Career-Focused Experiential Education for Students with Disabilities: An Outline of the Legal Terrain

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Abstract

While experiential education has been part of higher education for a long time, access for students with disabilities is an emerging topic, broadening the scope of work for disability service providers. Participation in career-focused experiential education, such as internships and cooperative education, is an especially important learning experience for students with disabilities as a way of preparing them for the challenges of employment after graduation. To further understanding of the intersection of career-focused experiential education and disability service provision, this paper outlines the U.S. statutes, regulations, and a small number of key court and agency cases that impact students with disabilities who participate in career-focused experiential education at U.S. institutions of higher education.

Individuals with disabilities exiting college still face unemployment, underemployment, and low pay compared to their nondisabled peers (Aune & Kroeger, 1997; Getzel, Briel, & Kregel, 2000). According to the 2004 National Organization on Disability (NOD) Harris Survey, only 35% of 18 to 64-year-old individuals with disabilities are employed, compared with 78% of 18 to 64-year-old individuals without disabilities (American Association of People with Disabilities, 2004). And, while postsecondary education increases the likelihood of employment for individuals with disabilities, many employment connections are made through internships and cooperative education (National Association of Colleges and Employers, 2004), to which students with disabilities traditionally have not had access. This makes career-focused experiential education an important opportunity for students with disabilities.

While experiential education has been part of higher education for a long time, participation by students with disabilities in higher education is relatively recent, opening up new areas of service provision for higher education professionals. Disability service providers are in a unique position to encourage and support student participation and to increase campus awareness regarding programmatic access to internships and cooperative education (or Co-Op). Several gray areas exist, however, particularly around how students with disabilities access academic adjustments, auxiliary aids or work accommodations at internship or Co-Op sites, and who is responsible for supervising and paying for these services.

To enhance the understanding of disability service providers, this paper provides a snapshot of U.S. statutes, regulations, and key court and agency cases that impact students with disabilities in career-related experiential education at U.S. institutions of higher education. This includes general guidance and a review of the small number of cases that have begun to define the area. The information does not apply to other countries, and disability service providers should be aware that state and local laws may present additional requirements and direction. It should be noted that there is a very small but growing number of cases involving requests by student for modifications and/or accommodations abroad. This article is not meant to take the place of careful discussion with key college personnel and legal counsel but to highlight some areas for consideration by disability service professionals.

Rulings cited here reflect the language of their time, - using words like handicap, and, perhaps, a limited understanding of academic adjustments and auxiliary aids

and services. The reader will also note that reasonable accommodation is a term reserved for situations where an employment relationship exists with the term academic adjustments or modification used in all other situations. This is in keeping with the language used in the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973. Within some of the direct quotations provided, the term, reasonable accommodations, is used to cover both academic and employment situations because the term has taken on an informal, generic use.

About Experiential Education

Experiential education may be defined as a "philosophy and methodology in which educators purposefully engage with learners in direct experience and focused reflection in order to increase knowledge, develop skills, and clarify values" (Association for Experiential Education [AEE], 2004, What is EE section, para. 2). In the American educational system, Dewey's work is considered to be the root of experiential education. Dewey (1938) was concerned that the "traditional" educational system devalued experience in favor of deductive, abstracted, and dualistic thinking. Along with making learning more enjoyable, he found experience to be critical to the formation of knowledge that could be transferred to other situations.

In practice, experiential education is an umbrella term that links a diverse array of learning activities serving widely divergent purposes. For example, the National Society for Experiential Education (NSEE, 2004) includes internships, service learning, cross-cultural education, School-To-Work, cooperative education, field study, leadership development, and active learning under this general heading. Other organizations, such as the AEE (AEE, 2004), include outdoor/adventure education. Disability service providers must be aware of the types of experiential education available on their campuses and enter into the dialogue regarding access for students with disabilities in these programs.

Most colleges and universities provide some type of career-related experiential education. Pettit (1998) reports that 250,000 students participate in co-op programs each year. More than 80% of the top 100 companies in the Fortune 500 employ students through college co-op programs (National Commission for Cooperative Education, 2003). The NACE added experiential education to their survey instrument in 1999 and surveyed 1,717 employer members. Of the 365 employers who did offer experiential education, 58.1 percent had cooperative education, 87.7% offered internships, and 52.1% had summer employment programs. Slightly more than 30%, or 110 employers, offered all three types of programs (Nagel & Collins, 1999, p. 39). In their 2004 survey, NACE found that employers rated internship programs as the most effective recruiting method they use for hiring new college graduates (NACE, 2004).

