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STUDENTS WITH DISABILITIES IN HIGHER EDUCATION AND IMPLEMENTATION OF SECTION 504: A HISTORICAL-COMPARATIVE ANALYSIS

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**STUDENTS WITH DISABILITIES IN HIGHER EDUCATION AND
IMPLEMENTATION OF SECTION 504: A HISTORICAL-COMPARATIVE
ANALYSIS**

By

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Presented to the Faculty of the Graduate School of
Stephen F. Austin State University
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of the Requirements

For the Degree of
Doctor of Education

STEPHEN F. AUSTIN STATE UNIVERSITY

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ABSTRACT

Section 504 is a civil rights law that prohibits discrimination against individuals with disabilities by programs or activities receiving or benefiting from federal assistance (Rehabilitation Act, 1973). Specifically, Subpart E of the rules and regulations for Section 504 addresses postsecondary educational services and prohibits discrimination in the areas of recruitment and admissions, academic and athletic programs and activities, student evaluations, housing, financial aid, counseling, and career planning and placement.

Using a historical-comparative research method, the purpose of this study was to identify, analyze and compare cases of case law and Office of Civil Rights decisions since 1973 that have shaped the way universities interpret and implement Section 504, as well as the accommodation trends since 1973. In six out of nine cases included in this study, the courts ruled in favor of the university. These specific cases provide critical insights as to how universities protected themselves from the negative outcomes. In three out of nine cases included in this study, the courts ruled in favor of the student with a disability. These specific cases provide critical insights as to how universities were vulnerable in their policies and practices, which led to an unfavorable outcome in the eyes of the courts. Universities should examine these cases and the policies and practices that were not deemed satisfactory to protect them from being liable in the same manner.

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CHAPTER I

Introduction to the Study

Individuals with Disabilities Education Act (IDEA) of 2004 paved the way for students in public education to receive a free and appropriate public education from birth to 21 years of age. Furthermore, this law requires appropriate transition to postsecondary services be provided, however, once the student graduates, the eligibility for services under IDEA are terminated. Although, Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act, 1973) provides protections for students in public education, the protections are not significant as those provided under IDEA and it is not a funded program or service. In other words, IDEA is funded based on enrollment of students with disabilities.

Over the past several decades, enrollment in postsecondary education has increased significantly. According to Ewell and Wellman (2007), for students in general, “postsecondary enrollments are at an all-time high” (p. 2). In 1995, the HEATH Resource Center reported that only 2.6% of all freshman reported having a disability back in 1978. Likewise, enrollment in higher education for students with disabilities was 26 percent in 1990 and rose to 46 percent in 2005 (Newman, Wagner, Cameto, Knoockey, & Shaver, 2010, p. xv). Specifically, four of the nine disability categories experienced

similar growth in enrollment in 1990 compared to 2005. Students with hearing impairments increased 23 percent, intellectual disabilities increased 20 percent, learning disabilities increased 18 percent, and emotional disturbances increased 17 percent (Newman et al., 2010, p. xvii).

With that being said, a key challenge that has been identified is “ensuring that students with disabilities have access to and full participation in postsecondary education” (National Center on Secondary Education and Transition, 2003, p. 1).

Universities must use the guidance for Section 504 of the Rehabilitation Act of 1973 and the American with Disabilities Act of 1990 to meet this challenge. Case law and Office of Civil rights decisions, along with federal legislation, shape how universities interpret and implement policies and programs to ensure access to higher education for students with disabilities.

With that being said, it is important to note that students with disabilities in higher education must self-identify themselves if they want to receive accommodations (Cook, Rumrill, & Tankersley, 2009; Simon, 2011; Thomas, 2000; U.S. Depart. of Ed, 2007). This means the student must follow the institution’s procedure and complete the process to be identified as a student with a disability. It is the student’s responsibility to initiate this procedure, whereas in PK-12 grades, under IDEA, it is the schools’ responsibility to perform child find activities and identify the child. The self-identify process is an essential part of being a student with a disability in a higher education institution.

Background to the Problem

According to Thomas (2000), prior to 1973, the fourteenth amendment was the only protection for individuals with disabilities. The amendment “requires states to provide for the equal protection of persons within their respective jurisdiction and to give due process any time state action could adversely affect life, liberty, or property” (pp. 248-249; U.S. Constitution, n.d.). Similarly, Section 504 of the Rehabilitation Act of 1973 was the first law to apply to students attending higher education institutions (Cory, 2011). Section 504 is a civil rights law that prohibits discrimination against individuals with disabilities by programs or activities receiving or benefiting from federal assistance (Rehabilitation Act, 1973). Specifically, Subpart E of the rules and regulations for Section 504 addresses postsecondary educational services and prohibits discrimination in the areas of recruitment and admissions, academic and athletic programs and activities, student evaluations, housing, financial aid, counseling, and career planning and placement.

The disability definition under Section 504 is much broader than the thirteen categories of disability under IDEA. In regard to the definition of a disability, the U.S. Department of Education (n.d.a) defines a disability as any physical or mental impairment that substantially limits one or more major life activities, regardless of the nature of severity of the disability (para 19).

A “physical impairment” is defined as a physiological disorder or anatomical loss affecting one of more body systems and includes, “neurological, musculoskeletal (the system of muscles and bones), respiratory, cardiovascular, digestive, lymphatic and

endocrine systems” (ADA Best Practices, n.d., para. 18). A “mental impairment” is defined as a mental or psychological disorder and includes intellectual disabilities, mental illness or organic brain syndrome (ADA Best Practices, n.d., para. 18). A “major life activity” includes activities such as caring for oneself, operation of a major bodily function, seeing, hearing, eating, sleeping, walking, standing, speaking, learning, thinking, communicating and working (ADA Best Practices, n.d., para. 18). As a result, this definition includes a multitude of disabilities that are protected under Section 504.

In addition, postsecondary institutions are required to make modifications to academic requirements and other rules that discriminate against students with disabilities. Postsecondary institutions are required to provide auxiliary aids to students with disabilities. It is important to note that Section 504 requires that programs and activities be accessible to students with disabilities.

Comparatively, the American with Disabilities Act (ADA) of 1990 is very similar to Section 504, but it applies to all postsecondary institutions, not just ones that receive federal grant assistance. ADA also applies to employment, state and local government agencies, public accommodations, commercial facilities, and transportation. These two laws, Section 504 and Title II under ADA provide broad protections to students with disabilities in postsecondary institutions.

Furthermore, case law and Office of Civil Rights (OCR) findings have solidified Section 504 requirements for students with disabilities attending postsecondary institutions. For example, in *Abdo v. University of Vermont* in 2003, the court stated that universities should not establish difficult procedures that might hinder students with

disabilities from receiving accommodations. Additionally, in the *Nathanson v. Medical College of Pennsylvania* case in 1992, the court stated professors needed to make reasonable accommodations, which may include implementing learning strategies and innovative teaching techniques. Federal law, Office of Civil Rights (OCR) findings and case law are the foundation of the minimal protections and services institutions must provide. The Office of Civil Rights findings and case law also shape the way postsecondary institutions interpret and implement Section 504 regulations on their campuses.

Stating the Problem

Before 1973, there was no federal law specifically prohibiting discrimination on the basis of disability in higher education (Rothstein, 2010). When Section 504 of the Rehabilitation Act of 1973 was passed, this began to set the stage for changes for students with disabilities enrolled in public institutions, including higher education institutions. Rothstein (2010) pointed out that federal guidance for Section 504 did not begin until 1979, which was six years after the passage of the act.

One of the first Supreme Court cases was *Southeastern Community College v. Davis* in 1979 which Frances Davis, a nursing student with a hearing impairment and was unable to understand speech without lip reading, was denied entry into nursing school. When her application was denied a second time, she filed suit in the United States District Court stating the college violated Section 504 of Rehabilitation Act of 1973 (The Oyez Project, n.d., para 1; Thomas, 2000). The court ruled against her because college programs are not required, “to provide fundamental alteration, but should consider

technological advances but need not lower standards” (Rothstein, 2010, p. 1). In other words, programs leading to licensing are given “substantial deference” by the courts on what are essential requirements and what is considered burdensome (Rothstein, 2010, p. 1). Confirmed by Thomas (2000), her participation would have required the college to make significant modifications to the program, which would have lowered the standards. Since this very first case the courts, “require individualized assessments of whether the individuals were able to carry out the essential functions of the program with or without reasonable accommodations in spite of the disability” (Rothstein, 2010, p. 1). What policy did the college have in place, which they knew the denial of Ms. Davis’ application would be upheld in Federal Court?

In another case in 1981, *Pushkin v. Regents of the University of Colorado*, Pushkin was an M.D. with multiple sclerosis who was denied admission to a residency program at the University of Colorado Psychiatry Unit. The interview committee stated they were concerned about how patients would react to Dr. Pushkin and they felt he would require too much medical care to satisfy the requirements of the program (Rose, n.d; Simon, 2011). In this case, the courts ruled in favor of Dr. Pushkin and made it clear to universities that there must be, “an individualized inquiry into the circumstances of each individual and that broad stereotypes of the limitations of individuals with various disabilities are not properly the basis of a decision that someone is not ‘otherwise qualified” (Rose, n.d, para. 4). The regents at the University of Colorado thought their three-point justification would stand up in court and it did not. What procedures or policy did they have in place that led them down this road, which landed them before the

Supreme Court and lose? How did they misinterpret the law to the point of losing in Federal Court?

These two early court cases indicate that interpretation of Section 504 can be a massive challenge for universities. This can lead to misinterpretation on the part of the university that affects services to students with disabilities. Postsecondary faculty are required to follow these mandates when they may or may not fully understand the complexities of the laws (Dona & Edmister, 2001; Jensen, McCrary, Krampe, & Cooper, 2004; Salzberg, Peterson, Debrand, Blair, Carsey & Johnson, 2002). Unfortunately, misinterpretation and failure to implement Section 504 requirements lead to students filing lawsuits in the courts or complaints with the Office of Civil Rights (U.S. Dept. of Ed., n.d.a).

The Purpose of this Study

Using a historical-comparative research method, the purpose of this study was to identify, analyze and compare cases of case law and Office of Civil Rights decisions since 1973 that have shaped the way universities interpret and implement Section 504, as well as the accommodation trends since 1973. In 2000, Thomas suggested that universities only made “moderate progress” in making their programs accessible for students with disabilities between 1973 and 1990, when the ADA was passed (p. 248). Additionally, he concluded that universities are faced with a greater demand for accommodations in higher education because of the continued growth in both the PK-12 sector as well the higher education sector. Likewise, Thomas (2000) reported that

students with disabilities are demonstrating an increase of awareness about their rights to accommodations in higher education (p. 248).

Proctor's (2001) research concentrated on students with learning disabilities. She reported this category as the largest category of students with disabilities in PK-12 and higher education. With this in mind, Proctor (2001) contended that universities need to be aware of their responsibilities in ensuring the students with disabilities success as well as the responsibilities the student has in order to be prepared for the challenges in the higher education setting (p. 39).

Similarly, Rothstein (2010) pointed out that universities will be faced with more challenging populations than ever before such as students needing more intensive and specialized services like students with autism and the growing number of veterans needing special attention. Additionally, Rothstein (2010) suggested that the new health care reform may affect mental health access for veterans and students with disabilities which will become a unique concern for university disability centers (p. 8). These changes, along with population changes, will prompt universities to be aware of the most recent interpretations of the courts of Section 504 in order to provide appropriate services and avoid costly legal battles.

This study was intended to provide universities and policymakers with insight into historical and contemporary trends in the implementation of Section 504 in university settings since 1973 and its influence on the accommodations offered. With the study's findings, disability officers can examine their policies to ensure compliance with Section 504. For Section 504, Rothstein (2010) posited that there will be continued

guidance from the court system and the Office of Civil Rights (p. 8). It is because of this continued activity within the courts and OCR that universities will need to stay abreast of current decisions so their programs can continue to remain compliant.

Research Questions

The following research questions were used to guide this study:

- How have the court cases and the Office of Civil Rights findings since the implementation of Section 504 influenced/shaped disability services on four-year university campuses?
- Are there trends in accommodations since the implementation of Section 504 that have influenced/shaped disability services on four-year university campuses?

Definitions

In this historical-comparative study, it is important that the reader have the understanding of certain concepts used throughout the study. Below is a list of definitions of key terms that will help the reader gain a better understanding of the purpose and importance of this study.

Auxiliary aids and services.

These are provided by the university to a student with qualified disability in order to for the student to access and benefit from the program or activity. Examples include: notetakers; interpreters; readers; videotext displays; television enlargers; talking calculators; electronic readers; Braille calculators, printers, or typewriters; closed caption decoders; open and closed captioning; specialized gym equipment; calculators or

keyboards with large buttons; reaching device for library use; raised-line drawing kits; assistive listening devices/systems (U.S. Department of Education, 1998, para. 8)

Equal access.

Equal opportunity for a person with a qualified disability to participate in or benefit from educational benefits, aids, and services (U.S. Department of Education, n.d.a., para. 64)

Office of Civil Rights (OCR).

The agency within the U.S. Department of Education (USDE) that is charged with enforcing the regulations implementing Section 504 by program and activities that receive federal funding from the USDE (U.S. Department of Education, 2010, para. 2)

Qualified student with a disability.

This is a student with a disability who meets the academic standards for the postsecondary institution in which he/she is enrolled (U.S. Department of Education, n.d.a., para. 19)

Reasonable accommodations.

Changes, adaptations, or modifications in the policy, program or service that enables a qualified student with a disability to fully participate in the program or service (U.S. Department of Education, n.d.a., para. 67)

Significance of the Research

Postsecondary institutions face the challenge of interpreting Section 504 regulations and implementing them into their policies, practices and programs (Simon, 2011). The importance of understanding how case law and the Office of Civil Rights

findings have shaped this process is essential. Cory (2011) stated that the federal laws provide universities with the minimum of what they are expected to provide students with disabilities in higher education. The findings of this study provided insights and deeper understandings of how case law and the Office of Civil Rights findings have influenced the interpretation and implementation of Section 504 since from 1973 to 2016, so universities can challenge themselves to not only meet the minimum requirements of the law but also provide an inclusive environment for students with disabilities.

