

## Dear Colleague Letter

### OFFICE OF THE ASSISTANT SECRETARY

March 16, 2007

Dear Colleague:

The mission of the U.S. Department of Education is to ensure equal access to education and to promote educational excellence throughout the nation. The Department's Office for Civil Rights (OCR) contributes to this mission through vigorous enforcement of civil rights laws. I am writing to ask for your help in furthering an important part of that mission by disseminating information about the legal rights and responsibilities of students with disabilities as they transition from secondary to postsecondary education settings.

Increasingly, after completing high school, students with disabilities continue their education at institutions such as two- and four-year colleges and universities and at vocational and career schools. Data from the Department of Education's most recent National Postsecondary Student Aid Study indicated that, in the 2003-04 academic year, more than 2 million postsecondary students reported having some type of disability. They accounted for more than 11 percent of postsecondary students and represent a 2 percent increase in the number of postsecondary students who reported having disabilities just four years earlier. Postsecondary students with disabilities have a range of impairments, such as visual, speech and hearing impairments; specific learning disabilities; attention deficit disorder; mental illness; developmental disabilities; orthopedic disorders and others. Institutions of postsecondary education are responsible for providing disability-related services to students with disabilities. OCR's experience as a law enforcement agency, however, and other data, indicate that some students have reported that they need disability-related services and accommodations but do not receive them.

OCR enforces Section 504 of the *Rehabilitation Act of 1973* (Section 504) and Title II of the *Americans with Disabilities Act of 1990* (Title II), which prohibit discrimination on the basis of disability. Every school district and nearly every institution of postsecondary education in the United States is subject to Section 504 or Title II, which have similar requirements. Private institutions of postsecondary education that do not receive federal financial assistance are not subject to Section 504 or Title II. They are, however, subject to Title III of the *Americans with Disabilities Act*, which prohibits discrimination on the basis of disability by private entities that are not private clubs or religious entities and which is enforced by the U.S. Department of Justice. Entities covered by these civil rights laws have an obligation to comply with legal requirements and to carry out their programs and activities in a manner that does not discriminate on the basis of disability.

Through the Office of Special Education and Rehabilitative Services (OSERS), the Department of Education administers the *Individuals with Disabilities Education Act* (*IDEA*), which provides funds to states to assist in making a free appropriate public education (FAPE) available to eligible children with disabilities. *IDEA* requirements apply to state education agencies, school districts and other public agencies that serve *IDEA*-eligible children. Institutions of postsecondary education have no legal

obligations under *IDEA*. OSERS also administers the state Vocational Rehabilitation (VR) Services program, a formula grant program that provides funds to state VR agencies to assist eligible individuals with disabilities to obtain employment, including the provision of services designed to facilitate the transition of eligible students with disabilities from school to post-school activities.

OCR strongly encourages students with disabilities to know their rights and responsibilities and the responsibilities of institutions of postsecondary education under Section 504 and the *Americans with Disabilities Act*. This information will help to facilitate equal access to postsecondary education programs and activities for students with disabilities. This information may also help students successfully make the transition from a secondary school system in which parents and school staff have typically advocated on their behalf to a postsecondary system in which they will be expected to advocate for themselves.

OCR also provides information to educators to help answer students' questions about their rights and responsibilities, to aid in offering practical suggestions to students to facilitate the successful transition to postsecondary education and to ensure that educators are aware of postsecondary institutions' obligations to students. Institutions of postsecondary education have significantly different responsibilities from those of elementary and secondary school districts. The unique relationship between institutions of postsecondary education and students with disabilities is apparent in the application and pre- and post-admissions processes. For example:

### **Prior to Admission**

- Institutions of postsecondary education may not make inquiries about prospective students' disabilities prior to admitting them. Prospective students may choose to provide an institution with information about disabilities, but any disclosure of disability is voluntary.
- Institutions of postsecondary education may inquire about whether prospective students can meet the academic and technical standards that are required for admission, provided that such inquiries are not designed to reveal the existence of disabilities.
- Prospective postsecondary students may obtain changes in standardized testing conditions in the administration of entrance examinations if they can provide documentation from a qualified professional that supports the existence of a disability and the need for the specific change.

