SERVING STUDENTS WITH DISABILITIES IN HIGHER EDUCATION: MAKING THE TRANSITION FROM THE IDEA

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20th ANNUAL LAW & HIGHER EDUCATION CONFERENCE
Clearwater Beach, Florida
February 11-13, 1999
In 1975, Congress passed the Education for All Handicapped Children Act of 1975 ("EAHC") (Public Law 94-142) and, in so doing, determined that the special educational needs of children with disabilities were not being fully met and that more than one-half of children with disabilities in the United States were excluded from the public school system. Subsequently, the EAHC was amended and renamed the Individuals with Disabilities Education Act ("IDEA"). As a result of this expansive federal legislation, hundreds of thousands of school children have been identified as educationally disabled and have received special education and related services.

Since the initial passage of the EAHC, public school districts have experienced a tremendous increase in IDEA litigation, in part, as a result of the growing expectations and demands by the parents of disabled children. Numerous factors have produced this growth in litigation, including the ever-expanding number of students identified with IDEA disabilities as well as the 1997 amendments to the IDEA that emphasize mainstreaming, "access to the general curriculum," and the successful completion of a high school diploma and transition to college or work. Significantly, however, the IDEA and its statutory support system apply to students with disabilities only until such time as they "age out" at twenty-one or until they graduate from high school. Accordingly, the extensive procedural and substantive protections of the IDEA no longer apply to students upon their entry into higher education and such students must, therefore,
look to Section 504 of the Rehabilitation Act for accommodations for their previously diagnosed educational disabilities.

Because the procedural and substantive provisions of the IDEA and Section 504 significantly differ and serve distinctly different purposes, previously identified disabled students may discover that the IDEA’s significant support system that enabled them to progress and proceed to college is no longer available. Without adequate transition planning and orientation to prepare such students for the changes they will experience upon entry into college, this author anticipates that institutions of higher education may soon encounter a parallel increase in Section 504 litigation by which disabled students (and their parents) seek entitlement to the substantial individualized services and procedural safeguards to which they were entitled under the IDEA. To appropriately respond to such demands and/or litigation, institutions of higher education must be prepared to address the different obligations imposed by the two statutes and to resist attempts by disabled students to expand Section 504 such that it duplicates IDEA at the college level.

This article will explore the differences in the two statutory schemes and provide some practical suggestions with regard to how higher education institutions can effectively deal with the anticipated increase in student requests for services and litigation.

A. The Individuals with Disabilities Education Act

Under the Individuals with Disabilities Education Act, all children with disabilities between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school, are entitled to a free appropriate public education ("FAPE") designed to meet their unique needs. 20 U.S.C. § 1412. A local educational agency fulfills the requirement of FAPE “by providing personalized instruction with sufficient support services to permit the

Pursuant to the IDEA, the term “child with a disability” is statutorily defined to mean a child with mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities and “who, by reason thereof, needs special education and related services.” 20 U.S.C. § 1401.

The IDEA does not entitle any student to post-secondary education. 20 U.S.C. § 1401(8) (defining FAPE to include “an appropriate preschool, elementary, or secondary school education); *see also* OSEP Memorandum, Letter to Richards, 17 EHLR 288 (November 23, 1990) (“[IDEA] does not require a State to provide a post-secondary school education to any child who is disabled, regardless of the child’s age. . . . eligibility for special education and related services would cease upon granting of the high school diploma.”). Graduation is simply a change in the student’s educational placement and, once this change in placement occurs, the IDEA no longer applies.