Additionally, the accommodations will be examined from 1973 to 2016 so university disability centers can ensure their policies reflect the most current accommodations available to provide access to students with disabilities.

This historical-comparative study contributes to the limited number of H-C studies regarding Section 504 and students with disabilities in post-secondary education. Administrators in post-secondary institutions can shape their policies based on recent study analysis and best practice learned from case law and the Office of Civil Rights findings. In shaping their policies, institutions will be able to better serve students with disabilities in a way that increases their chances for success. Better policies increase post-secondary institutions' retention rates among students with disabilities (Getzel, 2008; Lechtenberger, Barnard-Brak, Sokolosky, & McCrary, 2012; Proctor, 2001).

Summary

With enrollments of students with disabilities who will qualify for services under Section 504 increasing at universities, it is important for universities to ensure their policies are compliant with current case law and the Office of Civil Rights decisions

(Ewell & Wellman, 2007; Newman et al., 2010; Rehabilitation Act, 1973). Additionally, this study examined the accommodation themes within the case law and the Office of Civil Rights decisions, which will help them ensure their services to students with disabilities, are appropriate. Section 504 regulations are broad, however, court cases and the Office of Civil Rights decisions have helped shaped interpretation and policy implementation at the university level (*Southeastern Community College v. Davis*, 1979; *Pushkin v. Regents of the University of Colorado*, 1981). This study provides the insight into ways that administrators working in university disability centers can ensure their policies are aligned to current interpretation by court cases and the Office of Civil Rights decisions.

Organization of the Study

In Chapter II, the researcher provides a historical view of the pertinent federal laws to students with disabilities. The researcher also discusses case law examples and how it can assist universities disability centers in interpreting certain components of the law. Additionally, in Chapter II, the researcher discusses the literature on the barriers that students with disabilities face when they enter postsecondary settings as well as how universities can implement appropriate services. Finally, Chapter II ends with a discussion on key characteristics of successful programs, which will assist university disability centers in shaping their delivery of services.

In Chapter III, the researcher provides a description of the research methodology used, which is a historical-comparative, as well as informs the reader of the data collection and data analysis. The research hypothesis, along with descriptions of the case

selection process, are identified in Chapter III. Further, a detailed, step-by-step procedural process is shared with regard to all aspects of the research design, implementation, collection and analysis of data.

Chapter IV describes, in detail, the findings of the study. Each piece of case law and Office of Civil Rights Letters is summarized. Tables and clear descriptions are used to explain the analysis and findings of the study. A summary of the findings is included in Chapter IV. Chapter V presents a summary of the study, conclusions, implications of the study along with recommendations for future research and concluding remarks.

CHAPTER II

Review of Related Literature

Introduction

Newman, Wagner, Cameto, Knoockey, and Shaver (2010) reported that enrollment of students in higher education has increased significantly. This was based on the National Longitudinal Transition Study begun in 1985 and the National Longitudinal Transition Study-2 done in 2000, which was a 15-year span. Moreover, according to these two national longitudinal studies, there was an overall 19 percent increase in enrollment of students with disabilities in higher education within 4 years of graduating high school from the 1985 study to the 2005 study (Newman et al., 2010, p. xiv). When examining these studies, the increases in specific disability categories seem to be significant.

Youth in four of nine disability categories experienced significantly higher rates of ever having enrolled in postsecondary programs in 2005 than in 1990, specifically those with hearing impairments (73 percent vs. 50 percent, 23 percentage-point difference), mental retardation (28 percent vs. 8 percent, 20 percentage-point difference), learning disabilities (48 percent vs. 30 percent, 18

percentage-point difference), and emotional disturbances (35 percent vs. 18 percent, 17 percentage-point difference). (Newman et al., 2010, p. xvi)

With the increases in enrollment rates for students with disabilities, universities have increased challenges to meet the requirements of the law under American with Disabilities Act of 1990 and Section 504 of the Rehabilitative Act of 1973 while at the same time there are higher percentages of students with unique learning needs.

This literature review examined the history of racial discrimination beginning with *Plessy v. Ferguson* in 1896 and then moved into disability rights starting with *Brown v. Board of Education* in 1954. A discussion of the history of the case law and federal guidelines deemed important in this Historical-Comparative (H-C) study followed. Thirdly, it examined the barriers that students with disabilities faced when entering postsecondary institutions. This discussion included research of key characteristics of successful disability programs. Lastly, it demonstrated the continued need for university disability centers to address the barriers students with disabilities face in order for them experience success.

History of Racial Discrimination

Before a discussion about disability rights can truly begin, one must first begin a historical discussion of the racial discrimination issues our country fought against to gain a full understanding and insight of why disability specific discrimination laws were needed. Race discrimination and the struggles of the African American people, specifically after *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954), along with the Civil Rights Movement helped frame the plight of individuals with

disabilities in the 1960's. The culmination of these events led to disability education laws like the Education for All Handicapped Children Act (EAHC) of 1975 commonly referred to as P.L. 94-142.

Equal but separate.

In 1896 *Plessy v. Ferguson*, the Supreme Court considered the constitutionality of a Louisiana law passed in 1890 that provided for “equal but separate” accommodations for black and white passengers (Klarman, 2007, p. 5). According to Klarman (2004), there was a citizen’s committee of upper class Afro-Creoles in New Orleans who wanted to challenge this 1890 law. The committee hired Albion Tourgee to represent them and selected Mr. Plessy as their plaintiff because he was from the working-class Afro-Creole and shared the white appearance of the members of their committee. The committee arranged with the railroad officials to have Mr. Plessy arrested in New Orleans before the train left (Klarman, 2004, p. 8).

When this case reached the Supreme court, Plessy argued the “separate but equal” law violated the Equal Protection Clause of the Fourteenth Amendment, which prohibits states from denying, “to any person within their jurisdiction the equal protection of the laws” (U.S. Const. amend. XIV). Plessy also argued it violated the Thirteenth Amendment, which banned slavery (U.S. Const. amend. XIV).

Plessy lost the case in a 7-1 decision. Justice Harlan was the only one who dissented in this judgment. Justice Harlan’s dissent in this case was a very powerful one and part of it is worth quoting:

But in view of the constitution, in the eye of the law, there is in this

country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race. (*Plessy v. Ferguson*, 1896, p. 10)

This case gave the legal standing to the idea of “equal but separate” and was used as a legal precedent until 1954 when *Brown v. Board of Education of Topeka, Kansas* came into the spotlight. For over 50 years, the courts used *Plessy v. Ferguson* (1896) as a “thumbs up” to racial segregation legal challenges.

The *Plessy v. Ferguson* (1896) decision was perhaps the most devastating blow to African Americans rights since slavery that gave legitimacy to deny equality to African Americans. This decision governed the way individuals, government, and society’s institutions viewed and responded to race for the next fifty-seven years (Combs & Combs, 2004).

After *Plessy v. Ferguson* (1896), more than 41 cases were brought to the courts to challenge the separate but equal doctrine and none of them were successful (Klarman, 2007, p. 70). Klarman (2007) noted that the cultural, societal, and political atmospheres

were not ready for such a change and the courts knew this (p. 77). However, when *Brown v. Board of Education* (1954) was presented to the Supreme Court they actually were ready to confront, “the cultural basis of racism and discrimination” (Combs & Combs, 2004, p. 627). Combs and Combs (2004) continued to assert that, “More directly, during oral arguments to consider the separate but equal doctrine of *Plessy v. Ferguson* (1896, the Justices seemed to have understood the political and cultural importance of possibly overturning the doctrine that shaped race relations for more than fifty years” (p. 627).

Brown v. Board of Education (1954).

In 1947, a report called *To Secure These Rights*, drafted by the Civil Rights Commission appointed by President Truman evaluated the impact of the separate but equal doctrine and the status of the African Americans in America (Combs & Combs, 2004, p. 639). This report called on the government to be actively engaged in eliminating the, “values of racism from society” (Combs & Combs, 2004, p. 640). Additionally, it reported that the hardest impacted were the African American children through a research performed by Dr. Kenneth B. Clark who stated that the children have been, “harmed in the development of their personalities” (Combs & Combs, 2004, p. 641). This report was crucial to the events forthcoming.

In 1951, black students in a segregated high school in Prince Edward County, Virginia commenced a strike against overcrowding and other equal conditions. This youthful black militancy was common in the South but not so common in rural Virginia (Klarman, 2007, p. 55). With the local leaders of the National Association for the

Advancement of Colored People (NAACP), the students would not be dissuaded. The organizations lawyers agreed to sponsor a lawsuit under the condition that, “the students and their parents directly attacked segregation, which had not been their initial intention” (Klarman, 2007, p. 55). This lawsuit became known as *Brown v. Board of Education* (1954).

Brown v. Board of Education (1954) “ranks among the first instances in which a modern American institution actually tackled the cultural basis of racism and discrimination” (Combs & Combs, 2004, p. 627). According to Combs and Combs (2004), Chief Justice Warren wanted the court to focus on the effect of segregation on public education and how it affects a child’s perception of himself and his place in society (p. 642). After 50 years of the “separate but equal” doctrine, the Brown Court held that segregation is a denial of the equal protection of the law.

Although this was unanimous vote in the end, Klarman (2007) pointed out that the discussions behind the scenes were not so easy between the Justices. This was a very complex case during a time where separate but equal was the acceptable norm in society. *Brown v. Board of Education* (1954) was first argued in 1952 and it took two years until the Supreme Court made a decision on May 17, 1954. At that time, no remedy had been decided and they waited until the next term to determine this under what is called *Brown II* (Klarman, 2007, p. 79).

Brown II (1955), decided on May 31, 1955, and the lower courts were given, “broad discretion in altering the segregation character of school districts. Lower courts were also assigned the dual role of managing and monitoring the change” (Combs &

Combs, 2004, p. 244). According to Klarman (2007), the Supreme Court Justices knew the tremendous pressure the lower courts were faced with enforcing desegregation (p. 83). Violence ensued after the Brown decision. In regard to *Brown v. Board of Education* (1954), Klarman (2007) validated that this case did, “play a role in shaping both the civil rights movement and the violent response it received from southern whites, deep background forces ensured that the United States would experience a racial reform movement regardless of what the Supreme Court did or did not do” (p. 231).

Disability History

Just as African Americans were faced with discrimination, individuals with disabilities faced discrimination early on in history. As one reads about the history of African Americans and individuals with disabilities, it is hard to imagine that any human would treat another human being in such a way just because they were different in some way. As history has shown, the courts have had to step in and pass laws to stop such treatment and discrimination because it would not stop otherwise.

According to Nielsen (2012), “the economic inequalities of race in the United States meant that poor medical care sometimes created disability – and the Depression exacerbated those inequalities” (p. 137). For example, when poor African American children contracted polio, they could not afford hospital care and, therefore, received care from doctors with questionable credentials such as Henrietta Evers in Nielsen’s (2012) book (p. 138). When Evers visited her country doctor with her leg contracted up from the polio, the doctor simply pulled her leg out and broke all the tendons and ligaments in her leg. A family friend took Evers in because she needed extensive surgery, rehabilitation,

and better care; however, the damage done by inadequate care she received earlier remained (Nielsen, 2012, p. 138). According to Nielsen (2012), “the changing history of disability—its intersection with class, race, and rights activism—is particularly evident in the lives of polio survivors” (p. 138). Nielsen (2012) also stated that, “those who survived polio sometimes acquired significant physical disability” and “for children, polio often meant removal from their family household” (p. 138). He also pointed out, “many of the educational reforms that provided better education for children with disabilities came about at the insistence of the parent of polio survivors” (p.141).

Nielsen (2012) established a clear progression of a timeline in disability history throughout his book. Another group of parents who insisted better education for their children was parents with children with intellectual disabilities (called mental retardation up until 2010) (Nielsen, 2012). Additionally, Nielsen (2012) established that in the postwar period doctors had recommended that children with intellectual disabilities be placed into institutions (p. 142.) In the 1940s, Laura Blossfield was a mother of a child with an intellectual disability who felt her life was a “social island” (p. 142). She placed an ad in her local newspaper, seeking parents in similar situations. It was soon that she and two other others formed the New Jersey Parents Group for Retarded Children (p. 142). Ann Greenberg founded the New York Association for Help of Retarded Children in 1949 (Fleischer & Zames, 2011, p. 9). There were parent groups in many states.

In 1952, these parent groups merged to form the National Association for Retarded Children. By 1964, their membership exceeded one hundred thousand people. In 1974, the organization changed its name to the National Association for Retarded

Citizens. In 1992, the national organization became The Arc, in an effort to recognize those individuals with developmental and intellectual disabilities as well as remove the “mental retarded” name (Nielsen, 2012, p. 142). Organizations, such as The Arc promoted institutional and educational change for individuals with disabilities.

One of the most public exposures of the horrible conditions in the institutions for psychiatric and intellectual disabilities was a book called *Christmas in Purgatory* (1966) by Burton Blatt, a professor at Boston University and Fred Kaplan his friend who was the photographer. The two visited four New England institutions and secretly took pictures. They published these shocking and horrendous images of individuals that were naked or half-dressed being restrained and disregarded by the staff of the institutions (Nielsen, 2012, p. 145).

According to Nielsen (2012)

One reality of deinstitutionalization was that neither that federal government, states, or cities developed enough structures to provide significant support for those people who needed it in order to live on their own—even when doing so was far cheaper than institutional living. In the 1970s state-run psychiatric facilities began to release long-term residents to their home communities as a result of media exposés, lawsuits, activism, and legislation. From 1965 to 1980 the number of people institutionalized in public asylums fell by 60 percent: from 475,000 to 138,000. (p. 164)

The privileged ended up in community-based living centers while the remaining either ended homeless and living on the streets or even more found themselves in jails.

Nielsen (2012) pointed out that in, “ a 2006 Bureau of Justice Statistics study reported that more than half of all prison and jail inmates had a mental health problem” (p. 164). Additionally, in that same year, the Human Rights watch estimated that number to be 1.25 million (Nielsen, 2012, p. 164). Nielsen (2012) concluded that, “Deinstitutionalization has not accomplished all that many hoped for it; nor has it been supported by the means necessary for it to succeed” (p. 164).

