes the functional limitations associated with ASD in relation to postsecondary education and current accommodation practices. A substantive portion of the chapter delineates current and upcoming legal topics. This discussion outlines Section 504 of the Rehabilitation Act (Section 504; P.L. 93-112), the Americans with Disabilities Act (ADA; P.L. 101-336), and the Americans with Disabilities Act Amendments Act (ADAAA; P.L. 110-325) as three foundational pieces of legislation that shape access to postsecondary education for students with ASD. Using case law and OCR letters, the chapter examines application of legal precedent to admissions and transition to postsecondary education, self-identification, accommodation, learning as a major life activity, harm to other, and code of conduct violations. Topics that maybe salient to functional limitations associated with ASD but have already been covered within the literature (e.g., code of conduct violations) are

notably shorter or intentionally absent from this chapter. Looking to the future of accessibility in higher education, the chapter concludes with a discussion about opportunities ASD offers to understand the accommodations process as it relates to the sensory and social components of learning, the potential to view typing as a form of effective communication in postsecondary education, and implications Title IX holds for students with ASD that experience sexual assault. This chapter encourages an understanding of neurodiversity and advocates that institutions take a social justice perspective and view accessibility as more than a legal mandate.

ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

Appropriate accommodations are based on a student's functional needs within the learning context (Kurth & Mellard, 2006; Lindstrom, 2007). Data collected by the National Center for Education Statistics (NCES) in 2009 indicates that a considerable number of postsecondary institutions provide academically focused accommodations, including: 93% extended exam time; 77% classroom note takers; 71% alternative exam formats; and 70% adaptive equipment or technology (Raue & Lewis, 2011). NCES does not track sensory accommodations or campus life accommodations (i.e., residence hall modifications).

Accommodations are an important component of academic success for students with disabilities (Kim & Lee, 2015; Mamiseishvili & Koch, 2011; Trammell, 2003). Test and course accommodations, such as extended exam time, were significant predictors of grade point average (Kim & Lee, 2015). Students with disabilities who used accommodations in the first year were more likely to persist than students with disabilities who did not use accommodations (Mamiseishvili & Koch, 2011). For example, 24.7% of students who were offered, but did not use, the accommodation of a course substitution did not persist to their second year. This rate is significantly higher than students with disabilities who used this accommodation (4.3%; Mamiseishvili & Koch, 2011). Students with cognitive and psychological disabilities who used accommodations were more likely to be in good academic standing than disabled peers who did not use accommodations (Dong & Lucas, 2016). Yet, very few students with disabilities request or use accommodations (Dong & Lucas, 2016). Nationally, only 23% of high school students who received special education services used accommodations at the postsecondary level (Newman & Madaus, 2015a).

Unlike secondary education where parents and school administrators manage the disclosure process, in college students with disabilities are responsible for disclosing their status to the postsecondary institution in order to access accommodations. However, many students are reluctant to do so. Only 28% of students who received special education in high school disclosed to their postsecondary institution (Newman et al., 2011). After clearing the hurdle of self-disclosure, students' perceptions of accommodations as effective are an important predictor of use (Marshak, Van Wieren, Ferrell, Swiss, & Dugan, 2010). Students with disabilities described accessing accommodations as an obstacle in their transition to postsecondary education (Cawthon & Cole, 2010). Accommodations may be ineffective if they are solely based on a student's disability label and do not address functional limitations (Kurth & Mellard, 2006). Kurth and Mellard (2006) found that students with disabilities thought that taped text/notes (33.3%) and alternative testing locations (27.3%) were ineffective. Conversely, students rated extended exam time (14.3%) and notetakers (12.5%) as less ineffective.

Insufficient transition knowledge, institutional barriers, financial resources, and ableism affect student use of accommodations (Hong, 2015; Stein, 2013). Students with disabilities, and their families, indicated

accommodations provided in high school are more robust, while changes in the type and level of accommodations are not clearly communicated during the transition to postsecondary education (Cawthon & Cole, 2010; Lindstrom, 2007; Madaus, Banerjee, & Hamblet, 2010). Students with disabilities described the following institutional barriers as factors that limited their use of postsecondary accommodation: complicated documentation requirements (Bolt, Decker, Lloyd, & Morlock, 2011); an emphasis on self-advocacy (Hong, 2015); and costly testing (Denhart, 2008). Students who received transition planning in secondary education were more likely to receive accommodations in college (Newman & Madaus, 2015b). Family income also affects access. Students from households with annual incomes of less than \$25,000 per year are less likely to receive accommodations than their peers with family incomes more than \$50,000 (Newman & Madaus, 2015b). Faculty members' ablest attitudes can also hinder access to accommodations (Hong, 2015; Kurth & Mellard, 2006; Rao & Gartin, 2003) if faculty are unwilling to make accommodations (Cawthon & Cole, 2010). Additionally, faculty perceptions can make students feel unwelcomed or uncomfortable. In particular, faculty reported that students with ASD would take more of their time and disrupt the class routine (Gibbons, Cihak, Mynatt, & Wilhoit, 2015).