The primary vehicle for carrying out the IDEA’s goals is the “individualized educational program” (“IEP”). 20 U.S.C. § 1414. The IEP is a written statement that is developed for the “unique needs” of each disabled child, 20 U.S.C. § 1401(20), and is prepared at a meeting that includes representatives of the local educational agency, the child’s current teacher(s), the parents or guardian of the child, and whenever appropriate, the child. Each IEP must contain a statement of the child’s present level of performance, annual goals, short-term instructional objectives, a description of the placement and the reason for its selection, dates for the duration of the program, and objective criteria by which achievement of the objectives can be evaluated.
34 C.F.R. § 300.346. Further, the IDEA requires that each IEP must be reviewed at least annually and, where appropriate, revised. 20 U.S.C. § 1414. Beginning at age fourteen, public school districts also are required to include in the IEP a statement of the transition service needs of the student focusing on the child’s course of study, such as participation in advanced placement courses or a vocational education program, and those services the student will need to successfully prepare for post-IDEA education or work. 20 U.S.C. § 1414. See Yankton Sch. Dist. v. Schramm, 93 F.3d 1369 (8th Cir. 1996) ("Preparing disabled students for post-secondary education is one of the reasons for transition services under the IDEA").

To achieve its goals, the IDEA "establishes a comprehensive system of procedural safeguards designed to ensure parental participation in decisions concerning the education of their disabled children and to provide administrative and judicial review of any decisions with which those parents disagree." Honig v. Doe, 484 U.S. 305, 308 (1988). In recognition that a consensus regarding a child's proper educational placement and IEP would not always be possible, Congress provided for administrative review of an IEP determination at the request of either the parents or guardian or the local educational agency and, after exhaustion of the administrative review process, judicial review in a state or federal court. See 20 U.S.C. § 1415. If the parents disagree with the IEP or proposed changes to the IEP, the state must provide them with an impartial due process hearing. 20 U.S.C. § 1415. After an impartial due process hearing, either the parents or the local educational agency may seek further administrative review and, if the differences between the parties are not capable of resolution at the state level, either party may file a civil action in state or federal court. 20 U.S.C. § 1415.

To date, most federal courts of appeals have held that parents may not seek damages under the IDEA. See, e.g., Fort Zumwalt Sch. Dist. v. Clynes, 119 F.3d 607 (8th Cir. 1997).
However, much of the current litigation arising from § 1415 stems from parents’ unilateral placement of their child in a private school. In such cases, parents maintain that the public school district has denied their child the statutorily mandated “FAPE” and they are, therefore, entitled to reimbursement for the private school tuition and expenses as an equitable remedy. See Id. The Supreme Court has affirmed that such relief is available under the IDEA. See Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). In addition, parents who are prevailing parties in such litigation have a statutory right to attorneys’ fees. 20 U.S.C. § 1415. Thus, in spite of the apparent lack of a damages remedy, the financial exposure for public school districts in such litigation is significant. Further, the IDEA expressly provides that its provisions do not restrict or limit a parent’s right to seek recourse and remedies available under the Constitution, the Americans with Disabilities Act, Section 504 or other federal law, except that parents must exhaust their IDEA remedies before proceeding with such claims. 20 U.S.C. § 1415.

Clearly, the IDEA’s mandatory provisions impose weighty obligations upon public school districts and provide disabled students and their parents with significant procedural and substantive rights that, to date, they have not been hesitant to assert in litigation. To assure the smooth transition of these students to higher education, colleges and universities must be cognizant of these IDEA requirements.

B. A Comparison With Section 504 of the Rehabilitation Act

In contrast to the IDEA, Section 504 of the Rehabilitation Act does not require colleges and universities to affirmatively identify and serve students with disabilities or to provide a “free appropriate public education.” Rather, Section 504 is a nondiscrimination statute that provides as follows:
No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.


Moreover, unlike the IDEA’s very specific definition of what constitutes a child with a disability, Section 504 vaguely defines an individual with a handicap as “any person who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.” 29 U.S.C. § 706(8)(B). The accompanying federal regulations define major life activities to be functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, learning, and working. 45 C.F.R. § 48(j)(2)(ii).

Although the IDEA specifically mandates an individualized program for every student subject to its protections, the Section 504 regulations merely require the following:

Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adoption of the manner in which specific courses are conducted.