Students with Disabilities in Experiential Education

Students with disabilities encounter reduced access to and participation in experiential education (Briel & Getzel, 2001; Conyers & Szymanski, 1998; Hitchings et al., 2001). College personnel that oversee various aspects of experiential education are often unfamiliar with access-related issues and/or the concerns of students with disabilities (Burgstahler, 2001; Friehe, Aune, & Leuenberger, 1996; Getzel et al., 2000). Therefore, students with disabilities lose out on the traditional advantages attributed to experiential education, such as improved academic performance, higher rates of retention, and career exploration (Cantor, 1995; Carter & Franta, 1994; Knouse, Tanner, & Harris, 1999; Rolston & Herrera, 2000) as well as the opportunities to increase their disability-related knowledge around such key issues as disclosure of a disability and job accommodations (Friehe et al., 1996).

Students with disabilities are less likely than nondisabled students to persist and complete a postsecondary education and have a harder time finding employment after graduation. Yet, students who graduate from a baccalaureate program *and* find work have similar outcomes as their nondisabled peers in terms of salaries, degree of relatedness of job to degree, and rate of enrollment in graduate school within one year after earning their degree (Horn & Berktold, 1999).

The Institution's Fundamental Obligations

The 5th and 14th Amendments to the U.S. Constitution require states to provide equal protection to persons within their jurisdictions and due process any time state action could adversely affect life, liberty, or property. However, these statutes do not provide specific protections to persons with disabilities (Latham, 1995; Thomas, 2000). In 1973, Congress enacted Section 504 of the Rehabilitation Act (Section 504), which prohibits discrimination on the basis of disability by programs receiving federal financial assistance (e.g., student financial aid) and therefore applies to most institutions of higher education, both public and private. Its provisions include students, staff, faculty, and events and programs provided to the public (Rothstein, 2000). Section 504's statutory language is not well defined and the details regarding a school's requirements under the statute were initially stated in its implementing regulations and subsequently clarified in case law on the issues.

The ADA, passed in 1990, applies to a broader scope of society and comprehensively includes private employers and private providers of public accommodations, such as private colleges and universities, requiring they comply with its antidiscrimination mandates (ADA). The ADA was derived from the body of administrative and judicial history regarding Section 504 and includes significantly more detailed statutory language. The ADA has also been interpreted in subsequent case law and agency regulations. Historically, Section 504 and the ADA were designed to be interpreted consistently in most circumstances (*Guckenberger v. Boston University,* 1997).

Structure of the Statutes

The ADA consists of five major sections, three of which impact colleges and universities (see Table 1). Title I of the ADA apply to employers with 15 or more employees and would include a university's staff and faculty.[1] Title II applies to state and local government programs, including public universities, colleges, and community and technical colleges. Title III applies to private providers of public accommodations, and specifically includes undergraduate or postgraduate private schools or other places of education. The provisions of Titles II and III are mutually exclusive, "but taken together encompass nearly every public and private entity in the country" (*Bowden v. Redwood Institute for Designed Education, Inc.*, U.S. Dist. LEXIS 2881, *7 (N.D. Cal. Mar. 9, 1999)). In sum, federal law prohibits private and public higher education institutions from discriminating against students with disabilities.

There is a great deal of overlapping in coverage by Section 504 and the ADA. As a result, these laws are often "read in sync" (*Guckenberger v. Boston University*, 1997, 974 F.Supp. 106, 133 (D. Mass. 1997)) and considered "applicable and interchangeable" (*Stern v. University of Osteopathic Medical and Health Sciences*, 220 F.3d 906, 908 (8th Cir. 2000)). For example, a private college would be subject to Title III of the ADA and Section 504 of the Rehabilitation Act for student issues and programs provided to the public. For employment issues, the private college would be subject to both Title I of the ADA and Sections 503 and 504. A public college or public university is subject to Sections 503 and 504 and Title I and II of the ADA for employment issues. The public institution is further subject to Section 504 and Title II of the ADA in its relations with its students. In cooperative education (and in work study, which is mentioned briefly in this paper), the employer typically recognizes the student as an employee (National Commission for Cooperative Education, 2003) and, therefore, the employer's responsibility under Title I is included in this discussion.