ASD AND POSTSECONDARY EDUCATION

From a medical perspective, ASD is a type of neurodevelopmental disorder associated with deficits in social interaction and communication (American Psychiatric Association, 2013). College students with ASD may have difficulties coping with sensory input, managing executive function, navigating change in routine, socializing in groups, and understanding nonverbal communication (Hart, Grigal, & Weir, 2010). Difficulties associated with processing sensory input can occur in relation to vision, hearing, smell, taste, touch, balance, and muscular feedback (Robertson & Ne'eman, 2008). For instance, students with ASD may find florescent lights, the texture of a residence hall mattress, or the clicking of a laptop keyboard overwhelming and limiting to their classroom learning and college living environment (Boutot & Myles, 2011).

Differences in executive functioning cause students with ASD to struggle with managing simultaneous tasks (VanBergeijk, Klin, & Volkmar, 2008). This may create challenges with coursework as colleges often schedule larger assignments or exams around the same time (e.g., finals week). Executive functioning differences can create difficulty in breaking large assignments into smaller tasks (Cai & Richdale, 2016; Gobbo & Shmulsky, 2014). A student in Cai and Richdale's study explained, "When uni forces me to use a structure and do it in 10 smaller assignments each week, then that's okay. If I try to set a structure myself, I never follow it" (p. 35). Students may have problems navigating changes in routine making transitions, such as entering postsecondary education or studying abroad, difficult (Cai & Richdale, 2016; Gobbo & Shmulsky, 2012; VanBergeijk et al., 2008).

Students with ASD have trouble decoding non-verbal communication and may demonstrate difficulties interpreting social situations, including how to participate in group-work and understanding appropriate classroom behaviors (Gobbo & Shmulsky, 2014). Students with ASD report loneliness and isolation (Ashby & Causton-Theoharis, 2012; Cai & Richdale, 2016; Madriaga, 2010). In an attempt to conform to social pressures, they may expend large amounts of energy on self-governing behavioral modifications to suppress autism-related behaviors (Cox et al., in press). The sense of isolation may be compounded as many physical places (i.e., the student union or residence halls) that serve as "springboards for social relationships" are inhospitable for students on the spectrum due to sensory overload (Madriaga, 2010, p.

Accessibility and Students With Autism Spectrum Disorder

32). Students with ASD experienced a chilly campus climate and unwanted physical sexual contact at a significantly greater rate than their peers without disabilities (Brown, Peña, & Rankin, 2015).

The literature indicates that an overwhelming majority of postsecondary institutions provide students with ASD academically-focused reasonable accommodations (Brown, in press). In comparison to students with learning disabilities, students with ASD at two-year institutions are three times as likely to receive accommodations (there is no statistical difference in the provision of accommodations at four-year institutions; Newman & Madaus, 2015b). Notably, one nationally representative study found that more than 93% of the institutions provided a notetaker, the use of an audio recorder, extended exam time, and alternative testing locations (Brown, in press). However, less than half of institutions (44.7%) provided sensory accommodations and slightly more than half (55.5%) of institutions provided a single residence hall room at the same cost (Brown, in press). Students with ASD may experience co-occurring disabilities, such as anxiety or obsessive compulsive disorder, and receive accommodations for those co-occurring functional limitations (Cai & Richdale, 2016).

LEGAL PERSPECTIVES

Legislation, case law, and letters from the OCR structure institutional policies that affect the experiences of students with ASD and outline student rights and responsibilities. Section 504, the ADA, and the ADAAA protect access to postsecondary education for students with ASD. Case law is a method of clarifying the interpretation of existing legislation and the OCR is a mechanism for providing guidance regarding implementation of non-specific legislation and enforcing federal guidelines. The majority of this section outlines key responsibilities for postsecondary institutions and applies legal precedent to six salient topics for students with ASD.

Section 504

Section 504 (P.L. 93-112) of the Rehabilitation Act of 1973 stipulated that programs or activities receiving federal funding cannot deny the participation in, benefits of, or discriminate against any otherwise qualified person due to their disability. Although Section 504 was originally an “inconspicuous segment of routine legislation” (Scotch, 2001, p. 3), its implications meant that if any part of a college or university received federal aid, the entire institution was required to comply with the Act’s provisions (Thomas, 2000).