34 C.F.R. § 104.44(a).

Thus, Section 504 simply requires that institutions of higher education provide disabled students with those reasonable accommodations that are necessary to prevent discrimination on the basis of disability. IDEA’s reach is much more expansive and the IDEA requires public school districts to take all steps (including individualized modifications to curriculum or
instruction) that a particular child needs to receive an appropriate education, even if such modifications or services would substantially alter the school district’s educational program. Although many of the Section 504 reasonable accommodations such as extended time for testing or special seating arrangements also frequently can be found in an IEP, an IEP – by statutory definition – includes considerably more than these types of modifications and includes services that are individualized to the unique needs of the student.

Although the bulk of IDEA cases litigated necessarily revolve around the issue of whether a student’s IEP offers FAPE, the vast majority of Section 504 cases at the college level involve the issue of whether the student is handicapped as defined by the statute. This issue arises because, even if a student has a physical or mental impairment that substantially limits a major life activity, the student must also demonstrate that he or she is “otherwise qualified” to participate in the college or university program at issue. The federal regulations define a qualified person with a disability as “with respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity.” 45 C.F.R. 84.3(k)(3).¹

Applying this standard in the seminal Section 504 case, the United States Supreme Court held that a nursing school could refuse admission to its program to a deaf applicant because she did not have the requisite auditory skills to be otherwise qualified. Southeastern Community College v. Davis, 442 U.S. 397 (1979). In that case, the applicant’s hearing disability substantially interfered with her ability to understand speech and to participate in program’s

¹ Under the IDEA, there is no “otherwise qualified” standard. All states mandate school attendance for certain aged children and, therefore, a public school district cannot deny admission to or participation in its general programs to students with IDEA disabilities.
clinical training without very close individual supervision. *Id.* at 409-10. Because the applicant’s participation in the nursing program would have resulted in a fundamental alteration in the normal training program, the Court concluded that the college did not discriminate on the basis of disability when it denied admission. *Id.* As stated by the Court:

In this case, however, it is clear that Southeastern’s unwillingness to make major adjustments in its nursing program does not constitute such discrimination. The uncontroverted testimony of several members of Southeastern’s staff and faculty established that the purpose of its program was to train persons who could serve the nursing profession in all customary ways. This type of purpose, far from reflecting any animus against handicapped individuals, is shared by many if not most of the institutions that train persons to render professional services. It is undisputed that respondent could not participate in Southeastern’s nursing program unless the standards were substantially lowered. Section 504 imposes no requirements upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person.

*Id.* at 413.

Thus, the Court defined an “otherwise qualified person” as “one who is able to meet all of a program’s requirements in spite of his handicap.” *Id.* at 406. Significantly, in articulating this definition, the Court specifically noted the federal regulations that “explicitly excludes ‘devices or services of a personal nature’ from the kinds of auxiliary aids” that an institution must provide and, therefore, concluded that the nursing school was not required to give “close, individual attention” to the plaintiff as a means to enable her to take part in the school’s clinical program. *Id.* at 409 (citing 45 C.F.R. § 84.44(d)(2)) (emphasis added). *See also Aloia v. New York Law School*, 1988 U.S. Dist. LEXIS 7769 (S.D.N.Y. 1988) (finding that law school’s refusal to waive its minimum GPA requirement for student with “central nervous system metabolic disorder” was not unreasonable or discriminatory where “law school has an obvious interest in maintaining meaningful academic standards” and “to preserve the school’s reputation”); *cf. Doherty v. Southern College of Optometry*, 659 F. Supp. 662, 672 (W.D. Tenn.
1987) (finding that refusal to alter physical education requirement for history degree would clearly be unreasonable and discriminatory).

Prior to bringing litigation under Section 504, a student need not exhaust administrative remedies as under IDEA and, to prevail, must prove that (a) he or she is handicapped — i.e., otherwise qualified for participation in the educational program; (b) the institution is federally funded; (c) the institution’s actions impermissibly discriminated against the plaintiff; and (d) the student was being excluded from the educational program solely by reason of his or her handicap. Doe v. New York University, 666 F.2d 761, 774-75 (2d Cir. 1981); Pushkin v. Regents of Univ. of Color., 658 F.2d 1372, 1384 (210th Cir. 1981).