According to Fleischer and Zames (2011), there were early experiments in deinstitutionalization. At Goldwater Memorial Hospital in New York City were most of the patients had motor disabilities and most of the patients were anticipated to remain there the rest of their lives, there was a twenty-one year old quadriplegic wheelchair user, Anne Emerman, who was selected as a test case (p. 33). Fleischer and Zames (2011) reported

when she requested the opportunity to attend college after graduating from high school, she was told by a social worker that, “this idea is a fantasy, and fantasy can lead to mental illness.” Emerman, however, not only graduated from college and earned a master’s in social work at Columbia University, but she also became a psychiatric social worker at Bellevue Hospital. By 1990, Emerson was a wife, a mother, and director of the Mayor’s Office for People with Disabilities in New York City. Others like Emerman, who would become significant players in the disability rights movement, would follow this first test case out of Goldwater to live independent lives. (p. 33)

The U.S. history of disability has been a long and complicated story for the people involved. It would be remiss to say that the struggle ended with the passage of the federal laws discussed in the following sections, however the challenges still remain. Now, unlike previously, individuals with disabilities have the laws to use when public or private institutions do not follow the federal laws in order to have their needs addressed.

Federal Laws

Thomas (2000) reported that the Fourteenth Amendment was the only federal law that provided individuals with disabilities any extensive protection. The Fourteenth Amendment, enacted in 1868, stated, “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (U.S. Constitution: 14th; n.d., para 1). Although this is not disability specific, the amendment requires states to provide for the equal protection for all individuals and the right to due process any time an action adversely affects their life, liberty or property.

Additionally, Section 1983 of the Civil Rights Act of 1871 also known as Civil Action for the Deprivation of Rights, allows a person to have a jury trial and receive monetary damages in cases where the state violated constitutional or statutory rights (Civil Rights Act, 1871). Even though individuals with disabilities could access the protections of these two laws, they did not provide the specific protections that had been provided for individuals claiming race, gender, and other forms of discrimination (Thomas, 2000). In response to this, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 were enacted.

Section 504 of the Rehabilitation Act of 1973.

Pfeiffer (2002) revealed an interesting part of history of Section 504 which was brought to life by Senator Hubert Humphrey from Minnesota, who had a grandchild with Down Syndrome (para. 2). According to Pfeiffer (2002), Humphrey wanted to amend the Civil Rights Act of 1964 to include people with disabilities so he could put an end to the discrimination just as the Act did for people of color and women (para. 2).

Unfortunately, he was concerned about bringing the Act to the floor of the Senate for amendments for fear the changes would destroy its impact. Instead, Humphrey was convinced to put his antidiscrimination protections into the Rehabilitation Act of 1972, which was the, “first rehabilitation statute to avoid the title ‘vocational rehabilitation’” (Pfeiffer, 2002, para. 3). The bill passed after a contentious battle due to the financial assistance provision to help the severely disabled live independently. Pfeiffer (2002) commented that the Nixon administration thought this provision was a waste of money.

When the bill reached Nixon’s desk, he let it sit there and the bill died. When the new Congress came back in January of 1973, the authors of the bill reintroduced it on May 23, 1973. There was another battle but it passed the House on June 5th and the Senate on July 18th. President Nixon signed the Rehabilitation Act of 1973 on September 23, 1973 (Rehabilitation Act of 1973, n.d.).

Once the Rehabilitation Act of 1973 was passed, James L. Cherry started his campaign to request that regulations be issued. Cherry was a white law student attending Howard University in 1968 who had a severe physical disability. Unfortunately, the law school university denied his requests for a parking space near his classes and a key to the

elevator. He knew that Section 504 was more than a policy statement. He saw disability rights (Cherry, 2001, para. 6). His requests for regulations to be issued resulted in many “no responses” and little help. It was not until 1975 when Victor Kramer of the Institute for Public Interest Representation at Georgetown University Law School offered his help.

After exhausting administrative remedies, Mr. Cherry decided to file a lawsuit and initiated a case against the Health, Education and Welfare (HEW) Secretary David Mathews called *Cherry v. Mathews* because Cherry felt that 504 regulations were needed for enforcement (Fleischer & Zames, 2011; Nielsen, 2012). On July 19, 1976, “Judge John L. Smith of the U.S. District Court for the District of Columbia issued an order requiring that HEW develop and promulgate Section 504 regulations with all deliberate speed” (Fleischer & Zames, 2011, p. 51). According to Fleischer and Zames (2011),

were it not for the Section 504 lawsuit, which resulted in the issuance of specific regulations, Cherry still believes that the history of disability law would be “a litany of cases, a crazy quilt of decisions, narrowly defined, on issue, after issue, after issue.” Without precise regulations, Section 504 lawsuits would be based on the succinct, but unelaborated language of the law itself. (p. 51)

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination against individuals with disabilities by programs or activities receiving or benefiting from federal assistance (Rehabilitation Act, 1973). Specifically, Subpart E of the rules and regulations for Section 504 addresses postsecondary educational services and prohibits discrimination in the areas of recruitment and admissions, academic and athletic programs and activities, student evaluations, housing, financial aid, counseling,

and career planning and placement (Rehabilitation Act, 1973). In addition, universities are required to make modifications to academic requirements and other rules that discriminate against students with disabilities. Additionally, universities must provide auxiliary aids to students with disabilities. The federal regulations to assist universities in implementing Section 504 were originally published under the Non-Discrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. § 104 (1980). President H.W. Bush signed the authorization of these regulations in 1990.

Americans with Disabilities Act (ADA) of 1990.

President H. W. Bush signed the ADA into law on July 26, 1990 (Department of Justice, 2010). The ADA is modeled after Section 504's definition of disability (ADA Best Practices, n.d., para. 6). The ADA prohibits discrimination to individuals with disabilities. It applies to all entities such as private businesses, transportation, public and private education instead of those entities just receiving federal assistance like Section 504 (ADA Best Practices, n.d. para, 1 and 2). The ADA includes physical accessibility such as ramps, as well as programs and services. It includes five separate titles with Title II applying specifically to public education.

The ADA was amended in 2008 and the final regulations were published March 11, 2011 (Americans with Disabilities Act of 1990 and..., n.d., para. 1 and 3). The ADA is a much broader law than Section 504. The Department of Justice is the enforcement agency and has the, "authority to initiate ADA litigation against state and local

governments for employment violations under Title I of the ADA and for all violations under Title II of the ADA” (ADA Best Practices, n.d., para. 9).

Individuals with Disabilities Education Improvement Act (IDEIA) of 2004.

Before Public Law 94-142 (Education for All Handicapped Children) was enacted, individuals with disabilities’ lives were dismal. Many with severe disabilities lived in institutions and were provided only the basics to live. In 1967, it was estimated that 200,000 individuals with severe disabilities lived in institutions (U.S. Office of Special Programs, n.d., p. 1). Prior to Public Law 94-142,

Inaccurate tests led to inappropriately labeling and ineffectively educating most children with disabilities. Providing appropriate education to youngsters from diverse cultural, racial, and ethnic backgrounds was especially challenging. Further, most families were not afforded the opportunity to be involved in planning or placement decisions regarding their child, and resources were not available to enable children with significant disabilities to live at home and receive an education at neighborhood schools in their community. (U.S. Office of Special Programs, n.d., p. 2)

Public Law 94-142 was passed in 1975. It provided a free and appropriate public education for children with a disability that was individualized to meet the unique needs of the child. It set out to improve the way children with disabilities were identified and educated and evaluate the success of these efforts of the schools (U.S. Office of Special Programs, n.d.). Additionally, it provided due process protections for children and their families (U.S. Office of Special Programs, n.d.).

In 1990, Public Law 94-142 was amended and renamed the Individuals with Disabilities Education Act of 1990 also commonly referred to as IDEA, 1990 (Individuals with Disabilities Education Act, 1990). Additional amendments were made in 1997 (Individuals with Disabilities Education Act, 1997). In 2004, amendments were made and it was renamed to include the word Improvement resulting in IDEIA (Individuals with Disabilities Education Improvement Act, 2004). IDEIA (2004) paved the way for students in public education to receive a free and appropriate public education from birth to 21 years of age. Furthermore, this law requires appropriate transition services be provided, however, once the student graduates, the eligibility for services under IDEIA (2004) are terminated. Once the student enters postsecondary education, Section 504 and ADA provide protections, however, at a much lesser degree than IDEA (1997). IDEIA (2004) is a funded mandate and, therefore, comes with more requirements as opposed to Section 504 and ADA, which are not tied directly to funding. The regulations that guide school districts in implementing IDEIA are found in Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities 34 C.F.R. Parts 300 and 301 (2006).

Case Law and Office of Civil Rights (OCR) Decisions

Case law.

Since 1979, case law has solidified Section 504 and ADA requirements for students with disabilities attending postsecondary institutions. Since the federal laws can be vague when it comes to the interpretation and real-life implementation, case law can assist university disability centers in interpreting certain components of the law. As

mentioned in Chapter 1, the case *Southeastern Community College v. Davis* in 1979, was the first case to challenge the “otherwise qualified” definition in the law (Rose, n.d.). Another case, *Nathanson v. Medical College of Pennsylvania* case in 1992, the court stated professors needed to make reasonable accommodations, which may include implementing learning strategies and innovative teaching techniques (Rose, n.d.). In regards to procedures, a case *Abdo v. University of Vermont* in 2003, the court stated that universities should not establish difficult procedures that might hinder students with disabilities from receiving accommodations (Rose, n.d.). Federal law and case law are the foundation of the minimal protections and services institutions must provide students with disabilities.

Office of Civil Rights (OCR).

According to U.S. Department of Education (n.d.b.), “the mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights” (para. 1). The OCR office enforces complaints that an institution that receives federal funds has discriminated based on race, color, national origin, sex, disability, or age. Specifically, for Section 504 it is focused on discrimination based on disability cases. Court case outcomes and the Office of Civil Rights’ decisions play important roles in shaping university disability center policy interpretation and implementation.

Barriers to Student Success

Postsecondary education poses new challenges for students with disabilities. They must learn to navigate a new set of rules in order to self-identify as a student with a

disability but also settle into an environment where they are responsible for interacting with the faculty to implement the supports they require to be successful. In the PK-12 environment, a case manager or a special education teacher provided all of the student's teachers with the accommodations and modifications that were required. However, in the postsecondary setting, the responsibility is on the student.

Barriers and suggestions for improvement from students.

Getzel, Ipsen, Kregel, Martin, West, and Ming (1993) executed a study of 761 students with disabilities attending higher education institutions in Virginia. The researchers sent out a survey and 43 of the 57 institutions were represented in the respondents. The survey inquired about their satisfaction with the accommodations they received. In addition, they identified the barriers they encountered and were asked to provide suggestions for changes in their university's programs or services. The barriers listed below encompass the participant's responses:

(1) buildings without elevators; (2) inaccessible science labs; (3) no large print textbooks; (4) no large print computer terminals; (5) no V-tech machine on campus; (6) not being able to get a tutor; (7) not being able to attend a seminar because an interpreter was not provided were: (8) handicapped parking and electric doors on opposite sides of the building; (9) retrieving books from bookshelves at the library; (10) rooms so crowded that my wheelchair would not fit between the rows in the classroom; (11) a teacher refused to teach me when it was indicated by my name that I had a learning disability; (12) professors not being understanding; (13) told I was "unfit" by a professor because of my

disability; (14) unwillingness to provide accommodations by the professors; (15) feeling socially isolated or scorned by my professors and peers; and (16) professors not allowing me to tape a lecture when it was an accommodation. (Getzel et al., 1993, pp. 458-459)

On the other hand, two-thirds of the respondents reported they had observed some improvements in the services for students with disabilities during their educational careers. Getzel et al. (1993) stated, “improvements included better access to buildings and grounds, more understanding on the part of instructors and peers, the development of services for students with disabilities, and the assignment of staff to facilitate services and accommodations” (p. 460). Suggestions for improving services included:

(1) make the services office larger; (2) provide more handicapped parking spaces; (3) the next building on campus should be designed with input from disabled students and professionals; (4) provide more support groups; (5) we need a system for instructing (enlightening) faculty members as to the problems facing students with learning disabilities; (6) professors and administrators need to accept the idea that students with special needs are not innately inferior and that in some cases alternative methods and sources of learning and assessment are legitimate and necessary; (7) less posturing and more dollars applied to the facilities and equipment; (8) I would like to see a tape library so that volunteer’s time and services could be used more productively; (9) more support. (Getzel, et al., 1993, p. 461)

In a phenomenological study of 11 college students with learning disabilities who faced barriers at their universities, Denhart (2008) reported similar responses. She concluded there were three themes from her qualitative study with eleven college students with disabilities. These were: (1) being misunderstood; (2) needing to work harder than non-disabled peers; and (3) seeking out strategies for success in education. Denhart (2008) exclaimed, “the most striking finding of this study was the overwhelming reluctance of these informants to request or use accommodations” (p. 493). In addition, she concluded that disability specialists on campuses are crucial to student success.

In another study of 191 college students with learning disabilities and 190 students without learning disabilities, the researchers uncovered two areas of significant differences between the two groups (Heiman and Precel, 2003). The first area was learning strategies. The non-learning-disabled students used written strategies more often than students with learning disabilities. The students with learning disabilities used “tricks” to help them remember content, such as chanting, sketching or drawing a diagram. For the same reason, student with learning disabilities reported more obstacles “in humanities, where they had to write more and read longer texts, and difficulties in foreign language learning” (Heiman & Precel, 2003, p. 255). The second area was in student coping strategies during examinations. Student with learning disabilities experienced more examination stress than students without learning disabilities. The researchers hypothesized this could be due to the lack of learning strategies they possessed. The study reiterated the struggles and barriers that student with learning disabilities face in postsecondary educational settings.

Physical accessibility.

Singh (2003) reported findings of a national survey of 137 directors of disability services from randomly selected universities. Only 7% of the universities reported they offered complete accessibility to students with orthopedic disabilities (p. 372).

Accessibility is essential to the success of students with disabilities. Physical accessibility includes ramps, automatic doors, curb cuts, wheelchair accessible restrooms and classrooms, and reserved parking spaces within 40 feet of entrances to buildings. On the other hand, Singh (2003) described academic accessibility as the availability of note taking assistance, extended time, and flexibility of test taking space. Accordingly, providing accessible dorm living space is a factor in success for students with orthopedic disabilities.