Section 504 provided foundational language, defining a person with a disability in the following manner:

The term handicapped individual means any individual who (a) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (29 U.S.C. sec. 794)

This definition became a template for future legislation, broadening the legal understanding to include individuals who are defined by others as disabled and placing the focus on the impact of the impairment. Although Section 504 was limited in focus and students experienced difficulties with enforcement, this legislation increased the number of students with disabilities who participate in postsecondary education

(Dean, 2009). In addition, the professional field of disability resources evolved as a means for postsecondary institutions to deliver accommodations. (Dean, 2009)

The ADA

Passed in 1990, the ADA (P.L. 101-336) was intended to ensure equality for people with disabilities by expanding the protections offered in Section 504 to places of public accommodation, services, or programs offered by state or local governments, telecommunication, transportation, and private employers (Wilhelm, 2003). The ADA is a broad body of legislation composed of several “Titles” or sub-chapters. Title II applies to public entities, including state colleges or universities; Title III applies to places of public accommodation, including private universities (Kaplin & Lee, 2013). Title III focuses on key areas of institutional activity, including: eligibility criteria for services provided by the institution; modification to policies, practices, or procedures; auxiliary aids and services; removal of architectural barriers or alternatives to barrier removal; personal services; accessible seating and transportation; and accessible or alternative formats for exams and courses that reflect ability rather than impairment (Kaplin & Lee, 2013).

The ADA outlined three legal definitions that hold importance for students with ASD. First, the ADA defined a person with a disability using the same three-pronged measure employed by Section 504. This means that students with ASD are considered a person with a disability if their physical or mental impairment substantially limits one or more major life activities, they have a record of such impairment, or others perceive the student as having an impairment. Second, the ADA prohibits discrimination against any “qualified” individual with a disability (35 U.S.C. sec 130). Third, and of particular importance to this chapter, the ADA defined accommodation as, “any change in the work or school environment or in the way things are customarily done that enables an individual with a disability to enjoy equal opportunities” (42 U.S.C. sec 121001). These definitions are broad and the courts’ interpretations in relation to students enrolled in postsecondary education are described below.

The ADAAA

Prior to 2008, the U.S. court system substantially limited the protections that the ADA afforded. Through a series of Supreme Court cases, the system narrowed the definition of who is a person with a disability (e.g., *Sutton v. United Airlines*, 1999; *Toyota Motor Manufacturing v. Williams*, 2002). These rulings adversely affected students with disabilities by creating a contradictory standard. By requiring a high level of impairment to qualify as disabled, the courts created a paradox where the same student could not meet the academic standards of the institution (Simon, 2011). In 2009, when the ADA was reauthorized as the Americans with Disabilities Act Amendments Act (ADAAA; P.L. 110-325), Congress used this process to reaffirm the broad definition of a person with a disability and reduced the amount of documentation individuals must offer when establishing that they have a disability (Heyward, 2011). In doing this, Congress transferred the focus away from questions surrounding if the nature of impairment qualified as a disability, instead focusing on identifying if discrimination occurred (Simon, 2011). Hence, “cases decided prior to the effective date of the amendments on the ground that the student was not disabled provide limited guidance as to how courts may rule now that the amendments are in effect” (Kaplin & Lee, 2013, p. 1096). It is important to note that changes included within the ADAAA did not remove or alter the requirement that applicants and students with ASD be “qualified,” by meeting the same academic standards as non-disabled students. Nor does it change the requirement that students

Accessibility and Students With Autism Spectrum Disorder

must “demonstrate that a disorder ‘substantially limits’ a major life activity” (Kaplin & Lee, 2013, p. 1097). In short, the ADA makes “it clear that students may be talented and gifted *and* disabled and entitled to reasonable accommodations” (Simon, 2011, p. 98).

Admissions and the Transition to Postsecondary Education

Under Section 504 of the Rehabilitation Act of 1973, the admissions or recruiting process at educational institutions that receive federal funding cannot discriminate against people with disabilities (Kaplin & Lee, 2013). This means that postsecondary institutions cannot inquire if students are on the spectrum, use a quota system to limit the number of students with ASD, or use admissions criteria that would disproportionately affect the admission of students with ASD unless the criteria is a valid predictor of success and alternative, non-discriminatory options are not available. The admissions process must be individualized and admissions decisions cannot be based on a stereotype of a particular functional limitation (*Pushkin v. Regents of the University of Colorado*, 1981). For example, an institution cannot assume that all students with ASD are not otherwise qualified to participate in a medical program.

As described above, students with ASD may experience transition-related difficulties, including a lack of transition planning and unclear expectations of legal differences between the Individuals with Disabilities Education Act (IDEA; P.L. 105-17), which governs K-12 education and the ADA that applies to postsecondary education. Specifically, the IDEA entitles students to special education based on diagnosis. The ADA and subpart E of Section 504 guarantee protection from discrimination and equal access for qualified individuals.