While this paper focuses on concerns around issues related to disability, an initial question might be, is an intern or Co-Op student an employee? "Generally speaking, the various employment laws do not use the term 'intern,' nor do they provide a detailed definition of the term 'employee'" (Kaplan, 2002, p. 6). The U.S. Fair Labor Standards Act (FLSA) notes that "trainees or students may also be employees, depending on the circumstances of their activities for the employer," including the degree of control the employer has over the student's work, duration of the relationship, method of payment and benefits, etc. (U.S. Department of Labor, 2004, Typical Problems section, para. 1). Kaplan (2003) notes that "whether the intern is considered a temporary employee, trainee, or student in a school-sponsored internship program, the ADA requirements would be applicable" (p. 7).

Both Section 504 and the ADA define individuals with disabilities as those with "physical or mental impairments which substantially limit one or more … major life activities, [those with] a record of such an impairment, or [those who are] regarded as having such an impairment." (29 U.S.C. § 705(20) (B); 42 U.S.C. § 12102(2)). Major life activities are defined to include "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working" (34 C.F.R. § 104.3(j)(2)(ii). It is important to note that only students who are otherwise qualified and able to meet either the academic or technical requirements for admission and programmatic participation are protected by the statutes (Rothstein, 2000).

Nondiscrimination

The ADA defines discrimination to include (a) the use of criteria that unnecessarily screen out or tend to screen out individuals with disabilities from the use and enjoyment of goods and services; (b) the failure to make non-fundamental reasonable modifications of policies, practices and procedures when the modification is necessary to accommodate an individual with a disability; and (c) the failure to take necessary steps "to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals" (*Guckenberger v. Boston University*, 974 F.Supp. 106, 134 (D. Mass. 1997)).

Within employment arrangements, the disability discrimination laws forbid an employer to discriminate against a qualified individual with a disability. A qualified individual includes an individual with a disability who, with or without reasonable accommodation, can perform the essential function of the relevant employment position. An employer discriminates based on dis-

Table 1

Overview of Title V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act

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The Rehabilitation Act of 1973: First passed in 1973 and amended in 1993 and 1998, it has the primary goal of fostering economic independence for people with disabilities in part by providing funding and enabling greater access to government information and services for people with disabilities.
Title V sets forth several important assurances and protections:

- Section 501 - requires affirmative action in Federal employment of persons with disabilities
- Section 502 - provides for the removal of barriers to create a more accessible infrastructure (Access Board).
- Section 503 - covers Federal government contractors and subcontractors of $10,000 or more to include affirmative action efforts for employment of people with disabilities
- Section 504 - covers any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.
- Section 505 - provides for remedies and attorney's fees.
- Section 506 - covers responsibilities of the Secretary of Education to provide financial assistance to any public or non-profit organization which would be used for removing architectural, transportation or communication barriers.
- Section 507 - provides for an Interagency Disability Coordinating Council for implementation and monitoring of Title V.
- Section 508 - requires electronic and information technology accessibility.

The Americans with Disabilities Act: Created in 1990 and amended several times, the act provides broad civil rights protections parallel to those previously established by the Federal government for women and racial, ethnic and religious minorities.

- Title I – covers employer obligations. As of 1994, Title I covers obligations of employers with 15 or more employees.
- Title II Part A – applies to state and local governments.
- Title II Part B – applies to public transportation
- Title III – covers public accommodations, commercial facilities, private entities that offer examinations or courses related to licensing or certification, and transportation provided to the public by private entities
- Title IV – establishes a national telecommunications relay service and mandates that public service announcements provided or funded in whole or in part by any federal agency be closed captioned.
- Title V – miscellaneous provisions applying to all titles of the ADA, for example, requires several federal agencies to develop technical assistance plans for covered entities.

Note Information on the Rehabilitation Act of 1973 condensed from The Rehabilitation Act Amendments of 1973 available at www.access-board.gov/enforcement/Rehab-Act-test/intro.htm. Information on the Americans with Disabilities Act from the *Structure of the ADA* available at www.adata.org/whatsada-structure.html.

ability when it fails to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee, unless the employer can demonstrate an undue burden on the operation of its business (Americans with Disabilities Act of 1990; U.S. Airways, Inc. v. Barnett, 2002). According to the Equal Employment Opportunity Commission (EEOC) guidelines, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy employment opportunities.