Social barriers.

Barnard-Brak and Sulak (2010) pointed out the social barriers for students with disabilities who have visual disabilities, such as those that are apparent, like visual or physical impairments reported having positive interactions with individuals without disabilities. On the other hand, those students with hidden disabilities, such as learning disabilities, ADHD, or health related issues, reported they had fewer positive interactions after disclosing their disability with individuals without disabilities (Barnard-Brak & Sulak, 2010; Nichols & Quaye, 2009). By the same token, Nichols and Quaye (2009) affirmed that

students with visual impairments are unable to utilize common methods of communication such as email, flyers, newspapers, and posters used to advertise

events and activities. Although disability-specific barriers to social engagement are difficult to resolve, higher education constituents must begin to diversify intervention strategies and provide individualized solutions for students with physical disabilities. (p. 47)

Similarly, Cory (2011) suggested two important accommodations to use with students with Asperger's that are easy for faculty to implement:

An instructor may be used to simply skipping over a student's raised hand if that student is dominating the conversation. A student with Asperger's may need the instructor to explicitly say that other people need to have a turn, but the larger conversation can continue after class. Students with Asperger's may also prefer a routine and have a difficult time coping with changes or surprised. These students typically love and excel in classes that follow a predictable pattern. Instructors can help students cope with change by being explicit about it. They can say, for example, "Typically, we start class with a full class discussion, but today we are going to try something different and start class in small groups instead." (p. 32)

These two accommodations can help a student reduce the frustration or anxiety they may feel.

Requesting accommodations.

According to Barnard-Brak and Sulak (2010), if faculty members retain negative perceptions of students with disabilities, it will negatively impact student success (p. 83). For example, students with disabilities in higher education must request accommodations. If their interactions with their professor have been negative, they are more likely not to

approach them to request accommodations (p. 83). Additionally, Barnard-Brak and Sulak (2010) found that students with visible disabilities, as explained above, are more likely to request accommodations within online courses than in face-to-face courses (p. 86). The researchers concluded one reason for these results is students with visual disabilities may be provided with the necessary assistive technology within an online environment as opposed to moving large equipment from class to class. Students with disabilities face many barriers in postsecondary education. Universities can attempt to address these barriers by implementing appropriate services through their university disability centers.

Implementation of Appropriate Services

Strategies for professors.

Lechtenberger et al. (2012) reported universities are still failing to understand students with disabilities, which leads to their continued failure to succeed (p. 856). With this in mind, it would seem that professional development in this area would be an appropriate intervention for universities to use. More understanding of disabilities and the impact on student performance could assist professors provide students the assistance and understanding they need in the classroom.

Like many college students, many college students with disabilities have never taken a class on study skills, note taking or time management. Ticani (2004) cited this as a cause of academic failure for many students with disabilities. He described ten strategies that instructors could implement to increase the academic success students with

disabilities. It is important to note that these strategies promote the success of all students, not just students with disabilities.

The first strategy is providing an accessible syllabus. The syllabus is an important part of the course and professors should include a statement like “A student who feels that he or she may need an accommodation because of the impact of a disability should see the instructor to discuss specific needs” (Ticani, 2004, p. 129). The responsibility is always on the student in postsecondary education but this statement encourages the student as well as presents a welcoming atmosphere by the professor.

The second strategy is providing a list of study objectives for each chapter of the course material. Study objectives let the student know what to focus on when studying. Similarly, the study guide is the third strategy. Just as study objectives provide organization for chapters, the study guides help students focus on the important information for testing purposes. Frequent testing is the fourth strategy that promotes success for students with disabilities. Ticani (2004) suggested that rather than testing at mid-term and a final, professors should give more frequent tests. This is a better way to monitor the progress of students with disabilities. Ten small quizzes can give the professor and student critical feedback of the student’s progress than relying on two large exams with a large amount of material to be learned. The other disadvantage of having only two large exams is the student’s grade is heavily dependent on those two large exams with little opportunity to make up a lower grade.

The fifth strategy presented by Ticani (2004) is remedial activities. The sixth strategy is guided notes. Response cards (RC) are the seventh strategy described by

Ticani (2004). These are, “cards, signs, or items that are held up simultaneously by all students to display their response to a question or problem presented by the instructor” (p. 130). Instructors can use pre-printed response cards or white boards where students can write their own answers. Fluency building is the eighth strategy and it involves using vocabulary-building flashcards. Ticani (2004) posits, “Students who perform skills fluently will experience increased retention and maintenance, increased resistance to distraction, improved transfer to other skills, and better essay writing” (p. 131). Peer tutoring is the ninth strategy that will promote student success. The last strategy, feedback, provides students with disabilities with an outlet to give instructors valuable information about how the course was taught.

Ticani (2004) provided valuable strategies for instructors to ensure success of students with disabilities at the postsecondary level. As said before, these strategies can support students with disabilities but can also be valuable teaching strategies for all students. Frontloading these strategies into course curriculum can provide long-term benefits.

Key characteristics of successful programs.

Several studies and literature reviews have discussed the key characteristics of programs, which promote the success of students with disabilities in postsecondary educational settings. In a literature review by Roa (2004), the evidence was overwhelming that faculty attitudes towards students with disabilities are one of the important contributors to student success. Fichten (1988) concluded that the attitudes of

faculty were a vital ingredient in the success or failure of students with disabilities in postsecondary educational settings.

Getzel (2008) posited that several services and supports were essential in the success and retention of students with disabilities. The supports and services included “developing self-determination skills, self-management-skills, exploring technology, and obtaining internships or other career-related experiences” (p. 209). Universities are able to infuse these skills into their disability services office supports provided to students with disabilities.

According to Getzel (2008), there are a variety of approaches to encourage the development of self-determination skills. Universities can organize support groups, provide training, and use peer mentors in order to help students with disabilities develop self-determination skills, which are important to their success and retention. Costello and English (2001) recommended that university disability service offices provide experiences for students with disabilities to assist them in becoming more academically autonomous. They defined academic autonomy as “the capacity to deal with ambiguity and to monitor and control their own behaviors in ways that allow them to attain their educational goals” (p. 24). This would, as Getzel (2008) suggested, increase their self-management skills and make progress in becoming more independent.

Technology.

Technology can be explored in order to determine what meets the student’s needs best (Cory, 2011; Getzel, 2008). Text-to-speech software can be valuable to students with reading disabilities as well as other software to help organize or develop papers.

Getzel (2008) pointed out it should not be automatically assumed a student with a disability knows how to access or use technology. They may need assistance in choosing the right type of technology to meet their needs as well as instruction on how to use it. Accessing technology can increase student success.

Another key characteristic for successful educational programs is providing the faculty and staff with appropriate staff development on issues of students with disabilities. Getzel (2008) suggested this type of professional development be part of the university infrastructure. It should be targeted to the current issues and trends for students with disabilities. Universities should strive to provide instructionally and structurally accessible environments.

Universal Design for Learning.

Universal Design for Learning (UDL) is one of the current trends in achieving this goal of accessibility (Cory, 2011; Getzel 2008; Nichols & Quaye, 2009). UDL provides flexible materials, multiple avenues for media presentation and a variety of technology tools. Getzel (2008) affirmed the diversity of students on college campuses has increased which warrants new approaches in technologies and teaching strategies to meet their needs. Nichols and Quaya (2009) reiterated how universal design for learning benefits all students and, therefore, all faculty members should infuse UDL techniques into their pedagogical practices.

Framework for greater independence.

Getzel (2008) described a sample framework for providing services to students with disabilities. Virginia Commonwealth University developed a model that was based

on the principles of “existing supported education models that were developed for individuals with psychiatric disabilities or attention-deficit/hyperactivity disorder” (p. 214). The framework is a three-step model that moves students toward greater independence (p. 214).

The first step is Direct Coaching with program staff. This is the most direct intervention of the program. Students meet with staff weekly. The topics addressed are: (1) self-advocacy skills; (2) understanding impact of disability; (3) awareness of campus and community resources; (4) exposure to technology and how to incorporate into their learning; (5) identifying informational interviews/job shadowing experiences; (6) providing information on ADA and developing plan to disclose to employer; (7) assisting students to transfer accommodations and strategies to long-term work setting (Getzel, 2008, p. 214).

The second step in this supported model is Consultation. Students meet with staff twice a month. The activities included in this step are: (1) utilizing campus and community resources; (2) incorporating learning strategies and accommodations into their learning; (3) using technology devices or software in their learning; and (4) using self-advocacy skills in obtaining needed services and supports (Getzel, 2008, p. 215).

The last step toward helping students with disabilities become more independent is Monitoring. This model is fluid and students can move back a step if the situation warrants. Students meet with staff on an as-needed basis. The activities included in this step include: (1) student notifies program on an as needed basis; (2) fully using

accommodations and strategies; and (3) progressing in course of study at the university (Getzel, 2008, p. 215).

Summary

Students with disabilities face a myriad of barriers in postsecondary education. Although the research demonstrates many possible ways to address the barriers that students face and key characteristics of successful programs, universities are still faced with continued litigation for not implementing Section 504 requirements for students with disabilities. University disability centers play an important role in closing the gap for students with disabilities in postsecondary settings.

CHAPTER III

Methodology of the Study

Introduction

Before 1973, there was no federal law specifically prohibiting discrimination on the basis of disability in higher education (Rothstein, 2010). When Section 504 of the Rehabilitation Act of 1973 was passed, this began to set the stage for changes for students with disabilities enrolled in public institutions, including higher education institutions. Rothstien (2010) pointed out that federal guidance for Section 504 did not begin until 1979, which was six years after the passage of the act.

One of the first Supreme Court cases was *Southeastern Community College v. Davis* in 1979 in which Frances Davis, a nursing student with a hearing impairment and was unable to understand speech without lip reading, was denied entry into nursing school. When her application was denied a second time she filed suit in the United Stated District Court stating the college violated Section 504 of Rehabilitation Act of 1973 (The Oyez Project, n.d., para 1; Thomas, 2000). The court ruled against her because college programs are not required, “to provide fundamental alteration, but should consider technological advances but need not lower standards” (Rothstein, 2010, p. 1). In other words, programs leading to licensing are given “substantial deference” by the

courts on what are essential requirements and what would be burdensome (Rothstein, 2010, p. 1). Confirmed by Thomas (2000), her participation would have required the college to make significant modifications to the program, which would have lowered the standards. Since this very first case the courts, “require individualized assessments of whether the individuals were able to carry out the essential functions of the program with or without reasonable accommodations in spite of the disability” (Rothstein, 2010, p. 1). What policy did the college have in place, which they knew the denial of Ms. Davis’ application would be upheld in Federal Court?

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These two early court cases indicate that interpretation of Section 504 can be a massive challenge for universities. This can lead to misinterpretation on the part of the university that affects services to students with disabilities. Postsecondary faculty members are required to follow these mandates when they may or may not fully understand the complexities of the laws (Dona & Edmister, 2001; Jensen et al., 2004; Salzberg et al., 2002). Unfortunately, misinterpretation and failure to implement Section 504 requirements lead to students filing lawsuits in the courts or complaints with the Office of Civil Rights (U.S. Dept. of Ed., n.d.a.).

Sometimes researchers want to examine issues of long-term social change in order to analyze and provide input to the social changes (Lange, 2013, p. 1; Neuman, 2011, p. 465). Since they are unable to experiment with entire societies, researchers use field research to examine small-scale settings to present day settings. To examine large-scale trends across decades or centuries, researchers turn to historical-comparative (H-C) methods (Neuman, 2011, p. 465). Lange (2013) asserted that researchers use historical-comparative methods, “to expand insight into diverse social phenomena and, in so doing, have made great contributions to our understanding of the social world” (p. 1). Researchers do this by gathering and analyzing historical facts and records, such as court cases and other reliable documentation (Neuman, 2011).

An Overview of Historical-Comparative Method

Lange (2013) indicated that H-C methods have been around since the fourteenth century when Ibn Khaldun used them in his history of the world (p. 22). Furthermore, Montesquieu used this method in *The Spirit of the Laws* written in 1748. Subsequently,

Adam Smith wrote *The Wealth of Nations* in 1776 employing the H-C method (Lange, 2013, p. 22). Lange (2013) emphasized that although Montesquieu and Smith influenced later H-C researchers, it was not until the mid-nineteenth century within the scientific revolution that H-C methods were recognized as a research tradition (p. 22). This revolution advanced research in diverse areas to expand knowledge about the world. For example, the enormous social changes emerging in Europe during the mid-nineteenth century fueled an interest in gaining insight into those changes (Lange, 2013, p. 22).

Among the first of the earliest social scientists addressing these social changes were Alexis de Tocqueville, Karl Marx, and Max Weber. These researchers used H-C methods in the social sciences. Max Weber's death in 1920 signaled the end of the first generation of the H-C analysis because of the drop in the use of the method (Lange, 2013, p. 23).

The second generation of H-C researchers began in the late 1950's and 1960's (Lange, 2013, p. 23; Neuman, 2011, p. 466). Regarding the nature of these, Neuman (2011) stated that by the 1950's, there were a few H-C studies of major theoretical significance, however, by the 1960's, H-C studies made significant breakthroughs, which increased its popularity as a research method (p. 466). Researchers returned to using the H-C methods because this method offered considerable insight into the social issues of the 1960s and 1970s (Lange, 2013, p. 28). Lange (2013) pointed out that researchers such as Karl Polanyi, Reinhard Bendix, Shmuel Eisenstadt and Barrinton Moore emerged during the second generation of comparative historical analysis time period (p. 23).

Comparatively, in 1983, the American Sociological Association created a H-C section. The purpose of this section in the journal was designed to promote sociological research and teaching on cross-national variation and the temporal dimensions of social life. Section members are distinguished by their range of theoretical perspectives and methodological approaches. The themes of investigation addressed by section members are likewise manifold, including such issues as revolution, the welfare state, state formation, aspects of culture, law and social control, and political economy. (American Sociological Association, n.d., para. 1)

Additionally, a former section chair encouraged members, “to broaden the legacy of sociological thought inherited from the 19th century” (American Sociological Association, n.d., para. 2).