C. IDEA’s Child Find Requirement v. Section 504’s Notification Requirement

Under the IDEA, a local educational agency is required to affirmatively identify, locate, and evaluate all children with disabilities residing in its jurisdiction, including children with disabilities attending private schools, who are in need of special education and related services. 20 U.S.C. § 1412. Failure to timely identify and serve such students can result in a finding of a denial of FAPE and an award of compensatory education at a public or private school. Thus, where a student demonstrates significant academic or behavioral difficulties that cannot be attributed to environmental influences or lack of consistent instruction, a public school district must refer that child for a special education evaluation and prepare an IEP if necessary.

In contrast, Section 504 does not require colleges and universities to take affirmative steps to identify those students who might be covered by the Act. Rather, as noted by one court, to be liable under Section 504, an academic institution must have, or reasonably be expected to have, knowledge of a student’s disability. Wynne v. Tufts Univ. Sch. of Medicine, 976 F.2d 791 (1st Cir. 1992), cert. denied, 123 L.Ed.2d 470 (1993). See also Nathanson v. Medical College of
Pennsylvania, 1990 U.S. Dist. LEXIS 3055, at *9-10 (E.D. Pa. 1990) (noting that “defendant had no apparent legal obligation to anticipate plaintiff's alleged needs” and, although a higher education institution must make its programs accessible to otherwise qualified handicapped individuals, that does not mean that “an institution must foresee every discomfort that a program participant may have”); Murphy v. Franklin Pierce Law Center, 1995 U.S. App. LEXIS 13474 (1st Cir. 1995) (“Because Murphy never informed the Law Center that the diplopia was interfering with her ability to perform until after the end of her fourth semester, it is not chargeable with notice of this handicap before then”).

Accordingly, institutions of higher education do not have to take steps to locate and identify every student who might satisfy the definition of disabled under Section 504. Indeed, the applicable regulations specifically prohibits colleges and universities that receive federal funds from asking if an applicant is handicapped, although such schools may do so confidentially after an individual has been admitted for the purpose of providing reasonable accommodation. 45 C.F.R. § 84.42(b)(4). However, educational institutions may be put on notice that a student has a handicapping condition and requires reasonable accommodation with less than direct notice. See Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368 (3d Cir. 1991) (finding sufficient evidence to raise issue of fact as to whether medical college had reason to know that plaintiff was handicapped where she met with administrator and informed her that she had neck and back injuries that prevented her from attending classes even where the handicap was not visibly obvious and plaintiff did not make a direct request for accommodation); Doe v. New York Univ., 666 F.2d 761 (2nd Cir. 1981) (noting that long history of mental impairments indicated that former medical student was handicapped individual). Thus, colleges and
universities should have procedures to determine if a disabling condition exists and whether such students are otherwise qualified in spite of the handicap.

D. **FAPE v. Reasonable Accommodation**

As noted *supra*, public school districts are required to provide a free appropriate public education to all disabled students who are determined to need special education under the IDEA. Under the FAPE standard, an IEP is not required to maximize the educational benefit to the child, nor to provide each and every service and accommodation which could conceivably be of some educational benefit. *Rowley*, 458 U.S. at 199. Although an educational benefit must be more than de minimis to be appropriate, *Doe v. Bd. of Educ. of Tullahoma City Schls.*, 9 F.3d 455, 459 (6th Cir. 1993), *cert. denied*, 128 L.Ed.2d 665 (1994), as stated by the *Rowley* Court, an appropriate educational program is one which is “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 207. In articulating the standard for FAPE, the *Rowley* Court concluded that “Congress did not impose any greater substantive educational standard than would be necessary to make such access meaningful.” *Id.* at 192. The Court found that Congress’ intent was “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.” *Id.*

Significantly, although federal courts consistently apply the *Rowley* standard, parents currently are contending in a large number of cases that public school districts are required to provide a “maximizing” education that will allow every disabled child to reach his or her full potential and, in spite of *Rowley*, are demanding each and every service that they believe will be of some educational benefit.
In a given case, a public school also may have to provide related services and/or assistive technology to a disabled student for that student to receive FAPE. Under the IDEA, related services is defined as

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.”


