



Learning Disabilities and The Law: After High School: An Overview for Students

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Q: Do the legal rights of students with learning disabilities continue after high school?

A: Legal rights may continue. It depends upon the facts in the individual case. Children with learning disabilities who receive services under the Individuals with Disabilities Education Act (IDEA) or the Rehabilitation Act of 1973 (Rehabilitation Act) in public elementary and secondary school may continue to have legal rights under federal laws in college programs and in employment. When students graduate from high school or reach age 21, their rights under the IDEA come to an end.

The rights that may continue are those under the Rehabilitation Act and the Americans with Disabilities Act of 1990 (ADA). To understand which rights continue, it is important to understand the three basic federal statutes that confer rights on people with disabilities.

The IDEA, initially enacted in 1975, provides for special education and related services for children with disabilities who need such education and services by reason of their disabilities. The IDEA provides for a Free Appropriate Public Education (FAPE) and for an Individualized Education Program (IEP).

The Rehabilitation Act, most notably Section 504, prohibits discrimination against children and adults with disabilities. The Rehabilitation Act applies to public and private elementary and secondary schools and colleges that receive federal funding. It also applies to employers that receive federal funding.

The ADA prohibits discrimination against children and adults with disabilities and applies to all public and most private schools and colleges, to testing entities, and to licensing authorities, regardless of federal funding. Religiously controlled educational institutions are exempt from coverage. The ADA applies to private employers with fifteen or more employees and to state and local governments.

It may help to consider an example of how rights may continue over many years. Jeff has a reading disorder. For a long time he wanted to become a lawyer, and now he is in law school. He received special education and related services under the IDEA during public elementary school. He went to a small private religious high school and received accommodations under Section

504 of the Rehabilitation Act. He received extra test time on the SAT, during college, on the law school admission test (LSAT), and in law school. Under the ADA, he will be entitled to extra test time on the Bar Examination.

Q: Do all people with learning disabilities have legal rights under the Rehabilitation Act and ADA?

A: No. Many have legal rights, but some do not. Under the Rehabilitation Act and ADA, a disability is an impairment that substantially limits a major life activity, such as learning. Children and adults with learning disabilities, in many cases, have been found to have an impairment that substantially limits learning. That substantial limitation means that these individuals have a disability under the Rehabilitation Act and ADA and are protected under these laws.

Let's look at an example. Jim was diagnosed with a reading disorder and math disorder when he was six years old. He received special education under the IDEA for most of elementary school to assist with reading and math. By the time he entered high school, his reading comprehension and speed tested as average, but he continued to receive services under the IDEA for his math disorder through the end of high school. After graduation, Jim enrolled in art school. The art school required one math course as a requirement for graduation, but had a policy allowing course substitutions for the math requirement for students with disabilities that interfered with math. Jim disclosed his math disorder, requested a course substitution for math, and submitted good professional documentation of his disability and his need for accommodation. Since he had largely compensated for his reading disorder and tested in the average range, he was not substantially limited in reading. Thus, his reading disorder was not a disability under the law. He did not disclose his reading disorder and did not seek any accommodations for it.

Q: What rights do I have under the Rehabilitation Act and ADA as a person with a disability?

A: Basically you have the right to be free from discrimination on the basis of a disability. In the early school years, a child may be found ineligible under the IDEA but eligible under Section 504 and the ADA. The child would then receive services and accommodations under these anti-discrimination laws. In college, the Rehabilitation Act and ADA provide a right to accommodations for qualified persons with disabilities, so that courses, examinations, and activities will be accessible. These laws also require reasonable accommodations in the workplace for qualified individuals with disabilities.

Notice that the protections of these laws are for qualified persons with disabilities. This means you must be qualified to do the college program or job in order to be protected under the law. You may have to prove you are qualified. This is different from public elementary and secondary school, where you were presumed to be qualified to be educated.

An example will illustrate this point. Karen had a reading disorder, auditory processing and memory retrieval problems. She received special education throughout public school. She had

extra time on the SAT and did well enough to get into a college social work program. She disclosed her disabilities, requested the accommodation of extra test time and a reader for examinations, and provided supporting professional documentation. She received the requested accommodations, but failed essay tests anyway. She was dismissed from the social work program. She then sought to set aside the dismissal on the ground that she couldn't take essay tests on such complex material because of her memory retrieval problem. In the end, the finding was that the school had provided all requested accommodations, that the school had done nothing improper, and that Karen was not qualified for the program.

Q: What accommodations would I be entitled to in college?

A: College accommodations depend upon your particular disabilities and how they impact on you in the college setting. Accommodations might include: course accommodations (e.g., taped textbooks, use of a tape recorder, instructions orally and in writing, note taker, and priority seating) and examination accommodations (e.g., extended test time, reader, and quiet room).

Q: What accommodations would I be entitled to in my job?

A: Workplace accommodations depend upon your particular disabilities and how they impact on performing the essential functions of your job. Accommodations might include: instructions orally and in writing, frequent and specific feedback from supervisors, quiet workspace, and training course accommodations.

Q: What about ADD? Is it covered under the law?

A: Yes, if it meets the criteria of the particular law. ADD, while not expressly listed, may be covered by the IDEA under one of three categories: other health impairments, specific learning disabilities, and serious emotional disturbance. ADD has been found to be an impairment under the Rehabilitation Act and ADA and, like learning disabilities, is a disability if it substantially limits a major life activity, such as learning.

Q: How do I assert my rights in college?