The ADA delineated reasonable accommodations, auxiliary aids, and personal services as different types of modifications. Postsecondary institutions are not responsible for providing personal services, including personal attendants, as this modification exceeds the intent of equity. However, institutions are responsible for providing reasonable accommodations such as extended exam time and auxiliary aids such as qualified sign language interpreters, notetakers, or adaptive equipment (Kaplin & Lee, 2013). The demarcation between these terms is significant; students with ASD may have received personal services in K-12 education (e.g., social role-playing coach) that were helpful and supportive but are not mandated or covered under the ADA.

Students With ASD Must Be Otherwise Qualified

Students with ASD must establish that they are “otherwise qualified” to receive the benefits of the public service, program, or activity. A student with ASD is “otherwise qualified, with respect to postsecondary and vocational services, if he or she meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity” (Kaplin & Lee, 2007, p. 329-330). The courts have established that individuals with a disability must prove that they are “otherwise qualified” by showing that they can perform the essential duties of the position with or without accommodations (*Jakubowski v. The Christ Hospital*, 2010; *Southeastern University Community College v. Davis*, 1979).

Jakubowski v. The Christ Hospital (2010) is a current case that provides ASD-specific guidance. In *Jakubowski*, the appellate court found that a medical resident with Asperger’s syndrome was not “otherwise qualified” because he could not perform the essential functions of communicating and interacting with patients. Similarly, OCR letters reinforce and apply this legal precedent to the admissions process at competitive institutions and delineate how open enrollment institutions can address unsafe behavior.

In the Letter to Michigan State University, OCR reaffirmed that institutions have the ability to deny admission to students with ASD if they do not meet the minimum GPA required for applicants (Office of Civil Rights [OCR], 2005). Along the same lines, in a Letter to Glendale Community College, OCR determined that institutions have the right to deny participation if the student exhibits significant unsafe behavior over an extended time even with the provision of reasonable modifications, and the provision of additional auxiliary aids or services (OCR, 2003). Therefore, students with ASD must be able to demonstrate that they can perform essential duties, as well as meet the academic and technical standards of the program.

Self-Identification and Legal Prerequisites

Once admitted, students with ASD must properly inform the office of disability services that they are a student with a disability and demonstrate that they meet legal prerequisites for reasonable accommodations. A very small proportion of students with disabilities who are identified by parents or teachers in high school self-identify in postsecondary education (Dong & Lucas, 2016; Newman et al., 2011; Newman & Madaus, 2015a). In particular, students with ASD may find self-identification difficult as this process requires self-advocacy skills. This creates a paradoxical situation in which students are required to have social skills to access accommodations, yet their functional limitations are primarily social in nature. Further, students with ASD may decide that they no longer wish to be identified as disabled as many experience stigma and disability discrimination. Legally, postsecondary institutions are not required to provide accommodations to students who have not disclosed a disability.

If a student with ASD chooses to self-identify, the next step involves proving that they have “a physical or mental impairment which substantially limits one or more ... major life activities” (29 U.S.C. sec. 794; 42 U.S.C. sec. 12102). This step requires the student to provide documentation, usually in the form of diagnostic testing from a physician, confirming their physical or mental impairment. Although the ADA has reduced the amount of documentation and institutional standards for documentation may vary, the courts have established a precedent of deferring to medical records (*Grabin v. Marymount Manhattan College*, 2015) or social science research, specifically the Diagnostic and Statistical Manual of Mental Disorders (*Guckenberger v. Boston University II*, 1997; *Doe v. New York University*, 1981). Guidance on documentation practices from the Association on Higher Education and Disability (AHEAD) include student self-report, interactions and observations made by the disability services professional, and third party documentation including medical records (AHEAD, 2012). While AHEAD provides best practices for access, the courts do not allow individuals to self-diagnose and the institution has the right to request non-burdensome medical documentation to verify the student is a person with a disability (*Grabin v. Marymount Manhattan College*, 2015).

After self-identifying and providing documentation, students with ASD must meet two additional requirements before the court will address the issue of reasonable accommodations. Specifically, students with ASD must demonstrate that their disability affects a “major life activity.” Prior to the ADA, the court in *Wong v. Regents of University of California I* (1999) outlined major life activities to include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. In addition, the court in *Bartlett v. New York State Board of Law Examiners* (1997) expanded *Wong*’s definition to include reading and test taking as major life activities. With the passage of the ADA, the definition of “major life activity” expanded and Congress provided guidance via two non-exhaustive lists (Simon, 2011). “The first list includes many activities that the Equal Employment

Accessibility and Students With Autism Spectrum Disorder

Opportunity Commission (EEOC) has recognized (e.g., walking), as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating)” (Dyer, 2011, p. 4). The second list includes major bodily functions (e.g., “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions” (Dyer, 2011, p. 4). The lists stipulated under the ADA are not exhaustive. Therefore, prior court decisions (e.g., *Wong v. Regents of University of California I*, 1999) about major life activities still hold (Simon, 2011).