Equal Opportunity

Section 504 and the ADA are designed to ensure equal opportunity, not merely equal treatment. Thus, programs must provide academic modifications to make opportunities accessible for students with disabilities. Further, modifications are required even though they may result in financial or administrative costs and must be provided in integrated settings (Rothstein, 2000; 42 U.S.C. 12112 (1992); 42 U.S.C. 12182 (1992)). While the ADA and Section 504 are not designed to fundamentally alter or bankrupt institutions of higher education cost has not been found to be a compelling argument for denial of a requested academic adjustment or modification (Jarrow, 1997).

Public institutions of higher education assume a particularly high standard in providing academic adjustments and auxiliary aids and services to students with disabilities. One of the responsibilities of public colleges and universities is to maintain the widest possible access to the benefits of a college education (Kellogg Commission, 2000). In addition, the expense of a particular adjustment or modification is compared to the "total available resources" and, for public institutions, this is essentially the entire resources of the state (Jarrow, 1997, Undue Financial or Administrative Burden section, para. 2).

The ADA forbids schools from denying a good, service, facility, privilege, advantage or accommodation based solely on a student's disability. Further, schools may not provide a student with a disability with participation opportunities of unequal benefit. A key to disability discrimination policy is that the equal opportunities be provided in an integrated setting (Rothstein, 2000).

Self-Disclosure

Schools have no independent duty to identify a student with a disability. It is the student's obligation to notify the institution of his or her disability and provide documented information to the institution to assess the validity of the disability assertion. It is also the student's obligation to request any academic modification or auxiliary aid necessary for him or her to receive the benefits of the educational institution (U.S. Office of Civil Rights, Letter of Findings University of Montevallo, 1999). The disclosure requirement extends to a student's experiential education placement. That is, the student must request any accommodation necessary to complete the experiential education placement. (U.S. Office of Civil Rights, Letter of Findings, University of California, Los Angeles, 1996). Disability service providers can be especially helpful by educating students about their rights and responsibilities regarding disclosure and the availability of academic adjustments needed for program participation and reasonable accommodations required in the work setting.

The school may request specific, detailed information from a student requesting modifications to an academic program and "may impose certain requirements regarding the nature of the evidence demonstrating the disability." Schools must take care not to employ unnecessarily burdensome proof-of-disability criteria that precludes or discourages students with disabilities from establishing that they are entitled to reasonable modifications to an academic program (*Abdo v. University of Vermont*, 263 F.Supp.2d 772, 777 (D. Vt. 2003)). Likewise, students in employment arrangements may be required to provide information to employers regarding their request for reasonable accommodations. Information requested by schools and/or employers must be tailored to only that information which is directly necessary to substantiate the student's request.

Maintaining Educational Standards

Under the ADA and Section 504, schools are not required to fundamentally alter educational programs or lower educational standards, nor provide students with modifications that are unduly burdensome (*Darian v. University of Massachusetts Boston*, 1997; *McGregor v. Louisiana State University*, 1993; *School Board of Nassau County v. Arline*, 1987; *Southeastern Community College v. Davis*, 1979; U.S. Department of Education, Office for Civil Rights Letter of Findings Audrey Cohen College, 1998).

Often cases addressing the fundamental requirements of an academic program arise in the medical field and address a student's clinical requirements. For example, courts have found that institutions are not required to alter clinical requirements to accommodate students with a disability where the accommodations would fundamentally alter the program. Thus, a university did not violate Section 504 when it denied a deaf nursing student's application for admission the university believed her disability made it impossible for her to participate safely in

the clinical training program (*Southeastern Community College v. Davis*, 1979, 442 U.S. at 398). The school was not required to waive the clinical requirements as a reasonable modification for the deaf student.

