

# PREPARING STUDENTS WITH AUTISM FOR COLLEGE, AND PREPARING COLLEGES FOR STUDENTS WITH AUTISM

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Students with autism who also have the potential for successful employment, community integration and independent living are arriving at Pennsylvania's colleges and universities in great numbers. Accommodations for these students necessarily differ from those historically provided by college disability services offices. Additionally, these students have been ill-prepared by their public high schools to transition to college. These new students with disabilities are being expected to fit into structures developed by high schools and colleges for an earlier wave of learning disabled college-bound students. We argue that the models for transition planning and accommodation must be reconsidered to meet the needs of this population. A few college programs to support students specifically with autism are available at an additional cost to parents and students.

The following actions are necessary:

1. A directive to the Pennsylvania Department of Education and school districts to strengthen transition planning for such students, including training to provide these services, and
2. Funding of pilot programs at colleges and universities to provide the supports already established as best practice.

The prevalence of autism, once considered a low-incidence disability, has become a national health crisis. In Pennsylvania during the 2006-2007 school year, one in 133 students were listed as having an autism designation under the Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C. Sections 1400 *et seq* (US Dept. of Education, Child Count Part B, 2006-2007).

While in the past individuals with autism were considered to be unlikely to have the academic potential to pursue higher education, the landscape has dramatically altered as interventions have improved and as our understanding of the spectrum has been modified to include a broader range of behaviors and disabilities. Today, the majority of young adults identified with autism intend to go to college with a goal of achieving higher-level employment and independent living (Wagner, et al. 2007). To be successful, they require appropriate transition planning in high school and accommodations in college. Below we discuss the legal rights that students with autism have as they

transition from high school into a college setting, considering law, regulation, case law and letters of finding from the Office for Civil Rights of the United States Department of Education. We conclude that high school transition plans and post-secondary accommodations must be responsively redeveloped to meet the needs of this population, including provisions for addressing the social impact of autism on navigating college life.

## **The Legal Framework**

Since its inception, the IDEA has recognized the crucial role that public schools play in preparing students for all aspects of adult life, including employment, social integration, and active citizenship. Some have suggested these quality of life factors as the ultimate measure of successful special education services (Halpern, 1993). Congress, in preparing the findings that underpin the latest amendments to the IDEA, asserted the need for accountability regarding “effective transition services to promote successful post-school employment or education.” Transition services were redefined in 2004 to emphasize a results oriented process “focused on improving academic and functional achievement ... to facilitate the child’s movement from school to post-school activities, including postsecondary education.” U.S.C. Section 1401(34).

## **Eligibility for Special Education and Section 504**

Eligibility for special education is the predicate for an Individualized Education Plan and transition plan. Because students with autism often are academically successful, they are not necessarily found eligible for special education pursuant to the IDEA. The former Pennsylvania Special Education Appeals Panel<sup>i</sup> has held that such high functioning students do not have academic deficits and that school districts need not address social deficits (*In Re the Educational Assignment of E.L., a Student in the Tredyffrin/Eastown School District*, Spec. Ed. Op. No. 1208.) In contrast, the United States Court of Appeals for the First Circuit has recently upheld a ruling by the District Court that social skills implicated in an Asperger’s diagnosis were indeed addressed by the Maine Curriculum (2006 WL 224318, \*1, 10-11 (D.Me. 2006); affirmed in Mr. and Mrs. I. v. Maine Sch. Admin. Dist. No. 55, 480 F. 3d 1 (1<sup>st</sup> Dist. 2007).

Pennsylvania children with disabilities alternatively may be identified as protected handicapped students under 22 PA Code Chapter 15, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S. C. Section 794), a statute prohibiting discrimination in any program or activity that receives federal funding. The prohibition against discrimination includes the requirement for schools to take positive steps to ensure access and participation. Here the term “discriminate” includes not making reasonable accommodations to the known physical or mental limitations of an otherwise

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<sup>i</sup> The special education appeals panel was eliminated by the revision of Pennsylvania Title 22 Chapter 14 regulations, effective July 1, 2008, when Pennsylvania converted from a two-tier to a one-tier administrative system.

qualified individual with a disability. A student protected by Section 504 must demonstrate that he or she is a "qualified handicapped person" who is "substantially impaired in the performance of a major life activity." Currently, the effect of mitigating measures such as medication are considered when assessing substantial impairment because of the Supreme Court's ruling in an employment case [*Murphy v. United Postal Service*, 527 U.S. 516 (1999)]. In addition, restrictions on what constitutes "a major life activity" have limited coverage under Section 504. The Ninth Circuit Court of Appeals has held that social interaction is a major life activity (*McAlindin v. County of San Diego*, 192 F.3d 1226 (9th Cir. 1999)). This decision contrasts with some of the special education appeals panel decisions, discussed above, which question if academically capable students with autism have a handicapping condition. (*E.L. Supra*)