Next, the student must show that the disability creates “a substantial limitation” to that major life activity. When considering the concept of substantial limitation, the courts previously compared the student to an “average person in the general population” (*Price v. National Board of Medical Examiners*, 1997; Thomas, 2000). However, the ADA expanded the court’s interpretation of substantial limitation: “Congress also found that the federal regulations that had defined the term *substantially limits* as ‘significantly restricted’ communicated a much higher standard of impairment than Congress had intended” (Simon, 2011, p. 97). In particular, the ADA prohibits courts from considering mitigating measures—steps the student would take (e.g., medication, accommodations, or assistive technology) to decrease the effects of an impairment—in determining whether an individual’s impairment met the definition of a disability (Kaplin & Lee, 2013).

Accommodations as Reasonable and Interactive

As described above, the ADA provides a broad definition of accommodation. The courts’ interpretation of this definition employed the term “reasonable” as a means of balancing changes that provide access to students with those that would result in substantial modifications that may devalue or decrease academic rigor. *Southeastern University Community College v. Davis* (1979) set the precedent regarding academic quality. In this decision, the Supreme Court stated, “Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person” (p. 413). Later courts (e.g., *White v. University of South Carolina-Columbia*, 1996) often cite this standard when addressing issues of program modification. Although students with ASD may request accommodations, the accommodation will only be deemed reasonable if it meets the students’ needs without sacrificing the integrity of the program. The OCR further clarified what is reasonable in relation to the scope of the accommodation request. In a Letter to the University of Wisconsin-Milwaukee, the OCR established that institutions may give consideration to a student’s request and take steps to provide reasonable accommodations (e.g., providing a student with an assistive listening device). However, institutions are not obligated to provide accommodations that are not reasonable—in that, they cannot realistically be enforced—such as prohibiting eating and chewing gum in classes (OCR, 2006a).

The determination of reasonable accommodations is an interactive process that affords students with ASD the right to individualized assessment. Postsecondary institutions must engage with students in an interactive process to clarify individual needs and identify the appropriate accommodations (*Guckenberger v. Boston University II*, 1997; *Vinson v. Thomas*, 2002). As part of this interactive process, institutions must have individualized assessment procedures and demonstrate that “a fair, objective assessment based on reasonably reliable information about the individualized needs and abilities of the student” was conducted (OCR, 2003, para. 16). Arbitrary accommodations are not suitable (*Duval v. County of Kitsap*, 2001) and exploration of all viable options for accommodation are required. “Mere speculation that a suggested accommodation is not feasible falls short of the reasonable accommoda-

tion requirement” (*Wong v. Regents of University of California*, 1999, p. 818). Institutions must have written policies and procedures for requesting and appealing academic adjustments (OCR, 2007). As part of the accommodations process, postsecondary institutions must employ qualified individuals who have training in the field to make decisions about reasonable accommodations (*Guckenberger v. Boston University II*, 1997).

Although students with ASD must assume the initial cost of testing and documentation, the institution must bear the cost of providing reasonable accommodations (Rothstein, 1991). When considering changes to accommodations policies, a university cannot impose documentation or criteria that unnecessarily screens out students with ASD. Institutions must provide advanced notification of policies that would affect, delay, or deny reasonable accommodations (*Guckenberger v. Boston University II*, 1997). In the event that accommodations are denied, institutions must have a clearly articulated grievance policy in place (*Guckenberger v. Boston University II*, 1997; OCR, 2006b).

Code of Conduct Violations and Drug Abuse

The ADA and Section 504 do not protect students with ASD who are dismissed for misconduct (Kaplin & Lee, 2013). The courts have consistently demonstrated that students must meet behavioral requirements of their program (*Halpern v. Wake Forest University Health Sciences*, 2012) and cannot cheat on exams (*Strahl v. Purdue University*, 2009). The courts hold students with ASD to the same behavioral code of conduct as all members of the academic community. Further, the ADA specifically excludes “current abusers of controlled substances from coverage, but it does protect recovering abusers” (Kaplin & Lee, 2013, p. 454). Students with ASD who use illegal drugs are not covered under the ADA.

Students cannot threaten to physically harm others (*Mershon v. St. Louis University*, 2006). In the event that students with ASD pose harm to others, the institution must use an individualized, interactive, and objective assessment process to determine that the student poses a threat to the health or safety of others (for detailed discussion see Lee, 2014). Institutions must also have, and consistently follow, disciplinary policies (OCR, 2015a). In a Letter to Doane College, the OCR clarified that direct threat determination cannot be made based on “a speculation about future risk” (OCR, 2009, para. 14). While obnoxious or rude behavior may be a code of conduct violation, this does not necessarily constitute harm to others (OCR, 2015a). Many institutions have behavioral intervention teams or conduct committees, and including a professional staff member with knowledge about ASD on this committee is one method to prevent discrimination.