Traditionally, courts have granted substantial deference to a school's contention that a requested modification would fundamentally alter the educational program (see, generally, *Maczaczyj v. New York*, 1997; *Southeastern Community College v. Davis*, 1979). While granting deference, courts "must ensure that educational institutions are not 'disguising discriminatory requirements' as academic decisions" (*Wong v. Regents of the University of California*, 192 F.3d. 897, 817-18 (9th Cir. 1999)). The school is required to make an individualized inquiry into the nature of the student's disability and the requested accommodations (*School Board of Nassau County v. Arline*, 1987). Once the student has made the school aware of his or her disability, the school must (a) make itself aware of the nature of the student's disability; (b) explore alternatives for accommodating the student; and (c) exercise professional judgment in deciding whether the modifications under consideration would give the student the opportunity to complete the program without fundamentally or substantially modifying the school's standards (*School Board of Nassau County v. Arline*, 1987, quoting *Wynne v. Tufts University School of Medicine*, 1991; see also U.S. Department of Education, Office for Civil Rights Letter of Findings University of Montevallo, 1999). The school must present undisputed facts showing that the relevant officials considered alternative means, their feasibility, and the cost and effect on the academic program (*Wynne v. Tufts University School of Medicine*, 1991, 932 F.2d at 26). If a school rejects a student's proposed modification, it must be prepared to explain the grounds for its rejection in substantial detail.

> If the institution submits undisputed facts demonstrating that the relevant officials within the institution considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or requiring substantial program alteration, … the institution [has] met its duty of seeking reasonable accommodation [for the student with a disability]. (Wilhelm, 2003, p. 217, 235).

Use of an Interactive Process

In the employment context, the ADA requires employers to engage in an interactive process to determine appropriate, reasonable accommodations for an individual with a disability. The interactive process is designed to encourage cooperative problem solving based on open and individualized exchange in the workplace (*Barnett v. U.S. Air, Inc.,* 2000*,* 535 U.S. 391, 2000; *Criado v. IBM*, 1998). The EEOC views the interactive process as an obligation for employers, it has noted that the appropriate accommodation is best determined "through a flexible, interactive process that involves both the employer and the [employee] with a disability" (29 C.F.R. pt. 1630, App. § 1630.9, 2002). Once an employee has requested an accommodation, the employer must engage in a dialogue with the employee to determine the most appropriate accommodation (*Barnett v. U.S. Air, Inc.,* 2000*)*. A school employing a student in a work study position or a student in a co-op job must engage in an interactive process regarding any accommodations requested in the employment relationship.

Questions Specifically Addressing Experiential Education

Most colleges and universities offer experiential education components. However, there have been very few legal cases that help clarify the practical steps of providing access, academic adjustments or reasonable accommodations in settings where learning and employment intersect. Qualified students with disabilities should not be excluded from experiential education opportunities that are available to other students. The school should offer comparable experiential education opportunities at locations that can accommodate students with disabilities. There should be a reasonable range of opportunities offered to students with disabilities. Schools are not required to make each and every opportunity available to every student. However, "when viewed in its entirety" (34 C.F.R. § 104.22), a program or activity must be accessible to all students. The student with a disability should, however, be afforded a reasonable choice and opportunity to participate in experiential education programs (Buhai, 1999).

The regulations implementing Section 504 state that an educational institution, based on disability, may not exclude an individual with a disability from any course, course of study or other part of its education programming or activities or prohibit the individual from participating in any activity associated with the school. If a school considers participation by students in programs or activities not operated wholly by the school part of or equivalent to an educational program operated by the school, the school must assure itself that the program or activity provides an equal opportunity for qualified individuals with a disability. And, the regulations prohibit schools from discriminating in occupational training programs (34 C.F.R § 104.43).

The regulations further state that any school providing placement services to its students cannot discriminate in the provision of those services (34 C.F.R § 104.47). If a school assists "any agency, organization or person in providing employment opportunities to any of its students," the school must assure itself that the employment opportunities conform to the provisions of discrimination laws addressing employment (34 C.F.R § 104.46).

Must a School Excuse a Student from Required Experiential Learning Placements?

As noted, courts have generally granted educational institutions substantial deference in academic determinations. The United States Supreme Court identified a university's four essential freedoms as (a) determining for itself on academic grounds who may teach; (b) what may be taught; (c) how it may be taught; and (d) who may be permitted to study at the institution (*Regents of the University of Michigan v. Ewing,* 1985; *Sweezy v. New Hampshire*, 1957). A school is not required to lower or substantially alter its academic requirements to accommodate a student with a disability.