According to Neuman (2011), the percentage of articles in leading sociological journals were 18 percent in the late 1970’s and rose to 40 percent in the 1990s and 2000s (p. 486). At this current time, Charles Tilly, Immanuel Wallerstien, Theda Skocpol, Perry Anderson, Micheal Mann, along with many others are the most influential researchers in the H-C field (Lange, 2013, p. 23). The second generation of the H-C research continues to flourish today. As an illustration, one remarkable example includes Michael Mann’s *The Source of Social Power, Volume III: Global Empires and Revolution, Volume IV: Globalizations, 1945-2011* written in 2013. Another example is Dan Slater’s book entitled *Ordering Politics and Authoritarian Leviathans in Southeast Asia* written in 2010 (Lange, 2013, p. 23).

Case Methods

There are two prominent methods of H-C research used by researchers: with-in case and historical narrative methods. With-in case methods are referred to as case study methods because they analyze one case of phenomena. For example, examining a phenomenon in the United States or a specific region in Asia (Lange, 2013, p. 41). As Lange (2013) pointed out, the researcher must be careful in choosing the unit to be studied and consider any potential problems. Similarly, researchers must consider the temporal boundaries of the study (p. 41). This study will focus on case law and the Office of Civil Rights (OCR) decisions from 1973 to 2016, which is a single set of phenomena within a temporal boundary (1973-2016).

According to Lange (2013) within-case methods analyze data to offer insight into the characteristics and casual processes of particular cases. They are able to take holistic view, analyze complex phenomena, highlight mechanisms, and consider diverse factors and their interactions. The insight offered by within-case methods is largely in particular instances and explore causes of one particular social phenomenon in one particular setting. (p. 40)

Another H-C method is called Historical Narrative, which only describes the phenomena and does not attempt to explain it (Lange, 2013). Since this study will attempt to not only present the case law and the Office of Civil Rights decisions but also examine the accommodations that typically during those specific times periods, the Historical Narrative would not be an appropriate research method. With that being said,

the within case study H-C method was selected by the researcher to be the most appropriate method to achieve the goals of the study.

Research Questions Appropriate for Historical-Comparative

Mahoney and Rueschemeyer (2003) reported that the research community has learned a great deal about social policy through the use of H-C research methods. Research questions investigating issues surrounding social policy are appropriate for this type of research method. Historical-comparative research is “well-suited for examining the combinations of social factors that produce a specific outcome (e.g., a civil war, a system of taxation, a religion)” (Neuman, 2011, p. 466). This research “strengthens conceptualization and theory building” and therefore, generates “new concept and broaden understanding” (Neuman, 2011, p. 466). Summarily, Lange (2013) asserted that H-C methods can be used to investigate a wide variety of phenomena, but a large focus has been on social change and development. Historically, the focus was on Europe and now the shift has changed to all regions of the world (Lange, 2013). Lange (2013) pointed out that although H-C methods began with sociologists, the method is popular within other disciplines as well.

Steps in Conducting Historical-Comparative Research

According to Neuman (2011), the first step is to conceptualize the research topic and setting. The next step is to locate and gather evidence. The third step is to evaluate the relevancy and accuracy of the evidence that has been collected. The fourth step is organizing the evidence. The fifth step is synthesizing the evidence. The last step in the H-C research is writing the report.

According to Lange (2013), the first step is for the researcher to determine which cases will be part of the set. Once a population of cases is determined, which in this study, it will be archival case law and the Office of Civil Rights decisions from 1973-2016, the researcher must determine the number of cases to be selected and data accessibility (Lange, 2013). As Lange (2013) advised, the costs and benefits to a certain number of cases are virtually unknown at the start of the research process. Of course, the larger number of cases yields a greater insight into the research questions and a greater ability to generalize as opposed to a smaller number of cases (Lange, 2013).

Setting

The setting for this study is the United States from 1973 through 2016. These are the dates when US case law and the US Office of Civil Rights decisions were gathered. Specifically, for this study, because it spans from 1973-2016, all the cases and the Office of Civil Rights decisions were examined and a representative selection was chosen to represent the specific time period. The initial target selection was Section 504 cases and the Office of Civil Rights decisions regarding accommodations in 4-year universities during the time period of 1973-2016. Once that sample was selected, they were placed in chronological order. A systematic sample was chosen by selecting a sampling interval of every fourth entry from each case and the Office of Civil Rights decision. The final representative sample was organized in chronological order.

Role of the Researcher

Mahoney and Rueschemeyer (2003) asserted that the role of a researcher while using H-C methods is to look at the data objectively and not steer the data in order to

defend the researcher's own research agenda (p. 24). Specifically, in this study, the researcher worked with voluminous amount of case law summaries and the Office of Civil Rights decisions. The researcher was very organized in order to keep the cases and letters in chronological order and kept the trends documented. The final role of the researcher was to examine and report the data as it was presented with fidelity. This study can only be useful for university disability centers if the data and trends are a true reflection of the data collected and interpreted.

The researcher's experience and training included practicing as an educational diagnostician in PK-12 settings. During this time, she evaluated students with disabilities using formal testing instruments, such as the Woodcock-Johnson III Tests of Cognitive Abilities, Woodcock-Johnson III Tests of Achievement, and Wechsler Intelligence Scale for Children – Fourth Edition, which require specific administration and scoring requirements. Using that data, along with other formal and informal classroom data, she followed the Texas Education Agency's eligibility requirements for special education services and made data-driven eligibility decisions for students who were referred to or already receiving special education in Texas school districts. This required her to examine the data carefully in an unbiased manner in order to make eligibility decisions based on the data presented. This experience has given the researcher a solid foundation to collect and report data in an unbiased manner for the purposes of this study.

Data Collection

For this study, case law summaries and the Office of Civil Rights decisions were gathered and these are considered to be primary sources of data. This data was pulled

from a couple of different sources that house all of the court cases and the Office of Civil Rights decisions. The AHEAD website access was a member's only website. It was unexpected that the Office of Civil Rights decisions on the OCR website were only available on or after October 1, 2013. Any decisions before that date were unavailable. These provided the researcher with the chronological sequence of the cases and decisions in addition to types of accommodations that were used during that time period. The outcome of either the case or the Office of Civil Rights decision, coupled with the accommodation use, provided a historical presentation of Section 504 issues for the time period from 1973 to 2015.

There are four types of historical evidence that researchers use in H-C research. The first type is primary sources (Lange, 2013; Neuman 2011). This includes "letters, diaries, newspapers, movies, novels, articles of clothing, photographs and so forth of those who lived in the past and have survived to the present" (Neuman, 2011, p. 478). When primary sources are unavailable, researchers can search for secondary sources.

The second type of evidence is called secondary sources (Lange, 2013; Neuman 2011). Since obtaining primary sources may not be practical due to time limitations, researchers use secondary sources such as writings of historians about the research inquiry (Lange, 2013). Secondary sources have some limitations. One of the most significant limitations is the inaccurate historical account. This is the reason that researchers cannot use secondary sources to test hypotheses strictly. On the other hand, historical accounts written by others do provide the researcher information to develop

general explanations and “substantiates the emergence and evolution of tendencies over time” (Neuman, 2011, p. 481).

The third type of evidence is called running records. These are “files or existing statistical documents that organizations maintain on a regular basis” (Neuman, 2011, p. 480). An example of a running record is a listing of every marriage and death that a church might keep over time. The last type of evidence in H-C research is called recollections. These are statements or writings of individuals about certain experiences based upon his/her memory. These include autobiographies, memoirs, or interviews.

Data Analysis

This proposed H-C study, began with a chronological narrative of the case law and the Office of Civil Rights decisions that relate to Section 504 in higher education institutions since 1973. The case laws and the Office of Civil Rights decisions were coded according to changes through the study time period that relate to policy interpretation or implementation. The researcher developed an Excel spreadsheet with the cases listed on the left side of the sheet. The top columns were open for the themes or patterns identified in each case. If the same theme or pattern occurred in subsequent cases, a check mark was placed in the theme/pattern column beside that particular case. Those themes/patterns were reviewed. The identified patterns can be used to help university disability centers shape their policies accordingly.

Once those patterns were identified through the H-C analysis, a second review of the accommodations through the study time period were examined to determine if there were any patterns of accommodations used related to the case law and the Office of Civil

Rights decisions. The researcher developed an Excel spreadsheet with the cases listed on the left side of the sheet. The top columns were open for the accommodations patterns identified in each case. If the same accommodations patterns occurred in subsequent cases, a check mark was placed in the accommodations patterns column beside that particular case. Those accommodations patterns were reviewed. If any patterns of accommodation use that are related to the patterns in the changes in case law and the Office of Civil Rights decisions, provides university disability centers guidance to incorporate this knowledge into their training programs for disability services personnel, as well as faculty members in order to stay the most up-to-date on students with disabilities and access to higher education.

Provisions for Trustworthiness

Neuman (2011) discusses triangulation of measure in order to have multiple perspectives of the same phenomena (p.164). With this H-C study, case laws were pulled from a website that publishes case law called WestlawNext. This website had the original text of the court proceedings and, therefore, multiple perspectives were impossible. The Office of Civil Rights decisions was pulled from the Office of Civil Rights website and AHEAD (Association on Higher Education and Disability members only section) website. The Office of Civil Rights decisions are in original text from the Office of Civil Rights website, however, the AHEAD website offered some interpretation that provided a different perspective to the study. Documentation was kept on the data analysis.

Communicating the Findings

The findings are presented in a chronological comparative manner starting from 1973 through 2016. Embedded within the actual case law and the Office of Civil Rights decisions, the trends of the accommodations were interwoven. Patterns within the case law and the Office of Civil Rights decisions demonstrate their influence in policy in higher education. Additionally, this data helps universities shape their current policies by examining the trends since 1973 so that disabilities centers can provide better services to students with disabilities.

Summary

As presented in this chapter, the H-C research method was determined as the most appropriate method for the study because the researcher wanted to examine and provide insights on historical trends and patterns pertaining to a particular social phenomenon (Lange, 2013; Neuman, 2011). The chapter describes how the researcher examined the trends in case law and the Office of Civil Rights decisions from 1973 to 2016 and at the same time looked at trends in accommodations. Provisions for trustworthiness were also reported. In chapter four, the researcher reports the findings of this study, yielding valuable information for university administrators to use regarding services offered in disability centers, in university classrooms, and on their respective campuses. Policy makers at the state and federal level can use the findings to shape existing policy and provide better services to students with disabilities.

CHAPTER IV

Findings

Introduction

Before 1973, there was no federal law specifically prohibiting discrimination on the basis of disability in higher education (Rothstein, 2010). When Section 504 of the Rehabilitation Act of 1973 was passed, this began to set the stage for changes for students with disabilities enrolled in public institutions, including higher education institutions. Rothstein (2010) pointed out that federal guidance for Section 504 did not begin until 1979, which was six years after the passage of the act.

One of the first Supreme Court cases was *Southeastern Community College v. Davis* in 1979 which Frances Davis, a nursing student with a hearing impairment and was unable to understand speech without lip reading, was denied entry into nursing school. When her application was denied a second time she filed suit in the United States District Court stating the college violated Section 504 of Rehabilitation Act of 1973 (The Oyez Project, n.d., para 1; Thomas, 2000). The court ruled against her because college programs are not required, “to provide fundamental alteration, but should consider technological advances but need not lower standards” (Rothstein, 2010, p. 1). In other words, programs leading to licensure are given “substantial deference” by the courts on

what are essential requirements and what are considered burdensome (Rothstein, 2010, p. 1). Confirmed by Thomas (2000), her participation would have required the college to make significant modifications to the program, which would have lower the standards. Since this very first case the courts, “require individualized assessments of whether the individuals were able to carry out the essential functions of the program with or without reasonable accommodations in spite of the disability” (Rothstein, 2010, p. 1). What policy did the college have in place, which they knew the denial of Ms. Davis’ application would be upheld in Federal Court?

In another case in 1981, *Pushkin v. Regents of the University of Colorado*, Pushkin was an M.D. with multiple sclerosis who was denied admission to a residency program at the University of Colorado Psychiatry Unit. The interview committee stated they were concerned about how patients would react to Dr. Pushkin and they felt he would require too much medical care to satisfy the requirements of the program (Rose, n.d; Simon, 2011). In this case, the courts ruled in favor of Dr. Pushkin and made it clear to universities that there must be, “an individualized inquiry into the circumstances of each individual and that broad stereotypes of the limitations of individuals with various disabilities are not properly the basis of a decision that someone is not ‘otherwise qualified’” (Rose, n.d, para. 4). The regents at the University of Colorado thought their three-point justification would stand up in court and it did not. What procedures or policy did they have in place that led them down this road, which landed them before the Supreme Court and lose? How did they misinterpret the law to the point of losing in Federal Court?

These two early court cases indicate that interpretation of Section 504 can be a massive challenge for universities. This can lead to misinterpretation on the part of the university that affects services to students with disabilities. Postsecondary faculty members are required to follow these mandates when they may or may not fully understand the complexities of the laws (Dona & Edmister, 2001; Jensen et al., 2004; Salzberg et al., 2002). Unfortunately, misinterpretation and failure to implement Section 504 requirements lead to students filing lawsuits in the courts or complaints with the Office of Civil Rights (U.S. Dept. of Ed., n.d.a).

This chapter contains the findings of the historical comparative study conducted to answer the research questions:

- How have the court cases and the Office of Civil Rights findings since the implementation of Section 504 influenced/shaped disability services on four-year university campuses?
- Are there trends in accommodations since the implementation of Section 504 that have influenced/shaped disability services on four-year university campuses?

This study is intended to provide universities and policymakers with insight into historical and contemporary trends in the implementation of Section 504 in university settings since 1973 and its influence on the accommodations offered. With the study's findings, disability officers can examine their policies to ensure compliance with Section 504. For Section 504, Rothstein (2010) posited that there will be continued guidance from the court system and the Office of Civil Rights (p. 8). It is because of this continued

activity within the courts and the Office of Civil Rights that universities will need to stay abreast of current decisions so their programs can continue to remain compliant.

This chapter includes a review of the cases listed in Table 1 and Office of Civil Rights Letters across four distinct intervals since the implementation of Section 504 policy in the United States.