Both houses of Congress have now passed the Americans With Disabilities Restoration Act of 2007, amending the ADA to eliminate the current analysis of whether an impairment is "substantial" and requiring that a person's disability be considered without mitigating measures (H.R. 195). By eliminating the mitigating measures interpretation, the revised law would allow people with disabilities who are substantially assisted by services, medications or technology to qualify as disabled under the law. This would clarify, for example, that school age students with Asperger's or high functioning autism who can compensate for their social and communication deficits to some extent with medications, assistive technology, psychological services and behavioral services still have a qualifying disability under ADA. Because Title II of the ADA is interpreted harmoniously with Section 504, the application of Section 504 would change as well. Title II of the ADA (42 U.S.C. Sections 12101 *et seq.*) applies to governmental entities such as school districts. Title III of the ADA [42 U.S.C. Section 12182(a)] applies to public accommodations, including private schools, and requires access to persons with disabilities, but is not as stringent as Title II.

## **Transition Planning at the High School Level**

The declared purpose of the IDEA is to ensure that the education of people with disabilities prepares them for "further education, employment and independent living." The congressional findings stated as predicate to the 2004 amendments to the IDEA assert the need for accountability regarding "effective transition services to promote successful post-school employment or education."

Pennsylvania special education regulations emphasize the need for early planning by necessitating the creation of a transition plan when students reach age 14 rather than the federally mandated age of 16. Despite the clear legal mandates requiring transition planning,<sup>ii</sup> plans that fall short of preparing

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<sup>ii</sup> Additional clarifying requirements for transition planning were added to the 2004 reauthorization of the IDEA, cementing the need for these plans to be individualized to student's interests, preferences and strengths, and specifying the types of applicable services that may be included in transition plans. 34 CFR Section 300.43 (a) [20 U.S.C. Section 1401(34)].

capable students with autism for a college experience, employment, recreation, and community life have survived judicial scrutiny.

In practice in Pennsylvania, transition plans for college-bound students with IEP's are minimal, often including exercises such as filling out career interest surveys or writing letters to college admission offices. Transition planning that includes more intensive services, such as job sampling, job coaching, and independent living skills are more typically offered to students who are not college bound and viewed as more disabled.

In one case, the Pennsylvania Special Education Appeals Panel found the student's transition plan appropriate, although it included only exploration of career interests and writing letters to prospective schools and not social skills or independent living skills. (*In Re the Educational Assignment of H.H., A Student in the Indiana Area School District*, Spec. Ed. Op. No. 1882, 2008). The student was described in the due process hearing as having difficult peer relationships, not knowing how to select appropriate clothing, not knowing how to use the telephone, and having no ability to complete homework independently. None of these issues, which would preclude college admittance and/or success, were mentioned in her transition plan,

*In Sinan L. V. School District of Philadelphia, 2007 U.S. Dist LEXIS 47665*, the federal court for the Eastern District of Pennsylvania held that "skeletal" transition planning<sup>iii</sup> was appropriate and rejected reliance on an earlier case, *East Penn School District v. Scott B*, 1999 U.S. Dist. LEXIS 2683) because it was based on a withdrawn Section 342 regulation. The regulation in question stated:

Transition is an outcome-oriented process that is long range in nature. Transition planning involves a partnership of consumers, school-age services and programs, post-school services and program and local communities that results in higher education, employment, independent living and community participation. Transition should be conceptualized as a bridge between school programs and the opportunities of adult life. [22 PA Code Section 343.37 (a)].

The East Penn case, which held transition plans to a higher standard, also cited a withdrawn regulation that required the participation of other agencies, including higher education institutions in transition planning (22 PA Code Section 14.37).

In finding against the parents and child, the Pennsylvania federal court ruling in *Sinan L*, cited in support of its position as case from the United States Court of Appeals for the Seventh Circuit for the proposition that the total omission of a transition plan from an IEP is merely a procedural violation. *Board of Education v. Ross*, 486 F.3d 267, 2007 W.L. 1374919 at 7-8 (7<sup>th</sup> Cir. 2007). While *Ross* is not binding in this circuit, Pennsylvania school district attorneys are citing the *Sinan L*. case for the proposition that Pennsylvania

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<sup>iii</sup> Sections of the May 2005 IEP concerning Sinan's transition plan were left largely blank, aside from a notation that "Sinan will meet with school counselor to discuss prerequisites he needs to apply to college and explore college opportunities."

federal courts place little importance on the development of a transition plan in an IEP.

