

ACCOMMODATIONS



for Post-Secondary Students Under the ADA

by Robert M. Tudisco, Esq.

IN THE POST-SECONDARY EDUCATIONAL ENVIRONMENT,

it is incumbent upon the student seeking reasonable accommodations to self-report his or her disability and how it impairs learning—at the earliest possible opportunity. Only then must the school provide appropriate accommodations. This contrasts directly with the concept of “child find” in the Individuals with Disabilities Education Act (IDEA) and in Section 504 of the Rehabilitation Act of 1973. Until graduation from high school, the burden is on the school district to seek out and identify children with disabilities and provide services and/or accommodations in order to provide a Free Appropriate Public Education (FAPE). After graduation, that burden shifts to the student with disabilities.

Two relevant cases

Two lawsuits involving accommodations for post-secondary students under the Americans with Disabilities Act (ADA) were decided in July 2006 by the U.S. District Court for the District of Columbia: *Steere v. George Washington University School of Medicine* and *Singh v. George Washington University School of Medicine*. Due to the similarities of the issues, they were reported as companion cases.

The plaintiff in *Steere* was a medical student with attention-deficit/hyperactivity disorder (AD/HD) and a learning disability in math who did not initially disclose his disabilities. After he failed some classes, the school allowed him to retake them. Following subsequent failures, the dean of the medical school dismissed him and

refused to consider new evidence of a disability. Evidence of the diagnosis of AD/HD and math learning disability was offered after the student began having academic difficulties. The court accepted AD/HD as a legitimate disability that in some cases can qualify a student for accommodations under federal law. The court held, however, that the plaintiff failed to show how his particular AD/HD and learning disability impaired him in pursuing a “major life activity,” a criterion required for protection under ADA.

The plaintiff in the companion case, *Singh*, was also a medical student who had been allowed to retake courses she initially had failed. When her academic progress did not meet school standards, she was called before a

Robert M. Tudisco, Esq., is a practicing attorney and an adult diagnosed with AD/HD. He is a member of CHADD's board of directors and *Attention's* editorial advisory board. See his article “Advocacy Begins at Home” in the October 2005 issue of *Attention!*®. He welcomes questions and comments at his Web site, www.ADDcopingkills.com. Tudisco will speak at CHADD's annual conference this year; visit www.chadd.org for more



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Medical Student Evaluation Committee to determine whether the school should recommend dismissal. During the proceedings, she sought testing to determine whether she might have a learning impairment. She subsequently produced a report from a psychologist stating that she had a reading disorder and a mild processing-speed disorder. The dean reviewed the report, but did not change his recommendation for dismissal. After reviewing the evidence at trial, the court did not find that the plaintiff had a disability as defined by the ADA.

In both cases, the court stressed the importance of accommodations for students with disabilities under the ADA, but found that neither plaintiff fit the criteria under the law.

Diagnosis alone is not enough

Even though AD/HD is recognized as a disorder that can cause disability under education and anti-discrimination legislation, having a diagnosis is only the first step to obtaining services and/or reasonable accommodations. The three main statutes that govern students with disabilities—the IDEA, Section 504, and the ADA—all require the parent and/or student to establish how the disorder impairs learning. It is the impairment, rather than the diagnosis, that triggers services and reasonable accommodations.

IDEA applies to a child with a qualified disability “who, by reason thereof” needs special education and/or related services. Section 504 and ADA both require that an individual with physical or mental impairment show that the impairment “substantially limits one or more major life activities.” Based upon the nexus required by all three statutes, parents and students should be aware that an effective evaluation must do more than just diagnose a disability.

A thorough evaluation should explain how a disability affects the ability to learn, and further what steps could be taken by way of services or reasonable accommodations to place the student

on equal footing to those without disabilities. A thorough evaluation should be a blueprint for an Individualized Education Plan (IEP) or 504 Plan. Accurate diagnosis is important, but only the first step to protection under the law.

What these cases mean

The significance of these cases is twofold. First, both decisions clearly indicate that the students did not self-report their disabilities at the earliest possible opportunity—a crucial component of the protections for post-secondary students under both the ADA and Section 504. The District Court's ruling stresses the importance for the student to self-report disabilities and seek accommodations in order to enjoy protection under the ADA. Parents and students must understand this, and foster and develop self-advocacy at the earliest possible age. Students entering the post-secondary educational environment must be able to understand their disability, report it to the school, provide current documentation, and request appropriate accommodations.

The second issue raised in *Singh* and *Steere* is the requirement under the ADA and Section 504 that the student articulate how the disability specifically impairs a “major life activity.” The plaintiff in *Steere* in particular failed to do this. The court essentially stated that a diagnosis of AD/HD, or any other learning disability, is not enough in and of itself to establish a claim under the ADA. This underscores again the necessity for students to understand their disability and how it affects their ability to learn—not only so that the student can request appropriate accommodations, but also to

justify the necessity of those accommodations in a claim under the ADA.

These cases illustrate how vital it is that post-secondary students with disabilities truly understand their special needs and articulate them to their schools as early as possible—and how important it is that parents create an environment in which their children are not afraid to discuss their special needs and advocate for themselves. ■