FUTURE DIRECTIONS

The law is dynamic. Postsecondary institutions can progress toward greater accessibility by redefining “learning as a major life activity” with social components. Additionally, institutions must consider alternative means of communication, particularly as non-verbal students with ASD access postsecondary education. Students with ASD are at significantly greater risk for sexual assault and harassment. Therefore, institutions must explore methods to employ Title IX to proactively educate and protect at-risk populations. Finally, postsecondary institutions should view legal access as a baseline or floor, and create policies and programs focused on reducing ableism and supporting students with ASD.

Redefining Learning as a Major Life Activity

A wide range of disabilities (e.g., dyslexia) create substantial limitations on the major life activity of learning. For students with many of these disabilities, institutions have established a precedent of providing academically-focused reasonable accommodations (Raue & Lewis, 2011). Although students with ASD may benefit from common academically-focused accommodations, some students may not struggle with the academic parts of learning. Rather, their functional limitations are in the social, interactional, and sensory components of learning (Hart, Grigal, & Weir, 2010) and thus need different accommodations.

Humans do not learn in isolation; we build communities of knowledge. A constraint on accessibility in higher education for students with ASD is a legal framework that does not acknowledge or accommodate the social components of learning. Gobbo and Shmulsky (2012) summarized that students with ASD “experience significant challenges from the social aspect of classroom learning” (p. 40). Specifically, students with ASD often need support with social interactions and executive functions tasks (Longtin, 2014). These areas are typically not addressed by reasonable accommodations (Brown, in press; Burgstahler & Russo-Gleicher, 2015).

Additionally, there is a growing body of literature indicating that students with ASD experience sensory limitations and benefit from accommodations to address these, including the ability to take a break from class to allow for movement or access to a sensory break room (i.e., a quiet space with limited distractions, natural light, and non-patterned fabric; Ashby & Causton-Theoharis, 2012; Brown & Coomes, 2016; Cai & Richdale, 2016). Therefore, reasonable accommodations utilized to create an equitable playing field for students with other types of disabilities (e.g., extended exam time), may not be enough for students with ASD (Brown & Coomes, 2016).

Effective Communication

Technology, websites, and the use of auxiliary aids are gaining legislative prominence as an important topic for the future of accessible education. Specifically, the Department of Justice *Dear Colleague* letter on “Effective Communication” offered guidance on how institutions, primarily in the K-12 system, should interpret the IDEA, the ADA, and Section 504 regarding auxiliary aids. This letter stated that institutions of public education should provide students with appropriate assistive technology so that communication for students with disabilities is “as effective as communication with all other students” (Department of Justice, 2014a, p. 1). It also stated that institutions must give “primary consideration” to students with disabilities when determining the most appropriate auxiliary aid (Department of Justice, 2014b, p. 8-9). The Department of Justice letter primarily addresses K-12 institutions. Many of the postsecondary settlements (e.g., Department of Justice, 2013; OCR, 2013) only address access to website and online learning technology for students who are visually impaired. However, a focus on accessible technology holds implications for the future of students who type as their primary means of communication. As the number of students with ASD increases and advocacy groups for non-verbal students become more active, it is possible that the Department of Justice will recognize typing as an important means of effective communication in postsecondary education. Similarly, it is possible that future courts will be asked to consider the degree and difference between an auxiliary aid and a personal service, or to weigh in on facilitated communication, as communication mechanisms for non-verbal students become more diverse.

Sexual Assault

Although sexual assault is not directly covered under Section 504 or the ADA, the fact that students with disabilities in general (Cantor et al., 2015), and students with ASD specifically (Brown, Peña, & Rankin, in press), face higher rates of victimization makes this an important legal topic for the future of accessibility in higher education. College students with ASD (8.2%) were almost twice as likely to report unwanted sexual contact than their non-disabled peers (4.6%; Brown et al., in press). Risk factors for individuals with ASD include a lack of sexual knowledge (Brown-Lavoie, Vecili, & Weiss, 2014), the mistaken belief that individuals with ASD are asexual (Irvine, 2005), and challenges to providing sex education for individuals with ASD (Koller, 2000). Due to socio-emotional functional limitations, students with ASD may have difficulty discerning when others are being deceptive or have malicious intent (Dennis, Lockyer, & Lazenby, 2000). This places students with ASD at risk for predatory behavior (Edelson, 2010; Sevelever, Roth, & Gillis, 2013).

Previous legal authors discuss Title IX in relation to equal athletic opportunities for students with disabilities (e.g., Rothstein, 2015). However, Title IX's coverage is broader than wheelchair basketball. Federally-funded postsecondary institutions have obligations to address sexual violence and institutions must designate at least one employee as a Title IX coordinator. The coordinator must have full institutional support, including appropriate authority to oversee institutional compliance, sufficient training and support, and independent reporting to senior leadership. Contact information for the Title IX coordinator, as well as the grievance process, must be clearly communicated to all students, faculty, and staff (OCR, 2015b). In relation to accommodations, the White House Task Force to Protect Students from Sexual Assault provided guidance to institutions, stating that "students who have a disability, including those who develop a disability as a result of experiencing sexual misconduct, may be entitled to additional services [beyond interim measures] and supports as accommodations" (Notalone.gov, 2015, p. 1). A full discussion of Title IX is outside the scope of this chapter. Legal provisions for students with ASD that experience sexual assault or harassment are important areas of future research.