Typical high school students may develop social skills in the context of extra-curricular activities, but individuals with autism may be missing activities that are an important part of high school life, such as creating social networks, learning negotiation, and practicing relational problem-solving techniques. (Turnbill et al., 2003). Among students with disabilities, self-perceptions and choices of students with autism tend to exclude them from extra-curricular opportunities (Wagner, et al., 2007). Generally students with autism are among the least independent among disability subgroups (Wagner, Cameto, Levine & Garza, 2006). Self-advocacy skills, which are linked to a successful transition to college, may also be lacking in students with autism (U.S. Department of Education, OCR 2007). The transition plans for students with autism should focus on development of these skills, but transition plans are being held to a low standard just at the historical moment when students with autism, with their great promise as well as their great needs, are arriving on college campuses in great numbers.

## **College Admission**

When students who have been found eligible for special education move to college, they are no longer covered by the IDEA, and thus not entitled to proactive intervention in the form of specially-designed instruction. Students attending colleges and universities that accept federal funding, however, are protected by Section 504 and by Title II of the ADA. Private post-secondary schools are subject to the lesser standards of Title III of the ADA. Under these laws, students with disabilities entering college or university must self identify and request accommodations; post-secondary institutions do not have an obligation to actively identify these students.

Colleges generally have disability services offices, which administer the provision of services. Public post-secondary schools now have many years of experience in accommodating students with orthopedic or sensory disabilities and have accommodated them by removing architectural barriers, for example, and providing interpreter services for the hearing impaired. In the 1990s when students with diagnosed ADHD and learning disabilities made their way to college, there were additional challenges regarding the nature of disability services (Gordon & Murphy, 2000). These were resolved by creating new standard accommodations geared towards these disabilities (e.g. extra time on tests, note-takers and tutors) that could be obtained via proper documentation of disability. Today college disability offices often will offer a set menu of accommodations for common handicapping conditions.

At the college level, whether a student is “a qualified handicapped person” under Section 504 and Title II of the ADA is determined differently than it is at the elementary or secondary education levels. An elementary or secondary public school student is qualified by virtue of being school-aged, since these schools may not dismiss a student with a disability who cannot meet a core curriculum requirement. In college, the question of whether a

student is “qualified” could be raised in connection with demonstration of particular skills. Is a student with autism not qualified to attend a community college, for example, if the student is not able to participate in a group project or give an oral presentation with appropriate eye contact? A case on just this point, Letter to Goldberg (OCR letter Jan. 27, 2007), documents a complaint filed against Platt College to the Office of Civil Rights about discrimination and lack of implementation of 504 accommodations for a student with autism who required clear instructions, and peer assistance in class among other accommodations. The student was originally found to be eligible to attend the college, with a determination that she had “the ability to be successful in her academic classes, given the right academic adjustments and auxiliary aids.” Once the student began to experience difficulties owing to a lack of implementation of these services, the executive director of the college suggested that the student was not a qualified to attend because of “the importance of communication skills to participate in group projects and presentations.” OCR found in this case that the college did not have clear procedures for requesting accommodations and grieving decisions. The issue was resolved via a resolution agreement that provided the student with compensation and mandated the college create clearer procedures compliant with the statute. (OCR case # 09-06-2113, accessed via a FOIA request by the first author.)

Colleges and universities have no legal requirement to maintain enrollment of students who cannot meet school requirements; thus, students with disabilities must obtain a waiver or a modification of a requirement that they cannot meet. In determining allowance for a waiver, college disabilities offices staff are obliged to conduct an analysis of the student’s needs and requested accommodation in consultation with the student and family [Spycgaksjy v. Sullivan, 2003 U.S. Dist LEXIS 15704 (E.D.N.Y.Aug. 29 2003)].

## **College Services**

Support systems specific and appropriate for individuals with autism in college settings are sparse. Individuals with autism present a unique challenge to college disability services administrators, in that the students’ needs often span areas that are not generally addressed or accommodated in a college setting (e.g. life-skills, social networking). To request an accommodation and use a college grievance system, students with autism must use communication and social skills and engage in self-advocacy – must, in other words, use skills that should have been taught in high school. To be granted a reasonable accommodation, college students must provide recent documentation of disability from appropriate experts; this requirement should not burden students with extra effort and expense [Guckenberger v. Boston University, 974 F. Supp. 106 (D. Mass. 1997)]. If an accommodation is denied, the college or university must have a “prompt and equitable procedure” in place for appeal (Letter to Loyola University Chicago, No. 05-2139). Should a student complain to the Office for Civil Rights (OCR) of the United States Department of Education or proceed to court, he or she will bear the burden of describing the

reasonable accommodation that was requested and denied; the burden then shifts to the college to demonstrate that the requested accommodation would fundamentally alter the nature of the school's program [*Millington v. Temple Univ.*, 261 Fed. Appx. 363 (3d. Cir. 2008)(unpublished)].

OCR has addressed complaints from students with emotional issues, whose atypical behavior has caused alarm. Based on guidance in the resulting OCR letters, students with disabilities must be accommodated in all aspects of college life and may not be penalized for behavior that is atypical but does not represent a "direct threat" (Letter to Loyola, *supra*).