Table 1

Case Law and OCR Decisions for the Time Period of 1973-1979

Date	Case Name or OCR Decision Name
1976	<i>Cherry v. Mathews</i>
1979	<i>Southeastern Community College v. Davis</i>

Note: Section 504 Regulations were signed and went into effect May 4, 1977.

Cherry v. Mathews

The very first case filed under Section 504 of the Rehabilitation Act of 1973 was filed by Mr. Cherry in 1976. Mr. Cherry had inquired about when the regulations for Section 504 were going to be put in place and he was told that Section 504 was a “policy statement” (Cherry, 2001, para. 6). At the time, Mr. Cherry was a research patient for a muscle illness that made him a quadriplegic and he viewed the new Section 504 as “legal rights and power” (Cherry, 2001, para. 7) for people with disabilities. The Institute for Public Representation (INSPIRE) took his case for pro bono in 1975 to fight for Section

504 regulations. The case was filed against Department of Health, Education and Welfare Secretary David Mathews since he was over the Rehabilitation Act of 1973.

On July 19, 1976, U.S. District Court Judge Lewis Smith ruled in favor of Mr. Cherry and ordered the Department of Health, Education and Welfare to create Section 504 regulations to prohibit discrimination against ‘handicapped persons’ in any federally funded programs (Cherry, 2001, para. 16). Mr. Cherry decided to keep his court victory quiet, however, in January 1977 David Mathews declined to sign the prepared regulations. Consequently, this landed him back in court for contempt of court. It was later in January of 1977 that Jimmy Carter became President and moved Joseph Califano into the Secretary of the Department of Health, Education and Welfare who was more supportive of the Section 504 regulations being written (Cherry, 2001, para. 20). However, before Joseph Califano could review the proposed regulations and sign them, a sit-in occurred by people with disabilities at the Department of Health, Education and Welfare and across the U.S. The protests delayed the signing of the new regulations of Section 504, however, they were finally signed into law on May 4, 1977 (Cherry, 2001).

Southeastern Community College v. Davis

Frances Davis was a person with a hearing disability and was unable to understand speech without lip-reading. She applied for the nursing program at Southeastern Community College. According to Colker and Grossman (2014), while in the interview for program, she had difficulty understanding the questions and depended upon a hearing aid (p. 171). The committee advised her to seek the assistance of an audiologist. She was diagnosed with a “bilateral, sensory-neural hearing loss” (Colker &

Grossman, 2014, p. 172). This type of hearing loss is the result of damage to the inner ear in which, most of the time, surgery cannot repair (Sensorineural Hearing Loss, n.d.). The audiologist recommended a change in her hearing aid in order to detect sounds, however, she would still need lip-reading for communication. The College denied her application based on the safety and necessary modifications to the nursing program to meet her communication needs and she filed in the U.S. District Court for the Eastern District of North Carolina.

The court heard the case in 1979 and ruled against her, however, the U.S. Court of Appeals overturned that decision (*Southeastern Community College v. Davis*, 1979). The College took it to the Supreme Court and it was decided on June 11, 1979. It was Justice Lewis F. Powell who wrote for the unanimous decision that Davis did not meet the “otherwise qualified handicapped individual” as stated in the Act meant one who meets all the program’s requirements “in spite of his handicap” (Powell, 1979). This meant that Davis could not be admitted to the nursing program without substantial modifications to the admission and program requirements, therefore her rejection did not constitute discrimination (*Southeastern Community College v. Davis*, 1979). As an additional fact, there is nothing in the regulations that prohibit an institution from requiring reasonable physical requirements for admission to a training program.

This case, *Southeastern Community College v. Davis*, began to define the “otherwise qualified”. Disability Offices should take heed when the requests from students with disabilities modify the program requirements at the post-secondary level. Unlike with IDEA, under Section 504, modifications to programs are not reasonable

accommodations and therefore can be denied. This is a significant component of Section 504.

Table 2

Case Law and OCR Decisions for the Time Period of 1980-1989

Date	Case Name or OCR Decision Name
1981	<i>Pushkin v. Regents of University of Colorado</i>

Pushkin v. Regents of University of Colorado

This decision was a 1981 U.S. Court of Appeals case in the 10th circuit. It is important to point out that in any Section 504 case against an institution receiving federal funds, it is always the institutions responsibility to prove the person is not an “otherwise qualified handicapped individual”. In this 1981 case particular, Dr. Pushkin was a psychiatry resident that was denied into the residency program because he was in a wheelchair and had multiple sclerosis (Pushkin v Regents of University of Colorado, 1981, para. 1). According to Colker and Grossman (2014), the university stated they rejected Dr. Pushkin’s admission to the residency program using rational basis test (p. 246). However, the Court disagreed with this and said recipients of federal funds cannot discriminate on the basis on handicap, “regardless of whether there is a rational basis for so discriminating” (Colker and Grossman, 2014, p. 246). In other words, Dr. Pushkin could not be denied admission to the residency program based on his handicap alone. He

met all the other qualifications when compared to any other applicants to the residency program.

When analyzing this case, disability offices should make individualized decisions for students with disabilities rather than basing their decisions on their perceptions of how a disability might impair a student. Likewise, Rose (n.d.) stated,

Pushkin teaches that we may not stereotype students with disabilities when deciding whether they are otherwise qualified for such programs, but rather consider how each individual student can or cannot meet program requirements. (para. 4)

In other words, universities should not assume deficits of students because of certain disabilities. They should gather facts and seek out how the disability affects the individual student prior to making decisions.

In Table 3, the cases and OCR decisions from 1990-1999 were reviewed.

Table 3

Case Law and OCR Decisions for the Time Period of 1990-1999

Date	Case Name or OCR Decision Name
1991	<i>Wynne v. Tufts University School of Medicine</i>
1993	<i>McGregor V. Louisiana State University of Supervisors et al.</i>
1993	Letter to New College of California

Wynne v. Tufts University of Medicine

Steven Wynne was dismissed from Medical School in 1985 trying to complete his first year of medical school for the second time (Wynne v. Tufts University of Medicine, 1991). During the fall of 1983, he was diagnosed with dyslexia and requested testing accommodations because interpreting Type-K multiple-choice questions were difficult. Additionally, he requested oral testing administration. The university rejected his request for any type of individualized testing accommodations, however they provided tutoring in the subjects he failed, note takers and a tutor to help with study skills. During his second attempt at his first year, he failed biochemistry for the third time, at which time the university dismissed him from the program.

Wynne filed suit on the basis of the university's "failure to offer an alternative to written multiple choice examinations" (Wynne v. Tufts Medical School, 1991, p. 2). Initially the district court ruled that he was not a "qualified individual" because he could not meet the requirements of the program. Wynne appealed this decision. The question was "was he an otherwise qualified individual?" Does giving oral examinations reduce the integrity of the program? The appeals court did not think so. In their decision, they made it clear to what the responsibility of the university was by saying

Similarly, Tufts could not be required to offer a personalized test for Wynne specifically designed to avoid all of his cognitive problems. Tufts is entitled to administer difficult exams to help it evaluate whether its students can process and work with complex material. If more than one reasonable method exists for accomplishing that purpose, however, a jury properly could find that Tufts may

not select the one technique that poses an insurmountable barrier to dyslexic students. (Wynne v. Tuffs Medical School, 1991, p. 5)

In the analysis of this case, it offers insight to providing accommodations to students with disabilities. The student needed a specific accommodation, however, the university wanted to provide another type of accommodation rather than the one that the student needed based on his disability. The accommodation that was offered and provided by the university was not effective for the student. The opinion from the appeals court is an important message when it comes to accommodating tests for students with disabilities. Universities should not place burdens on students with disabilities in higher education by offering alternative insufficient accommodations. Universities must make individualized decisions for students.

McGregor V. Louisiana State University of Supervisors et al.

In 1993, Robert McGregor, a law student with orthopedic and neurological disabilities, filed a Section 504 suit against the Louisiana State University Law School stating the university unfairly dismissed him (Filo, 2004). McGregor did not meet the GPA requirements to proceed to his junior year. At that point, McGregor requested an accommodation that he be allowed to attend on a part-time basis or reduced the GPA requirements. The university was providing several other accommodations but refused to allow him to attend on a part-time basis or to change the GPA requirements. This would have been a substantial modification of the program because their program was fashioned like a cohort group and it was a full-time program. Similarly, changing the GPA

requirements would have been a substantial modification of the program. The court found the university not to be out of compliance with Section 504.

In the analysis of this case, it is important to note that Section 504 does not require universities to make modifications to their programs. For example, providing different GPA requirements is not an accommodation (it is a modification) that universities do not have to provide since it would modify the program requirements. As we learned in the 1979 Davis case, program modifications are not a requirement to be compliant with Section 504.

Letter to New College of California (OCR)

This 1993 the Office of Civil Rights letter was issued because a hearing-impaired student filed a complaint that the college did not provide her with interpreters in all of her classes as promised (Interwork Solutions, n.d.). According to the college, they were unable to afford the cost of the interpreters. While the Office of Civil Rights investigation was in progress, the college received funding for the interpreters and implemented the interpreters in all of the student's classes. Even though the Office of Civil Rights found the college to be in violation of Section 504 because interpreters were not provided for most of the classes in the beginning, the Office of Civil Rights made a note the college had implemented interpreters before the investigation was completed (Interwork Solutions, n.d.).

When analyzing this Office of Civil Rights letter, it is important to note that the Office of Civil Rights pointed out that costs for services for students of disabilities cannot be a reason for the denial of services or a denial of Section 504 regulations as did the

New College of California. These services may be difficult to obtain but it does not relieve the university of its duties under Section 504. Universities must provide reasonable accommodations.

In Table 4, the time period of 2000-2009 cases and OCR decisions are listed and then reviewed in the following section.

Table 4

Case Law and OCR Decisions for the Time Period of 2000-2009

Date	Case Name or OCR Decision Name
2002	Letter to Laney College
2003	<i>Abdo v. University of Vermont</i>
2004	<i>Falcone v. University of Minnesota</i>
2004	Letter to Cabrina College
2004	Letter to Arizona State University
2008	<i>Button v. Board of Regents of University</i>

Letter to Laney College (OCR)

In 2002, the Office of Civil Rights had a complaint from a student who reported her math professor failed to provide her extended time accommodation. The student complained to the math department after not receiving her accommodations on several occasions, however, the professor refused to provide the accommodation because he felt it would make a change to the program (Filo, 2004). After their investigation and their letter to the college, Office of Civil Rights stated the college must ensure that instructors who feel that they cannot provide the accommodations should get a determination that

the accommodation will make a fundamental change in the program, rather than ignoring the implementing of the accommodation (Filo, 2004).

In the analysis of this letter, universities must protect students who are served under Section 504 by securing their accommodations listed in their 504 plans.

Universities should have policies and procedures in place so professors who are required to implement the accommodations have an avenue to discuss the accommodation if they feel it will make a fundamental change to the program. University disability centers should have some training made available to faculty in regard to providing accommodations to students with disabilities.

Abdo v. University of Vermont

In *Abdo v. University of Vermont* (2003), Abdo had been in a car accident and had some physical disabilities. She sought accommodations from the University of Vermont in 1999 as a graduate student. The University of Vermont had a policy of the specific place on campus to request accommodations based on the type of need the student was requesting. For example, for medical issues, the student would seek the assistance of the Students Health Center and for psychological issues the student would go to the Counseling and Testing Center.

In this certain case, Abdo went to seek out the accommodations at the Office of Specialized Student Services for physical disabilities and the procedure was explained to her about the documentation that she would need from her doctor to be considered for accommodations. The list of accommodations included a rest break in which the university provided access to a lounge. Abdo did not like this lounge because of the

number of people that passed through it on a daily basis. The university provided names of other professors that could help her find another rest area, however, none were able to meet the satisfaction of Abdo.

At this point, the university said she would need to contact the Student Health Center to help her find a place to rest due to her medical condition. When Abdo contacted the Student Health Center, they were unable to find her a place to rest and suggested that she contact Residential Life. Residential Life gave her access to an apartment on campus for her to rest and to use if she was too tired to drive home at night. That semester ended and Abdo did not enroll again until the fall of 2001. She went to the Student Health Center to obtain the accommodations she needed. They requested additional documentation before they would certify her as a student with a disability. They specifically asked for the documentation to include, “specific diagnosis and functional limitations that are relevant to these requested accommodations” (Filo, 2004, p. 57). The Student Health Center gave her specific requirements that the letter from her doctor must include. According to the university, the letter that Abdo returned from her doctor was not sufficient and she was denied accommodations. This is the point that Abdo filed suit under ADA, Section 504 and Vermont Law.

It is important to note in the case the court noted the fact that Abdo’s doctor’s letter did not specifically have a diagnosis as required by the university does not make it “legally insufficient” (Abdo, 2003, para. 28). The letter did include information about her condition and her limitations. Additionally, Abdo stated the university’s requirement to seek assistance from multiple offices for accommodations prevented her from getting

the appropriate accommodations. The court stated the university followed its procedures and Abdo failed to follow those procedures. It took her three months to seek accommodations after she enrolled.

When analyzing this case, it is evident that the outcomes are significant for two reasons. First, it demonstrates the importance of following policies and procedures to protect university disabilities service centers. Ensuring procedures are aligned with the regulations and case law as well as ensuring they are implemented with fidelity will help students not only understand the process but also receive the appropriate accommodations they need. Secondly, university disability centers should be careful to not make the documentation it requires for certification of a disability a burden to the student (Filo, 2004). In this case, making the student contact multiple offices for different disability conditions was not looked up as a positive practice for the university. Accessing accommodations should be easy for students with disabilities.

Falcone v. University of Minnesota

In *Falcone v. University of Minnesota* (2004), Christopher Falcone was a medical student who notified the university disabilities services of his learning disabilities. When he started his classes in the fall of 1995, he was afforded the similar accommodations from when he was an undergraduate and graduate student which included extra test time, flexible deadlines, and tutoring. However, by November of 1995, Falcone was failing two courses and the university recommended he be switched to a part-time schedule. During the next several years, Falcone continued to fail courses and the university would

adjust his accommodations. However, in the fall of 1999, he failed a clinical rotation (Falcone v. University of Minnesota, 2004).