SOLUTIONS AND RECOMMENDATIONS

The law is a floor designed to prevent discrimination, not a ceiling. Neurodiversity and holistic interventions are two methods of supporting inclusion of students with ASD in postsecondary education. These recommendations critique and move beyond legal initiatives.

Neurodiversity

Whereas legal frameworks rely heavily on traditional medical or socio-political understandings of disability, academic and higher education scholars have "forged alternative frameworks" for understanding disability (e.g., Connor & Gabel, 2013, p. 102). Alternative frameworks seek to replace deficit-based conceptualizations with the idea that natural human variation is a way to understand cognitive, physical, emotional, and sensory differences among humans (Connor & Gabel, 2013). As such, paradigms including critical disability theory (Corker, 1999; Meekosha & Shuttleworth, 2009), critical realism (Shakespeare, 2014), social justice (Adams, Bell, & Griffin, 2007), Deaf gain (Bauman & Murray, 2009), and neurodiversity (Robertson & Ne'eman, 2008) offer frameworks that view disability as fluid, embodied,

Accessibility and Students With Autism Spectrum Disorder

associated with ableism, and valued. Neurodiversity is a shift away from deficit-driven understanding and a term used to describe “the neurological diversity of autistic people, dyslexic people, and people with other major differences in cognitive processing” (Robertson & Ne’eman, 2008, para. 8). By working to reframe what normal means, and inherently honoring variation, neurodiversity offers potential solutions to how higher education conceptualizes access for students with ASD and other learning differences.

Further, there is a paradox in using law as a platform for analysis on accessibility (Connor & Gabel, 2013) in that the law, via its function as a regulatory social mechanism, works to inscribe and enforce normality from a predominantly medical perspective. Legal rights do not always bring meaningful social change or ameliorate inequality (Spade, 2011). As Spade stated, “a legal system that was formed by and exists to perpetuate capitalism, white supremacy, settler colonialism, and heteropatriarchy” (pp. 15-16) will not allow for transformative measures of addressing oppression. Instead, this chapter argues that transformative approaches to accessible education must focus on the impact of the law (not the intent) and discredit the concept of normal. Neurodiversity is a way for educators to challenge the “the hegemony of normalcy” (Connor & Gable, 2013, p. 101). Following Spade, “such an approach includes law reform work but does not center it” (p. 15), rather the focus is on changing ableism and resisting hierarchies. In relation to topics discussed in this chapter, it is imperative to resist hierarchies that value and perpetuate the ideal of colleges and universities, and the individuals employed by these institutions, as the exclusive legitimate creators, proprietors, and disseminators of knowledge.

Applying neurodiversity to postsecondary institutions means that educators and practitioners must honor a variety of communication methods. For example, college students are expected to participate in class via verbal communication, and students with ASD that type to communicate are “often rendered silent in higher education” (Ashby & Causton-Theoharis, 2012, p. 265). Neurodiversity means that postsecondary institutions must honor and support effective communication for these students. Additionally, the institutional language and process of determining accommodations “often function to police and limit the degree to which neurodiversity, at an individual and collective level, can be ‘achieved’ within university systems, as well as other contexts” (Lester, Dostal, & Gabriel, 2013, p. 53). In their discourse analysis of postsecondary disability resource office websites, Lester et al. (2013) found that some offices used language to indicate the office existed because of the law and, in these instances “the university’s obligation resides not with defending students’ rights, but in protecting the integrity of institutional objectives” (p. 52). Other offices “presented their existence as being about something far more than a law, as they sought to become a space of inclusion and diversity” (Lester et al., 2013, p. 52). Hence, postsecondary institutions can embrace neurodiversity via the language they use to describe the accommodations process.

Holistic Interventions as a Method of Moving Beyond Legal Mandates

Although this chapter focused on legal concepts, reasonable accommodations are not the only strategy to support the success of students with ASD. Transition programs, general academic support services, ASD specific interventions, a welcoming campus climate, and universal design principles are important holistic interventions. The transition to postsecondary education is a critical juncture. Students who engaged with disability services during the transition had better academic performance than students who sought support after their first year (Lightner, Kipps-Vaughan, Schulte, & Trice, 2012). Disability services professionals can support the transition of students with ASD by creating formal and informal

bridge programs, meeting with new students multiple times, and connecting with the local autism community (Brown & Coomes, 2016).