In addition, an assistive technology device means “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.” 20 U.S.C. § 1401 (1). Similarly, assistive technology service, is defined as “any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device” and includes, the evaluation, purchasing, customizing, repairing of such devices, the training on such devices for staff and families and the coordination of such devices with other therapies or services that the child receives. 20 U.S.C. § 11401(2).

The student’s IEP team determines what related services or assistive technology an individual child requires to receive FAPE. Moreover, the parents of a disabled child may initiate the § 1415 due process procedures to challenge any related service or assistive technology decision made by the IEP team. See, e.g., East Windsor Bd. of Educ., 20 IDELR 1478 (Conn. State Educational Agency May 9, 1994) (parents of eleven year old boy with spastic quadriplegia, severe visual impairment and speech problems initiated litigation over the issue of whether the child required horseback riding as a related service); Apple Valley Unified Sch.
Dist., 25 IDELR 1128 (Calif. State Educational Agency Feb. 28, 1997) (parents initiated due process over the issue of vision therapy for student with a visual impairment); San Lorenzo Unified Sch. Dist., 26 IDELR 331 Calif. SEA April 7, 1997) (addressing whether student diagnosed with serious emotional disturbance required a boxing and weight training program as a related service to benefit from his special education program); Walker County Sch. Sys., 22 IDELR 187 (Ga. SEA Jan. 25, 1995) (reviewing whether student with serious emotional disturbance required the related services of physical therapy and family counseling); Colonial Sch. Dist., 26 IDELR 776 (Pa. SEA May 13, 1997) (discussing whether student with multiple disabilities needed aquatic training as a related service).

Notably, an IEP team (or school district) may not deny a necessary related service or assistive technology on the basis of cost. In fact, the United States Supreme Court currently is reviewing a case to determine the extent of a public school district’s obligations to medically fragile students. See Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822 (8th Cir.), cert. granted, 1998 U.S. LEXIS 3396 (1998). The Court heard oral arguments on November 4, 1998. In this case, the student is a quadriplegic from a motorcycle accident, and requires a plethora of related services, including tracheostomy suctioning, repositioning in his wheelchair, assistance with the provision of eating, ambu bag administration in cases of ventilator malfunctioning, ventilator setting checks, blood pressure monitoring, and catheterization. The district has provided the services of a teacher associate to the student, at an annual cost of approximately $10,000, but has refused to hire a nurse. To date, the parents have been successful in obtaining each of the above-mentioned services through all rounds of litigation. The Cedar Rapids case certainly illustrates the ever-expanding services and financial obligations public school districts face with respect to the IDEA.
Unlike the IDEA, Section 504 does not require the provision of FAPE to students in post-secondary programs.\(^2\) Rather, the federal regulations require colleges and universities that receive federal funding to make reasonable accommodations to the "known physical or mental limitations" of otherwise qualified individuals unless the recipient can show that such an accommodation "would impose an undue hardship on the operation of its program." 45 C.F.R. § 84.12(a). Moreover, colleges and universities are not required to provide related services and assistive technology that students require to benefit from higher education. Rather, as applied to institutions of higher education, the Section 504 regulations require the provision of some "auxiliary aids" to prevent discrimination on the basis of disability. The pertinent regulation provides that

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

45 C.F.R. § 84.44(d) (emphasis added).

The limiting language of § 84.44(d)(2) that expressly provides that a recipient need not provide devices or services of a personal nature may limit the litigation over auxiliary aids that current plagues public school districts with respect to related services. To date, courts have not