A: You need to disclose your disability to the college, request specific accommodations, and supply supporting professional documentation. In public school, the school system has a duty to identify students with disabilities. This is not so in college. The student has the responsibility to disclose the disability and to request accommodations. You must be specific about the accommodations that you need because of your disability. It is not enough to say that you have learning disabilities, so the college must help you.

Let's look at an example. Sarah is taking courses at the community college. She has a reading disorder, expressive writing disorder, and ADD. She requested one and one-half time on tests, separate room for tests, a reader to read exam questions to her, and a scribe to take down her answers. She provided good professional documentation to support her request and was granted

the requested accommodations.

There are student requests that the college is not obligated to grant. For example, if you did not request an accommodation on a test and failed it, generally you may not require the college to eliminate the failure from your record.

Q: Should I disclose my disability at work?

A: It depends. If you do not need accommodations in the application process, generally it is best to wait until after you have the job. Once on the job, if you see that a part of your job is a problem for you and believe you need an accommodation, it is best to act promptly and not allow a long period of poor performance. Also, at the time you disclose your disability, request the specific reasonable accommodations that will enable you to do your job.

Let's consider an example. Carlos has problems with expressive writing, spelling, and fine motor coordination. After high school, he was hired as a security guard. On the job, he began to have problems with the reports he had to write. The reports were messy, had spelling errors, and were often submitted late. He sensed that his boss was becoming annoyed. Carlos disclosed his disabilities and requested that he be able to dictate his reports into his tape recorder and then type them up on one of the computers (with spell check) at the main office at the end of each day. His request was granted.

Q: How should I disclose my disability?

A: Disclose the disability in writing. Be confident and positive. Combine the disclosure with a request for accommodations that will enable you to perform the job. Provide professional documentation of your disability and need for accommodations.

Q: What documentation of my disability and need for accommodations do I have to provide?

A: You need to provide documentation that establishes that you have a disability and that you need the accommodations you have requested. This might be a letter or report for the college or employer from the professional who has evaluated you. It should state the diagnosis and tests and methods used in the diagnostic process, evaluate how the impairment impacts on you, and recommend reasonable accommodations.

Q: What if I find out I have a learning disability during college or even later?

A: A late diagnosis of learning disabilities may be questioned more than an early diagnosis. It is important to have excellent documentation of the disability. It may be important to explain why the disability was not evident earlier. For example, Janet was diagnosed during her first year of college with a reading disorder. There were reasons why the problem had not shown up earlier. She had done well in the elementary and secondary school because she went to schools that did not have timed tests. She put in the extra time needed to successfully complete her course work

and her tests. In college, timed tests posed a major problem for her and led her to seek a thorough evaluation. She was able to document her reading disorder and her need for extra test time in college and medical school.

Q: What if I take medication for ADD? Do I still have rights?

A: Yes. The existence of a disability ordinarily must be judged without reference to the possible beneficial effects of medication. The taking of prescription medication for ADD does not result in loss of disability status under the Rehabilitation Act and ADA or in loss of reasonable accommodations .

Q: Can learning disabilities or ADD cause a person to be rejected for service in the Armed Forces?

A: It depends. Many individuals with learning disabilities or ADD join the Armed Forces and report that the structure and clear expectations help them to do well. However, these conditions may prevent some individuals from obtaining the required score on the Armed Forces Qualifying Test. The Armed Forces are not required to grant accommodations, such as extended test time, on the qualifying test. Further, military regulations provide that academic skills deficits that interfere with school or work after the age of 12 may be a cause for rejection for service in the Armed Forces. These regulations also provide that current use of medication, such as Ritalin or Dexedrine, to improve academic skills is disqualifying for military service.

Q: Can I be fired from my job or dismissed from college even if I establish that I have a disability?

A: Yes. Having a disability does not create absolute entitlement to a job or college education. The purpose of the anti-discrimination laws is to make sure you have equal opportunity. For example, if you have math disorder and cannot pass a required math course (with no substitutions permitted) for an engineering program, then you would not be qualified for the engineering program.

Q: What about confidentiality of disability records I file with a college or an employer?

A: Colleges generally have confidentiality policies with respect to disability material. The employment provisions of the ADA contain confidentiality provisions. However, these provisions are not as strong as the IDEA provision that provides for a right to delete disability records contained in your public school files.

For example, Ruth's parents submitted professional documentation of her learning disabilities and depression to her public high school. Ruth submitted the same documentation to her first employer when she disclosed her disabilities and requested job accommodations. After leaving her first job and being hired by a new employer, Ruth decided that she did not need accommodations in the new job. She also decided to request deletion of her disability information from prior files, while retaining copies in her own files in case she would need the

records later. The public high school complied with her request. Her first employer informed her that the disability information could not be deleted but was kept in a separate, confidential file.

Q: If I don't get what I ask for, should I sue?

A: A lawsuit is not the first step. First, you must evaluate your own position. It may be wise to consult with a lawyer to review the strong points and weak points in your case. If your case has merit, and you wish to pursue it, then follow these steps: communicate to the college or employer the basic facts and the reasons why you are entitled to what you have requested, negotiate by marshaling the facts that support your request, consider alternative dispute resolution (e.g., mediation and arbitration), and finally consider formal proceedings, such as litigation in the courts.

Remember, even if you have a strong case, it does not mean you must take legal action. You may decide that you wish to put your energy into moving on to a new college program or job rather than disputing events at the prior program or job.

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