Students with disabilities, who consistently used academic support programs, in addition to reasonable accommodations, had higher grade point averages (Troiano, Liefeld, & Trachtenberg, 2010). Newman et al. (2011) found that 44% of postsecondary students with disabilities used general support services (e.g., tutoring center or writing center). Faculty can reduce stigma and encourage the use of academic support programs by requiring that all students in their classes use a relevant support center as part of a course assignment.

Each student with ASD is unique and supports must be individualized (Brown & Coomes, 2016). A full discussion of ASD specific interventions is beyond the scope of this chapter; sensory break rooms and inclusive sexual education programs are two examples. First, a sensory break room is one strategy for minimizing sensory overload by offering a safe space for students to decompress when they feel overwhelmed (Brown & Coomes, 2016). Second, inclusive sexual education programs are one method to address the higher rates of unwanted sexual contact reported by students with ASD and other disabilities (Brown et al., in press). Programing should follow principles of universal design, contain concrete examples, be highly structured, break information down into manageable segments, and encourage students to take breaks when needed (Brown, et al., in press; Cai & Richdale, 2016; Gobbo & Shmulsky, 2014).

Loneliness and isolation are two of the most common challenges that students with ASD report experiencing (Ashby & Causton-Theoharis, 2012; Cai & Richdale, 2016; Madriaga, 2010). One multi-institutional campus climate study found that one-third of students with ASD experienced exclusionary, intimidating, offensive or hostile behavior within the past year (Brown et al., 2015). Disability awareness and ASD should be included in campus diversity training as students' consideration of whether and when to disclose included considering how others would perceive them (Cox et al., in press). Further, postsecondary educators must become aware that students with ASD demonstrate increased risk for bully victimization because of social impairments that are manifestations of their disability (Blake, Lund, Zhou, Kwok, & Benz, 2012) and actively seek to rebut the negative implications by cultivating a campus climate that promotes inclusion.

The principles of universal design can also be applied to support students with ASD. Beneficial classroom practices include organizing classroom space to decrease sensory stimuli, providing a detailed syllabus and schedule, and following predictable class routines (Gobbo & Shmulsky, 2012). Looking to the future of accessibility, postsecondary institutions must move beyond legally-mandated baselines to support students with ASD via social integration, thoughtful mentoring, universal design, and career counseling (Brown & Coomes, 2016).

CONCLUSION

In their article on students with ASD, Hart, Grigal, and Weir (2010) stated that “it is critical to remember that a successful college experience is measured in several ways—grades, yes, but also increased learning, increased independence and self-determination, and positive social experiences, among others” (p. 137). As scholars and practitioners look to the future of accessibility in higher education, it is imperative to remember that a successful college experience is an accessible college experience.

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KEY TERMS AND DEFINITIONS

Ableism: A form of oppression that occurs on societal, cultural, institutional, and individual levels by valuing able-bodiedness, independence, and creating environments that are hostile to people whose abilities fall outside the scope of normalcy.

Assistive Technology: Any type of assistive device, either hardware or software, that gives students with disabilities access to the same information available to users who are not disabled.

Autism Spectrum Disorder (ASD): ASD is a term with varying legal, medical, historical, and personal definitions. According to the medical community, ASD is a type of neurodevelopmental disorder associated with deficits in social interaction and communication.

Auxiliary Aid: Effective methods or ways to communicate with people who have communication disabilities. Examples include qualified interpreters, notetakers, computer-aided transcription services, written materials, and assistive listening devices.

General Support Service: Free services or programs designed to support students with and without disabilities. These services provide transition, educational, and social support beyond the level of reasonable accommodations; however, they are programs commonly offered by institutions to a variety of students (e.g., career counseling).

Neurodiversity: A concept that moves away from deficit-driven understandings of neurological and cognitive processing differences. Neurodiversity values difference, honors variation, and posits that there is no one way of being, communicating, or knowing. Thus, neurodiversity stipulates that educational researchers understand disability as heterogeneous.

Office of Civil Rights: Part of the U.S. Department of Education tasked with ensuring equal access to education by enforcing civil rights.

Office of Disability Resources: The department or individual at a postsecondary institution primarily designated with responsibility to assist students with disabilities and ensure compliance with the Americans with Disabilities Act.

Accessibility and Students With Autism Spectrum Disorder

Reasonable Accommodations: Changes in the school environment that allows students with disabilities equal educational access or learning opportunities.

Sensory Accommodations: Accommodations that specifically address issues of hyper-sensitivity to sensory stimuli which individuals with ASD may experience. Examples of sensory accommodations include odorless markers, natural light (as opposed to florescent lighting), and computer screen dimmers.

Sensory Break Room: A quiet space with limited distractions, natural, non-florescent light, non-patterned floor covering (e.g., carpet) and furniture that is comfortable to touch. This private space is accessible to students with ASD at any time they might need to decompress.