Several OCR letters of finding have relevance to the predictable needs of students with autism. DeSales University denied campus housing to a student on the basis of behaviors such as posting a sign on his door regarding people with depression and suicidal thoughts. The student, who had registered with the disabilities office, was required to see a physician to obtain written clearance to return to campus. He also complied with the university's own condition that he attend three sessions with his physician. Nevertheless, the student was dismissed from campus housing. OCR applied the "direct threat" standard and found that the university had acted improperly: "We found no evidence that University officials tried to address the Complainant's disruptive behaviors by modifying its usual policies or practices in a nondiscriminatory manner acceptable under Section 504." OCR also found that the university had no grievance procedures that the student could use to challenge his exclusion from campus housing (Letter to O'Connor, OCR Docket No. 03-04-2041).

Regarding a student diagnosed with Asperger's Syndrome who had an awkward exchange with a professor, who then delayed in making a promised grade change, OCR found that the college was not prepared with adequate knowledge about Asperger's Syndrome before the student arrived on campus. OCR noted the communication deficits that such a student might manifest and discussed the need for faculty guidance so that communication could be more successful. Such informed communication was presented as an appropriate accommodation in this OCR letter (Letter of Kehoe, OCR Case N. 09-05-2111).

The need for social skills training for college students as well as the need for in-service training for college faculty is noted repeatedly in articles published in an electronic publication aimed at college administrators [Disability Compliance for Higher Education, 11 (7); 12(6); 13 (4, 7, 9)]. Colleges are now more aware that these types of social accommodations are required to curb the high attrition rate of college students with autism. As stated by one Administrator, "[college students with autism are] landing in trouble with judicial affairs for their lack of social boundaries, irritating professors with excessive questions and comments during class, and vexing roommates who don't understand their lack of eye contact." [*DCHE 12(6)*]

## Summary of Existing Programs

Researchers have suggested that high functioning students with autism will achieve optimal results in an integrated, support based system, as opposed

to separate, self-contained programs. (VanBergeijk, Klin & Volkmar, 2008). Pilot integrated/support based programs for students with autism are being attempted around the United States; examples include programs at Marshall, Alabama and Boston Universities. These programs use peer mentors or facilitators, often specifically trained fellow students majoring in social science graduate or undergraduate programs, who can support students in an unobtrusive manner. One of the first programs, Marshall University's West Virginia Autism Training Center, provides academic, social and life skills training to students with high functioning autism. The program's goal is to provide these students with the strategies they need to graduate (DCHE, 2008) including everyday social skills, such as how to schedule classes, join clubs, buy books and replace ATM cards that don't work (Aresty, 2008). At Keene State College in New Hampshire, fellow students act as "social navigators." (*Id.*) Their role is to alter the student's outsider status by introducing them to their friends. The Strategic Education for Students with Asperger's Syndrome is a pilot program that also implements a "coaching" model with graduate students assigned to each college student with autism to work on individual goals (DCHE Jan. 17, 2007). These programs all have common features. All provide extra supports so that students have a place to turn when a need arises that supersedes the general accommodations provided by the local office of disabilities. Typically, these add-on programs cost students thousands of dollars over and above tuition, e.g. the Marshall program was \$6,200/year in 2006 (Kaplan, 2006). While students with other impairments are able obtain accessible college education without additional costs, the relatively novel accommodations required for college students with autism is creating a system where these social-based services are available only for those who can afford them.

## **Conclusion and Remedy**

Many individuals with autism have significant academic strengths, often in technological, mathematical, and mechanical fields (Baron-Cohen et al., 1997; Wagner, et al., 2007). Although there is a growing demand for students to enter into science and technological fields, employment prospects for people with autism remain poor often because of general social deficits (Turnbill et al., 2003). Recent studies show that adults with autism often experienced high levels of un- or under-employment; social mistakes and misunderstandings frequently leads to poor outcomes including being fired from jobs (Müller, Schuler, Burton & Yates, 2003; Howlin et al., 2004).

The cost of losing the contribution of this unique population will be borne by both the individuals affected and by the rest of society. Students with autism may be assisted to productive, creative adult lives or face more limited futures surviving on benefit payments. We recommend Pennsylvania should restore the specific requirements for high school transition plans that were withdrawn when 22 Pennsylvania Code Chapter 342 was withdrawn through statute or through regulation. Secondly, the state should fund pilot programs for students with autism at colleges and universities. The danger in preoccupation with the complex analysis that goes with accommodations under

Section 504 and the ADA is the loss to society and the economy of many young people with autism. Existing programs have demonstrated what is needed so that these students need not fail, but flourish. Now these programs should be publicly funded and developed. We look to a future where social mentoring and counseling will be on the list of standard available accommodations for students with disabilities who demonstrate this need.

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