### **Following Admission**

- Institutions of postsecondary education do not have a legal duty to identify students with disabilities. These institutions' obligations are different from those of school districts, which must identify elementary and secondary school students with disabilities.
- After admission, institutions of postsecondary education may make confidential inquiries of students about disabilities that may require accommodation. A postsecondary student does not have to disclose that he

or she has a disability. To obtain academic adjustments, however, students must identify themselves to institutions of postsecondary education as having disabilities and must make a request for an academic adjustment. A student may request an academic adjustment at any time, but advising the institution as soon as possible of the need for an academic adjustment can help to ensure that the institution has adequate time to review the request and provide an appropriate academic adjustment.

- Section 504 and *IDEA* require school districts to conduct an evaluation of a student suspected of having a disability at no cost to the student or his or her parents to determine whether the student has a disability and, because of that disability, needs special education and-or related services. Institutions of postsecondary education, however, are not required to pay for such evaluations. Therefore, if funding from other sources, such as the state VR agency, is not available to a postsecondary student, the student may have to pay for the evaluation.
- To comply with the requirements of *IDEA*, a school district or other public agency must have in effect an individualized education program (IEP) for children with disabilities. School districts may also create a plan or other document describing the evaluation and placement decisions they make for elementary and secondary school students pursuant to Section 504. Institutions of postsecondary education have no obligation to create these documents.
- Institutions of postsecondary education must provide appropriate academic adjustments based on students' disabilities and individual needs when necessary to avoid discrimination. In providing an academic adjustment, a postsecondary institution does not have to eliminate or lower essential requirements, or make modifications that would result in a fundamental alteration of the programs or activities being offered or impose an undue burden on the institution.
- Institutions of postsecondary education may establish reasonable procedures for requesting academic adjustments, and students are responsible for knowing these procedures and following them. Postsecondary institutions may require students who request academic adjustments to provide documentation of their current disabilities and the need for academic adjustments. The institutions must inform students of the documentation they require. Elementary and secondary school IEPs generally will not be sufficient documentation, due to the different contexts and requirements of postsecondary education. However, existing assessment reports and a summary of the student's academic achievement provided in compliance with *IDEA* may meet some documentation requirements.
- Institutions of postsecondary education may not require students with disabilities to pay part or all of the costs of academic adjustments. Postsecondary institutions may not condition their provision of academic adjustments on the availability of funds, refuse to spend more than a certain amount to provide academic adjustments, or refuse to provide academic adjustments because they believe other providers of such services exist.

These are just a few examples of the changes students with disabilities may encounter as they make the transition from high school to postsecondary education.

To further inform students with disabilities and their parents and educators working with the students, OCR has prepared a pamphlet entitled *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities* and a guide entitled *Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators*. The pamphlet and guide explain the legal requirements of Section 504 and Title II in the postsecondary education context. Copies of each document are enclosed. You may obtain the pamphlet electronically at <http://www.ed.gov/ocr/transition.html> and the guide electronically at <http://www.ed.gov/ocr/transitionguide.html>. You may obtain additional copies of the pamphlet by writing to ED Pubs, Education Publications Center, P.O. Box 1398, Jessup, MD 20794-1398; by faxing to 301-470-1244; by e-mailing to [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov); by calling 1-877-433-7827 or 1-800-872-5327; by TDD and TTY at 1-877-576-7734; or by ordering online at [www.edpubs.org](http://www.edpubs.org). Both the pamphlet and the guide are available in alternative formats, such as Braille, large print or computer diskette by calling 202-260-0852 or 202-260-0818. The pamphlet is also available in Spanish. (See <http://www.ed.gov/about/offices/list/ocr/transition-sp.html>).

In addition, I have prepared the enclosed "Dear Parent" letter regarding the subject of transition. Please help us to continue to raise awareness of this important matter by sharing the "Dear Parent" letter with the parents of students with disabilities with whom your institution or organization has contact. I also encourage you to post this letter, the "Dear Parent" letter and links to the pamphlet and guide on your Web site. You may also contact the OCR Enforcement Office for your state for additional information and assistance. Contact information for these offices is at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

Thank you for helping OCR to reach out to and better inform students with disabilities.

Sincerely yours,

Stephanie Monroe  
Assistant Secretary for  
Civil Rights

Enclosures