At this point, Falcone was sent a letter to appear before the Committee on Student Scholastic Standing to request to repeat the course. He was allowed to repeat the course with new accommodations and warned if he failed another clinical rotation it would grounds for dismissal. As predicted, he failed another clinical rotation in October 1999, however, because he was not provided reasonable accommodations the university allowed him to stay in school. The university expressed concern about his suitability for medical school at this time. In the spring of 2000, Falcone failed a third clinical rotation and the university dismissed him from medical school for two reasons listed below

(1) the Committee felt that you had received appropriate accommodations on the Emergency Medicine rotation as requested by Disability Services; and (2) you have been unable to demonstrate, with or without accommodations, that you can synthesize data obtained in a clinical setting to perform clinical reasoning, which is an essential element of functioning as a medical student and ultimately as a physician. (Falcone v. University of Minnesota, 2004, para. 6)

Falcone, of course, disagreed with the university's decision and appealed at the university level. The appeal was denied. As a result, he filed claim under Section 504.

This case is slightly different because Falcone stated he did not receive his accommodations in all of his clinical rotations. The court questioned Falcone and wondered that even with all of his accommodations implemented every single day could he have passed those rotations? (Falcone v. University of Minnesota, 2004). The court

believed Falcone did not prove the burden and sided with the university. On the other issue of Falcone's claim of being dismissed solely because of his learning disability, the court felt he presented no evidence to prove what the university had stated was the reason for his dismissal. The university presented a tremendous amount of evidence that indicated Falcone was not "otherwise qualified" to remain in medical school (Falcone v. University of Minnesota, 2004).

In the analysis of this case, university disability service centers can takeaway two important lessons. The first lesson is an obvious one. Even though the court did not hold the university accountable in this unique situation for the faulty accommodation implementation, it is wise to ensure all accommodations are implemented with fidelity. The second lesson is the term "otherwise qualified" means that with accommodations they are able to meet the academic standards of the course or program as non-disabled students. As we have learned from previous cases, higher education institutions are not required to change their courses or programs of study.

Letter to Cabrini College (OCR)

This October 5, 2004 letter from the Office of Civil Rights (OCR) to Cabrini College involved a visually impaired student did not received the double time on tests or reading materials with enlarged fonts or contrasts (Winick, 2007). Specifically, the student did not receive double time on the math placement test, nor did it have enlarged fonts or contrast. The Office of Civil Rights conducted their investigation and found the college to be out of compliance Section 504 regulations for failing to provide the double time and the enlargement of fonts. Due to this non-compliance, the college had to submit

assurances for future students who were going to take the math placement test that all accommodations would be followed (Winick, 2007). Again Section 504 regulations were affirmed for higher education institutions by the Office of Civil Rights.

After the analysis of this letter, it is evident that universities must implement accommodations such as double time on examinations and enlargement of fonts when it is in the student's 504 plan. University disability centers must put policies and procedures in place to ensure all professors working with students with disabilities implement the required accommodations with fidelity. This is not a choice but a requirement for compliance with Section 504.

Letter to Arizona State University (OCR)

On October 17, 2004, The Office of Civil Rights (OCR) issued a Letter to Arizona State University regarding a complaint from a deaf student who had problems with her interpreter who had been injured and was only able to use one arm to interpret (Winick, 2007). When the Office of Civil Rights did the investigation, it found the student had not notified the university about the issue with the interpreter prior to filing a complaint with the Office of Civil Rights. Consequently, the Office of Civil Rights determined the university cannot be responsible for something they were not aware of and determined they did not violate Section 504.

In analyzing this letter, it was very clear what the Office of Civil Rights required of universities. As a best practice, disability service centers should provide students with disabilities a contact person and encourage students to contact them if issues arise with the implementation of their accommodations. The contact information should be easily

attainable such as listed on the disability services website as well as printed material provided to the student.

Button v. Board of Regents of University

In 2008, Leslie Button appealed a case she initially did not win against the University of Nevada, Las Vegas along with the Community College of Southern Nevada regarding the accommodations she should have received as a student with a hearing disability (Button v. Board of Regents of University, 2008; Colker & Grossman, 2014). The main issue of this case involved Button requesting an interpreter, real-time captioning, and a note-taker; however, the quality of these services was not reliable (Colker and Grossman, 2014). The university felt she did not need all three accommodations, however, did not look into why they might be appropriate for Ms. Button. Button filed this case under Section 504. She also accused the university of “deliberate indifference” which means the university had the, “knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that likelihood” (Colker and Grossman, 2014, p. 282). The court of appeals reversed the lower court decision against her and sent it back for reconsideration with one judge dissenting on the “deliberate indifference” issue (Colker & Grossman, 2014).

For university disability centers, once again the court is clear when it comes to providing Section 504 accommodations to students with disabilities in higher education. This student needed very specific accommodations and the university did not investigate why she might need all three, which was unusual, however, it is what she needed. In addition, universities should take action when a student makes a complaint about the

quality or the consistency of the implementation of the accommodations. With this case, “deliberate indifference” was found by the court, which can result in money rewards for student. With that being said, university disability offices should investigate the appropriateness of student requests for accommodations rather than a blatant denial without the evidence to support that decision.

In Table 5, the final time period of 2010-2016 cases and OCR decisions are listed and then reviewed in the following section.

Table 5

Case Law and OCR Decisions for the Time Period of 2010-2016

Date	Case Name or OCR Decision Name
2011	Letter to Park University
2013	<i>Argenyi v. Creighton University</i>
2016	Letter to Florida Atlantic University

Letter to Park University (OCR)

On February 2, 2011, the Office of Civil Rights issued a letter regarding a student who filed a complaint that Park University did not provide him with his accommodations of time-and-a-half on testing, low distracting seating, typing the answers on his laptop (Association on Higher Education and Disability, n.d.). During the investigation, the Office of Civil Rights discovered there was a miscommunication between the student and disability services on campus since the student was denied the extended time on his tests because the campus thought he was in an online class rather than a regular classroom.

The Office of Civil Rights found the university out of compliance with Section 504 for failing to provide him with extended time on his tests.

In the analysis of this letter, although there was a miscommunication, the Office of Civil Rights made it clear that the university was still responsible for the lack of the implementation of his accommodations. University disability centers should have procedures in place to ensure students are receiving appropriate accommodations. The mistake of denying a student with a disability because a staff member did not know what type of class he was enrolled in would not be a good enough excuse to keep the university in compliance with Section 504.

Argenyi v. Creighton University

In 2013, this case was heard by the U.S. Court of Appeals because the student Michael Argenyi lost in his first filing against Creighton University. The issue in this case was whether or not Creighton University gave Argenyi meaningful access with his hearing impairment (Argenyi v. Creighton University, 2013). Argenyi required specific accommodations, which were denied by the university, which was the Communication Access Real-time Transcription (CART) system. The university offered another type of accommodation, an FM system that was not sufficient for him to access the curriculum according to his doctor. Argenyi paid for his own equipment so he could get access to his medical education for two years in a row. The court of appeals determined that Creighton University did not provide meaningful access by not providing him with the specific accommodations for his hearing impairment. The court reversed the judgement for Creighton University and sent the case back to the lower court.

In the analysis of this case, it has significant implications about meaningful access to the curriculum. Although the university provided him with an FM System, it was not sufficient, even according to Ardneyi's doctor. Disability offices should remember that they must make individual decisions for all students. What will be appropriate for one student with a hearing impairment may not necessarily be appropriate for another student with a hearing impairment.

Letter to Florida Atlantic University (OCR)

In 2015, the Office of Civil Rights sent a letter to Florida Atlantic University after a student with a disability made a complaint that the university did not implement accommodations as stated in her Section 504 plan. In her complaint, the student reported she was not given a private place to take her tests, a reduced course load while at the same time maintaining financial aid, and not being provided with a complaint procedure for filing a complaint with the university. The Office of Civil Rights found that the student had not been offered a private testing room until December 2014, not December 2013 as the student's complaint had reported. The university reported they did not have a room available for her at that time. Since then, the university made some changes in the way the rooms were reserved as well as added additional private rooms for testing. As a consequence, the Office of Civil Rights did not find the university out of compliance in this area.

In regard to receiving financial aid with a reduced case load, the Office of Civil Rights closed this portion of the complaint because the complaint was unsubstantiated. The university granted full-time status while reducing her case load, however, the federal

government calculates financial aid on actual hours taken and the university cannot override a federal law,

In regard to the complaint about not having a grievance procedure, the Office of Civil Rights found the university to be out of compliance with Section 504. There were several issues, which included:

1. The name and contact number of the University's ADA coordinator and a statement that the person(s) is designated to coordinate the University's efforts to comply with Section 504 are not published.
2. The Equal Opportunity and Compliance policy does not state that the EOC will refer complaints that should be processed under different procedures to the appropriate office or section. Thus, it is unclear whether the EOC refers discrimination complaints to other offices or sections, when appropriate.
3. The University's policies require all complaints to be in writing, but OCR recommends that recipients also accept oral complaints.
4. The University's policies do not include a definition of disability harassment or outline what constitutes a hostile environment.
5. The policies do not consistently state that the University will conduct an adequate, reliable, and impartial investigation of complaints, which includes providing complainants the opportunity to present witnesses and other evidence.
6. The policies do not consistently require that the University provide notice of the outcome of the investigation to both parties.

7. The University's policies do not provide an assurance that it will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate. (Letter to Florida Atlantic University, 2016, p. 5)

This particular Office of Civil Rights analysis revealed that university disability centers should consider methods of communication, consistency in adhering to policies, ensuring that policies are in compliance with 504 guidelines, and a clear understanding of the meaning and parameters of the term 'disability' when reviewing their own complaint procedures on the website and in print. The law requires universities to provide specific information to be made available to students. The information should be accessible, so they are able to file a complaint. This process should not be cumbersome for a student with a disability who feels they need to use this avenue to have their needs addressed.

Even though the university was not found to be out of compliance with providing the accommodation of a private testing room, there still is an important lesson from this letter. Universities should have policies and procedures in place so students with disabilities are able to access accommodations rather than those arrangements not being available, such as the private testing room.

Historical-Comparative Analysis and Discussion

Before 1973, there was no federal law specifically prohibiting discrimination on the basis of disability in higher education (Rothstein, 2010). When Section 504 of the Rehabilitation Act of 1973 was passed, this began to set the stage for changes for students with disabilities enrolled in public institutions, including higher education institutions.

Rothstein (2010) pointed out that federal guidance for Section 504 did not begin until 1979, which was six years after the passage of the act.

One of the first Supreme Court cases was Office of Civil Rights *Southeastern Community College v. Davis* in 1979 which Frances Davis, a nursing student with a hearing impairment and was unable to understand speech without lip reading, was denied entry into nursing school. When her application was denied a second time she filed suit in the United States District Court stating the college violated Section 504 of Rehabilitation Act of 1973 (The Oyez Project, n.d., para 1; Thomas, 2000). The court ruled against her because college programs are not required, “to provide fundamental alteration, but should consider technological advances but need not lower standards” (Rothstein, 2010, p. 1). In other words, programs leading to licensing are given “substantial deference” by the courts on what are essential requirements and what would be burdensome (Rothstein, 2010, p. 1). Confirmed by Thomas (2000), her participation would have required the college to make significant modifications to the program, which would have lowered the standards. Since this very first case the courts, “require individualized assessments of whether the individuals were able to carry out the essential functions of the program with or without reasonable accommodations in spite of the disability” (Rothstein, 2010, p. 1). What policy did the college have in place, which they knew the denial of Ms. Davis’ application would be upheld in Federal Court?

In another case in 1981, *Pushkin v. Regents of the University of Colorado*, Pushkin was an M.D. with multiple sclerosis who was denied admission to a residency program at the University of Colorado Psychiatry Unit. The interview committee stated

they were concerned about how patients would react to Dr. Pushkin and they felt he would require too much medical care to satisfy the requirements of the program (Rose, n.d; Simon, 2011). In this case, the courts ruled in favor of Dr. Pushkin and made it clear to universities that there must be, “an individualized inquiry into the circumstances of each individual and that broad stereotypes of the limitations of individuals with various disabilities are not properly the basis of a decision that someone is not ‘otherwise qualified’” (Rose, n.d, para. 4). The regents at the University of Colorado thought their three-point justification would stand up in court and it did not. What procedures or policy did they have in place that led them down this road, which landed them before the Supreme Court and lose? How did they misinterpret the law to the point of losing in Federal Court?

These two early court cases indicate that interpretation of Section 504 can be a massive challenge for universities. This can lead to misinterpretation on the part of the university that affects services to students with disabilities. Postsecondary faculty members are required to follow these mandates when they may or may not fully understand the complexities of the laws (Dona & Edmister, 2001; Jensen et al., 2004; Salzberg et al., 2002). Unfortunately, misinterpretation and failure to implement Section 504 requirements lead to students filing lawsuits in the courts or complaints with the Office of Civil Rights (U.S. Dept. of Ed., n.d.a).

Summary

In seven out of fifteen cases included in this study, the courts ruled in favor of the university. These specific cases provide critical insights as to how universities protected

themselves from the negative outcomes. Universities would be wise to study these and mirror their policies and standards. Universities should look to these cases and view their guidelines and standards as best practices for implementation of Section 504 regulations.

In eight out of fifteen cases included in this study, the courts ruled in favor of the student with a disability. These specific cases provide critical insights as to how universities were vulnerable in their policies and practices, which led to an unfavorable outcome in the eyes of the courts. Universities should examine these cases and the policies and practices that were not deemed satisfactory to protect against potential liabilities.

Although there were no trends identified in this study, the cross section of cases and the Office of Civil Rights findings brings to light the relevance and significance of Section 504 practices in higher education. In every case and the Office of Civil Rights letter included in this study, exemplars for universities to use when evaluating their current practices may be found. Furthermore, these revealed the importance of policies and procedures to provide staff with guidelines to follow and to have well-established and compliant policies may still be less than adequate to ensure that all Section 504 students are receiving ideal accommodations from all staff. These cases and letters revealed the need to implement trainings that use clear expectations, fully inform faculty and staff of the legal obligations as set forth in Section 504 of the Rehabilitation Act of 1973, and to provide oversight and accountability to ensure the faculty and staff are compliant with the laws.