\(^2\) Notably, however, Section 504 does require the provision of FAPE to those students identified as disabled who attend preschool, elementary and secondary schools that receive federal funding. See 34 C.F.R. § 104.33. The pertinent portions of Section 504 that apply to these institutions consistently have been interpreted in a manner similar to the IDEA such that Section 504 in this regard now substantially mirrors IDEA.
interpreted Section 504's reasonable accommodations or auxiliary aids provisions as broadly as the IDEA's FAPE and related service and assistive technology provisions and have allowed colleges to cite costs and the effect on the academic program as factors in denying requested services. However, to prevail if litigation ensues over such issues, officials within the institution must have assessed the situation and come to a justifiable reason for denying a student's request. As noted in the leading case on this issue, "[i]f an institution submits undisputed facts demonstrating that the relevant officials within the institution considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or requiring substantial program alteration, the court could rule as a matter of law that the institution had met its duty of seeking reasonable accommodation." *Wynne*, 932 F.2d at 26. *See also Guckenberger v. Boston Univ.*, 8 F. Supp. 2d 82 (D. Mass. May 29, 1998) (rejecting claim of class action plaintiffs with learning disabilities that university should provide course substitution for the College of Arts and Sciences' foreign language requirements and concluding that "so long as an academic institution rationally, without pretext, exercises its deliberate professional judgment not to permit course substitutions for an academic requirement in a liberal arts curriculum, the ADA does not authorize the courts to intervene even if a majority of other comparable academic institutions disagree"). *Cf. Barnes v. Converse College*, 436 F. Supp. 635, 637 (D.S.C. 1977) (finding that plaintiff was otherwise qualified handicapped person who could adequately perform in academic class in which she wished to be enrolled with aid of interpreter, noting that cost of interpreter for the course was only $750 and holding that college was obligated to provide and pay for interpreter pursuant to Section 504); *U.S. v. Bd. of Trustees for Univ. of Alabama*, 908 F.2d 740 (11th Cir. 1990) (finding that UAB's auxiliary aids policy that
indicated that it would not provide interpreters or other “costly” aids and directing students to seek free interpreter services provided by state’s vocational rehabilitation service or other sources violated Section 504).

**E. Addressing Disabled Students’ Needs Under Section 504.**

Although Section 504 as applied to post-secondary institutions is not as procedurally and substantively burdensome as the IDEA, colleges and universities must have procedures and practices in place to address the needs of their disabled students. First, all institutions of higher education should have procedures to determine if a student’s asserted disability constitutes a substantial limitation on a major life activity, thus entitling the student to reasonable accommodations. As part of this process, an institution is not required to accept the student’s or the student’s doctor’s or psychologist’s bare claim that the student is handicapped. Rather, the institution can and should be prepared to request recent outside assessments that substantiate a particular handicapping condition or to conduct its own evaluation if the disability is such that it is unclear as to whether a substantial limitation exists. As part of this process, the institution may need to seek guidance from individuals who have expertise in the specific disability.

Similarly, the institution must be prepared to acknowledge the existence of handicapping conditions even where a student has not directly notified the institution of Section 504 eligibility and requested reasonable accommodation. Thus, if a student has provided sufficient indication of a condition that puts the institution on notice that a Section 504 disability may exist and requests accommodations, the institution must properly respond.

Assuming the institution determines that the student qualifies for the protection of Section 504, it then needs to have a procedure by which students can request reasonable accommodations. The institution then must be prepared to respond to such requests and to
justify the denial of any requests that it believes would alter the fundamental nature of its academic programs or would constitute undue hardships. Such responses and denials should not be ad hoc, unilateral administrative decisions, but should be based on an inquiry that satisfies the *Wynne* standard. If the institution follows such procedures, it is highly likely that a court will give that decision the oft-articulated deference due to academic decisions and highly unlikely that a court will second-guess the determination. In addition, each institution must determine whether the student or administration will be responsible for communicating the agreed upon reasonable accommodations to necessary faculty and must ensure that faculty implements all necessary reasonable accommodations.

Finally, the institution must train appropriate individuals with respect to the differing requirements of IDEA and Section 504. Those individuals can be in the forefront of orienting the institution’s Section 504 (and previously identified IDEA) students to those differences. These students must be made aware that the extensive IDEA support system is no longer available and that they will have to meet the institution’s academic requirements to remain otherwise qualified. Proper orientation may well reduce the unrealistic expectations that such students may have and may assist in avoiding litigation.

By ensuring that such processes are in place, institutions of higher education should be positioned to appropriately respond to student requests for reasonable accommodation under Section 504 and to limit expansion of Section 504’s scope as it now applies to disabled students enrolled in colleges and universities.