Generally, courts have found that schools are not required to accommodate a student with a disability by waiving an experiential learning requirement that is considered fundamental to the academic program. (*Maczaczyj v. New York*, 1997; *Doe v. Washington University*, 1991; U.S. Department of Education, Office of Civil Rights Letter of Findings Audrey Cohen College, 1998). In a case where a student suffered from severe panic attacks and could not attend a required residency program, the school was not required to modify its program and waive the residency program to accommodate the student. The school offered to allow the student to attend the program under modified circumstances; however, the student insisted that he could only attend the program by telephone. The school demonstrated that it had considered the student's requested modification, and determined for pedagogical reasons that telephonic attendance would not meet the residency program's educational objectives. The court found that the school did not violate disability discrimination laws by insisting that the student attend the residency program in person, holding that "[i]t is the severe nature of the [student's] handicap rather than the [school's] failure to offer reasonable accommodation that is limiting [the student's] ability to achieve his educational objectives" (*Maczaczyj v. New York*, 856 F.Supp. 403 (W.D.N.Y. 1997)).

Additionally, a school is not required to accommodate a student with a disability when the requested modifications could pose a danger to others (*Breece v. Alliance Tractor-Trailer Training II, Inc.,* 1993; *Doe v. Washington University*, 1991; *Southeastern Community College v. Davis*, 1979). This situation arises most often in health-related fields. For example, in 1979, the United States Supreme Court found a nursing program did not discriminate when it denied admission to a deaf student after concluding the student could not complete her clinical requirements without endangering patients (*Southeastern Community College v. Davis*, 1979).[2] Similarly, in 1991, a dental school found that an HIV-positive student could not perform invasive procedures in his clinical work due to the potential for transmitting the disease to patients and could not receive a degree without performing the procedures. The court found no discrimination in the school's refusal to allow the student to complete his clinical requirements based on the danger to patients (*Doe v. Washington University,* 1991, 780 F. Supp. at 634). The court noted that nothing in the language or history of disability discrimination laws "indicates an intention to limit the ability of an educational institution from requiring reasonable physical qualifications for participation in a clinical training program" (*Doe* citing *Southeastern Community College v. Davis*, 442 U.S. 397, 414 (1979)).

Must an Institution Provide Placement Assistance?

The federal regulations state that an institution that provides placement services to its students "shall provide these services without discrimination on the basis of handicap." Further, an educational institution may not counsel students with a disability toward "more restrictive career objectives" than nondisabled students (34 C.F.R § 104.47(b)). This regulation seemingly applies to placement assistance in experiential learning positions as well as to post graduation employment. A university must assist students with disabilities in securing positions to the same extent it assists nondisabled students.

When an institution does not provide assistance to students in their pursuit of experiential learning opportunities, assistance for a student with a disability could be requested as a program modification, provided the assistance would not fundamentally alter or substantially modify the institution's educational program. If locating an internship is not an essential activity of participation, college personnel could offer assistance to overcome a barrier created by a disability. For example, a staff member might place a call for a student who had difficulty communicating by telephone.

Can Institutions Provide Separate Experiential Education Programs for Students with Disabilities?

The ADA includes a general prohibition against activities by schools that may result in a "denial of participation," "participation of unequal benefit," or the provi-

sion of a "separate benefit" to individuals with a disability. Additionally, schools must provide students with "integrated settings," the "opportunity to participate," and "administrative methods" that do not discriminate or have a discriminatory effect (42 U.S.C. 12182). The school must justify creating an entirely separate program rather than modifying an existing one (Edwards, 1994). Even where schools have developed special programs for students with disabilities, qualified individuals must be given the option to participate in regular programs (*Coleman v. Zatechhka*, 1993).

Disability discrimination policy embraces the ideal of integrating students with disabilities within the existing educational framework, recognizing that "separate but equal" is not equal and can stigmatize students. Discrimination policy seeks to prohibit discrimination based not only on "affirmative animus" but also based on thoughtlessness, apathy and stereotypes (*Alexander v. Choate,* 469 U.S. 287, 295-97 (1985)). To the extent appropriate, school programming should be provided in the most integrated setting possible (Rothstein, 2000). It generally would not be appropriate under the ADA or Section 504 to require students with disabilities to be segregated in their experiential learning opportunities.