The findings of this study provide universities and policymakers with insight into historical and contemporary trends in the implementation of Section 504 in university settings since 1973 and its influence on the accommodations offered in post secondary educational settings. With the study's findings, disability officers can examine their policies to ensure compliance with Section 504. For Section 504, Rothstein (2010) posited that there would be continued guidance from the court system and OCR (p. 8). It is because of this continued activity within the courts and the Office of Civil Rights that universities will need to stay abreast of current decisions so their programs can continue to remain compliant. Chapter V provides a summary of the study, conclusions, implications, and recommendations based on the study.

CHAPTER V

Summary, Conclusions, Implications, Recommendations, and Concluding Remarks

Introduction

Chapter five provides a summary of the study followed by the conclusions and implications drawn forward from the findings. These conclusions are then considered in light of the current research and literature to inform implications for university disability office leaders. Finally, recommendations for scholar-practitioners are shared so both researchers and university leaders are informed of the connections between potential practices and research needs. Concluding remarks close the chapter.

Summary

Before 1973, there was no federal law specifically prohibiting discrimination on the basis of disability in higher education (Rothstein, 2010). When Section 504 of the Rehabilitation Act of 1973 was passed, this began to set the stage for changes for students with disabilities enrolled in public institutions, including higher education institutions. Rothstein (2010) pointed out that federal guidance for Section 504 did not begin until 1979, which was six years after the passage of the act.

One of the first Supreme Court cases was *Southeastern Community College v. Davis* in 1979 which Frances Davis, a nursing student with a hearing impairment and was

unable to understand speech without lip reading, was denied entry into nursing school. When her application was denied a second time she filed suit in the United States District Court stating the college violated Section 504 of Rehabilitation Act of 1973 (The Oyez Project, n.d., para 1; Thomas, 2000). The court ruled against her because college programs are not required, “to provide fundamental alteration, but should consider technological advances but need not lower standards” (Rothstein, 2010, p. 1). Programs leading to licensing are given “substantial deference” by the courts on essential requirements and what requirements are considered as burdensome (Rothstein, 2010, p. 1). Confirmed by Thomas (2000), her participation would have required the college to make significant modifications to the program, which would have lowered the standards. Since this very first case the courts, “require individualized assessments of whether the individuals were able to carry out the essential functions of the program with or without reasonable accommodations in spite of the disability” (Rothstein, 2010, p. 1).

These two early court cases indicate that interpretation of Section 504 can be a massive challenge for universities. This can lead to misinterpretation on the part of the university that affects services to students with disabilities. Postsecondary faculty members are required to follow these mandates when they may or may not fully understand the complexities of the laws (Dona & Edmister, 2001; Jensen et al., 2004; Salzberg et al., 2002). Unfortunately, misinterpretation and failure to implement Section 504 requirements lead to students filing lawsuits in the courts or complaints with the Office of Civil Rights (U.S. Dept. of Ed., n.d.a).

Using a historical-comparative research method, the purpose of this study was to identify, analyze and compare cases of case law and Office of Civil Rights decisions since 1973 that have shaped the way universities interpret and implement Section 504, as well as the accommodation trends since 1973. In 2000, Thomas suggested that universities only made “moderate progress” in making their programs accessible for students with disabilities between 1973 and 1990, when the ADA was passed (p. 248). Additionally, he concluded that universities are faced with a greater demand for accommodations in higher education because of the continued growth in both the PK-12 sector as well the higher education sector. Likewise, Thomas (2000) reported that students with disabilities are demonstrating an increase of awareness about their rights to accommodations in higher education (p. 248).

This study was intended to provide universities and policymakers with insight into historical and contemporary trends in the implementation of Section 504 in university settings since 1973 and its influence on the accommodations offered. With the study’s findings, disability officers can examine their policies to ensure compliance with Section 504. For Section 504, Rothstein (2010) posited that there will be continued guidance from the court system and OCR (p. 8). It is because of this continued activity within the courts and OCR that universities will need to stay abreast of current decisions so their programs can continue to remain compliant.

Research Questions

The following research questions were used to guide this study:

- How have the court cases and OCR findings since the implementation of Section 504 influenced/shaped disability services on four-year university campuses?
- Are there trends in accommodations since the implementation of Section 504 that have influenced/shaped disability services on four-year university campuses?

In seven out of fifteen cases included in this study, the courts ruled in favor of the university. These specific cases provided critical insights as to how universities protected themselves from the negative outcomes. Universities would be wise to study these and mirror their policies and standards. Universities should look to these cases and view their guidelines and standards as best practices for implementation of Section 504 regulations.

In eight out of fifteen cases included in this study, the courts ruled in favor of the student with a disability. These specific cases provided critical insights as to how universities were vulnerable in their policies and practices, which led to an unfavorable outcome in the eyes of the courts. Universities should examine these cases and the policies and practices that were not deemed satisfactory to protect them from being liable in the same manner. Although there were no trends identified in this study, the cross-section of cases and the Office of Civil Rights findings brings to light the relevance and significance of Section 504 practices in higher education. All in all, every case and the Office of Civil Rights letters included in this study provide relevant outcomes for consideration by university disability centers.

Conclusions and Implications

Students receiving 504 support services in post-secondary learning environments have often failed to receive appropriate accommodations because of disparities in the

interpretations of how these services are required to be delivered. The problem that colleges and universities face is a lack of clarity regarding necessary practices to fulfill Section 504 of the Americans with Disabilities Act (1974). One method of gaining insights into this problem is through the findings of court cases and Office of Civil Rights findings that directly involved post-secondary institutions and students who felt they were not receiving appropriate supports. This study sought to address this problem by answering two research questions using a historical-comparative research method that analyzed court and OCR findings from 1974 to 2016.

Research Questions

Research question one.

How have the court cases and the Office of Civil Rights findings since the implementation of Section 504 influenced/shaped disability services on four-year university campuses?

First of all, the presence of case law indicated that institutions of higher education are being held accountable for the implementation of Section 504 regulations. The implications here are evident that university systems and leadership of disability services should recognize that impending lawsuits are likely. Despite the outcomes of these cases and letters for the Office of Civil Rights, there are both implications for students and post-secondary institutions. Therefore, these leaders should implement policies and standard practices across all departments and schools within the university setting to train and hold all staff accountable for knowledge and implications of lawful practices. Additionally, this data helps universities shape their current policies by examining the

trends since 1973, which helps their disabilities centers provide better services to students with disabilities. These implications and the costs associated are significant.

Research question two.

Are there trends in accommodations since the implementation of Section 504 that have influenced/shaped disability services on four-year university campuses?

While no categorical trends emerged, the reality is that these cases are consistently ongoing and can be impacted by a university's decision to be proactive and diligent to ensure that its students receive the fullest measure afforded by the law. As mentioned before, court cases and the Office of Civil Rights decisions have been made in favor of the student and of the university. This bodes well for universities because the courts recognize and honor diligent efforts of compliance. Likewise, it should serve as a warning that the courts will not hesitate to hold the university accountable and responsible for its failure to uphold the laws. Ultimately, one would hope that in the spirit of higher education, student success would be of the highest concern but in the event that universities fail to recognize the unique status of Section 504, whether intentionally or unintentionally, the consequences are real.

Recommendations for Future Research

Because no trends were discovered in this research, the researcher suggests that a more in depth and thorough analysis of all court cases and OCR findings may reveal an indication of trends regarding 504 adherences with students in post-secondary settings. Furthermore, it is suggested that researchers identify how the cases progressed through the court system to determine if there are patterns of litigation in these cases. Both

students and institutions of higher education would benefit from a deeper understanding of how likely findings are to be upheld by appeals courts. These findings would be useful for setting clearer expectations of the time frame and expenses associated with such cases.

Another suggestion for future research is to conduct a quantitative study with staff, faculty, and administrators in higher education settings and ask them to identify their perceptions of matters pertaining to the requirements and delivery of 504 services in post-secondary settings. For example, to what degree do these segments of the workforce on college campuses understand and are aware of the rights of students in post-secondary environments who have completed the processes to receive 504 accommodations? How familiar are these workforce groups of the process that students are required to undergo to be identified and to receive such services? Perhaps physical needs are more likely to be addressed by housing administrators because they are more readily acknowledged. Are cognitive disabilities more often ignored and unidentified and why? The findings of such questions would provide a genuine understanding of the realities that students face when attempting to receive 504 accommodations and to the misunderstandings of how different workforce groups within higher education perceive and understand the laws as they are administered in post-secondary learning environments.

Findings from a study designed to measure the impact of transitional 504 services between the high schools and post-secondary learning institutions would provide information about the benefits and outcomes of intentional transition processes. Additionally, a study of this nature may indicate the missed or found opportunities that

are encountered by students because of a lack of or the availability of such partnerships and practices.

Additionally, this researcher suggests that a comparative analysis of how 504 services are offered as well as how students are made aware and provided access to these accommodations within different types of post-secondary learning environments would provide a greater understanding of where students with 504 needs may be most likely to receive a fair and appropriate education. Are trade schools more progressive than community colleges in resourcing both the students and the workforce groups? Are community colleges providing services more readily and appropriately than four-year institutions? How and where are students with 504 accommodations thriving?

A qualitative case study involving specific student populations with disabilities (e.g., students with autism, students who have experienced trauma) and how they received support in the university setting would be an additional recommendation for future research. This type of study would assist university disability centers drill down to specific student assistance. They would be able to better individualize their programs for specific students on their campus.

Another recommendation for further research is doing a mixed methods study of successful programs and university models. This would provide insight on the components of successful programs and models that exist so other universities could develop their policies and procedures to improve their services. A study like this could provide exemplars in the disability center arena, which not only were compliant with Section 504 but were also successful in student outcomes.

The researcher suggests that large-scale studies be completed which examine the demographic representation of postsecondary students seeking disability services compared with PK-12 or secondary populations. This could be beneficial for PK-12 administrators and teachers as well as university disability systems. Since postsecondary students have to self-identify, what is the percentage that actually self-identify? Are we losing a large percentage of students with disabilities in postsecondary settings or are they dropping out without seeking disability services assistance? How do PK-12 educators ensure a seamless transition to postsecondary institutions so the student can be successful under Section 504? How do college professors assist students who are struggling to obtain assistance? These questions can be used to frame additional and future research around this topic.

Lastly, this researcher suggests looking at further research on the cost benefit analysis to determine the return on investment for universities. Does student retention improve when disability services improve? If so, how much? And when looking at the different exemplar models of disability services, does one model, in particular, provide the greatest cost benefit? With increasing costs and decreasing funding, this type of study would be very beneficial to university disability centers.

Recommendations for Policy

In regard to recommendations for policy, an important step for university disability centers is to design an organizational chart to specifically charge departments with the responsibility to actively participate in the delivery of 504 services. This is not

only a recommendation for student services. All staff, faculty and administrators are responsible for compliance.

Another recommendation for policy is for university disability centers to design and deliver training to ensure adherence to the campus policies and procedures and to establish measures of accountability to validate noncompliance and compliance. This step will assist in consistency in the delivery of services as well as mitigate the vulnerability of disability centers. This training should be included in the professional development during the on-boarding process when new staff, faculty and administrators are hired.

Lastly, university policies and procedures should be examined for clarity and accuracy on a regular basis. Higher education administrators should ensure the policies and procedures are clear to staff, faculty, and students. As mentioned before, developing an organizational chart so changes and updates are communicated clearly and timely should be a top priority.

Recommendations for Practice

First of all, universities should not wait until a student demands services. They should implement clear policies and guidelines using the Section 504 terminology and definitions, findings of this study, along with other similar cases and findings of the OCR. With that being said, staff and faculty should be trained in assisting students who need to self-identify. They should be able to help the student access a disability services contact person so the student is able to access their needs. Residence hall staff should also be trained to help students in need of communicating their needs to disabilities

services. Residence hall staff see the students on a regular basis and may be able to early identify when students are struggling. Additionally, if the university has a freshman orientation program, those staff and faculty members should be aware of students who might need assistance to self-identify and need to access disability services. Again, this will entail professional development at all levels and for all departments; however, the benefits for universities will outweigh the costs.

Secondly, universities should construct intentional transition pathways between high schools and post-secondary institutions by designing partnerships between the two institutions. Thirdly, universities should seek out ways to provide professional development for faculty and staff members to increase their awareness of the laws and federal requirements while not make compliance with university requirements a burden (Lechtenberger et al, 2012). One such professional development opportunity would be to provide insight on the impact of faculty negative attitudes on student success, such as the information provided in the Barnard-Brak Sulak 2010 study. This could be done through a webinar, lunch and learn activity, or specific college presentations tailored to those professors. Other professional development opportunities should include providing faculty members the strategies for success in their specific field (e.g. as pointed out by Ticani in his 2004 study) followed by a questions and answer session. Professional development can increase the faculty members' knowledge base of assisting students with disabilities and make their contact more accessible.

A fourth recommendation for policy is to increase the visibility of the disability services for staff, faculty and students. This means ensuring the disability office has easy

access on campus and on the campus website. As we saw in two of the OCR decisions, it is imperative that information about procedures for students be easily accessible online. For example, it should not be a burden for the student to access the grievance procedures. There should be a clear access point for disability services on the website as well as a point of contact person. Making these accessibility changes can enhance the student experience with disability services.

Lastly, universities should identify the initial moment in which the opportunity is available to inform students of their rights and act on it immediately. This will create clear and easily accessible pathways for students to use so access is not impaired.

Concluding Remarks

Although no patterns of accommodation use related to the patterns in the changes in case law and the Office of Civil Rights decisions were found, university disability centers can hold fast to the research findings that legal ramifications have potentially powerful outcomes. These outcomes can be addressed proactively through intentional trainings of policies and procedures and best practices within an institution of higher education. The guidelines established by a particular college or university will ultimately protect or reveal weaknesses leaving the university either established as an exemplar or as a regretful lesson from which other universities can learn.

It was the intent of this researcher to provide the highest quality research data that university disability centers will be able to use for policy making and development. As evidenced by this study, this researcher's findings will only be as powerful as those who genuinely hold the authority and power to honor the full spirit of Section 504 regulations.

Ultimately, it is up to the universities and their leadership to decide upon which side of the law they will find themselves.

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