Who Is Responsible for Modifications and/or Accommodations in Experiential Education Placements?

With respect to activities such as work study, the regulations are clear that if an educational institution employs a student, it must meet the standards set forth in Section 504 and the ADA (34 C.F.R. § 104.46(c)). An employer may not discriminate against a qualified individual with a disability who could, with reasonable accommodation, perform the essential functions of the position (*U.S. Airways, Inc. v. Barnett*, 2002; 42 U.S.C. § 12101, *et seq.* (1994)). For students in work-study placements, the school must provide reasonable accommodations to a qualified individual so long as the requested accommodations do not constitute an undue hardship on the operation of the school (*U.S. Airways, Inc. v. Barnett*, 2002; 42 U.S.C. § 12101, *et seq.* (1994)).

In terms of internships and Co-Op, the regulations implementing Section 504 specifically require that educational institutions that assist "any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate" the disability discrimination laws governing employers (C.F.R. § 104.46(b)). There is no case law defining what measures an educational institution must undertake to "assure" itself that the employer does not discriminate based on disability. Similarly, there is no case law regarding who must bear the expense of providing reasonable accommodations for an internship student with a disability. *Disability Compliance for Higher Education* ("Attorneys create accessibility guidelines to assure internship opportunities," 1999) reported that the University of Minnesota provided the following guidance to its career advisors and potential internship employers summarized below:

- In a non-credit, non-paid internship, the internship site is responsible for accommodations if the university acts only as a liaison for a volunteer arrangement;
- In a non-credit, paid internship, the employer is responsible for any accommodations based on the employment relationship;
- In a for-credit internship, the university is responsible for any accommodations because the student's primary role is that of a learner.

Commentators have noted that responsibility for accommodations in internships may depend on whether the internship is part of the academic curriculum and required to graduate. When that is the case, the student may be considered to be completing required coursework in an "outside classroom" and the burden for accommodations therefore falls on the school. Alternatively, a court might consider the accommodations a joint obligation shared by the school and the employer. A court might consider the type of work performed by the intern, the benefit to the employer and the school's involvement in the internship opportunity. It is "safe to say that 10 different judges may rule 10 different ways" ("Administrators debate: Who should pay for intern's accommodations?" 1998). These are all elements a school should consider when placing the internship student.

Two additional points should be considered. "Consideration should be given if one entity (most likely, the college) is set up to provide the relevant modification/accommodation more efficiently. That entity should most likely handle the logistics. This does not need to mean that the entity must pay for them but may bill the other entity for the full or a share of the cost." And, "for the college, the time, effort, and good will spent when negotiating who will provide or pay may not be worth the overall cost or risk. Indeed, many attorneys would name both entities in any lawsuit with costs that would eclipse the expense of modifications or accommodations."

A literal reading of the regulations suggests that if a student requests an accommodation that the employer refuses in violation of disability discrimination laws, the educational institution should no longer assist the em-

ployer in providing educational opportunities for students. The University of Minnesota recommends that the university review the situation to determine who is responsible for accommodations and document the efforts to get the responsible party to provide the accommodations ("Attorneys create accessibility guidelines to assure internship opportunities," 1999). However, this approach has implications for relationships between employers and educational institutions seeking internship placements for students. That is, institutions, in a quandary, may feel pressured to provide the accommodation and maintain the relationship with the employer. It is unclear under the current law, what a school's obligations are in this situation.

Commentators have noted that the "burden should not only rest with the employer … [t]he school has to bear some of the responsibility" arguing that the school will be held accountable if the student with a disability was not offered the same opportunity as non-disabled students. Others have taken the position that "schools provide reasonable accommodation on campus and employers provide reasonable accommodations at the workplace" ("Administrators debate: Who should pay for intern's accommodations?" 1998). There is understandable concern that this type of attitude may have a chilling effect on companies' willingness to hire students with disabilities for internship positions.

Georgiana Jungels, a professor at the State University of New York, recommends that a contract be drafted with the employer, school and student providing input regarding the position and any accommodations that might be necessary. The contract should also address who is responsible for the cost of any accommodations ("Questions to ask," 1998). This is a sensible suggestion and one that should be a joint effort between the career placement and disability services personnel at a university. Open communication between the student, school and employer are crucial for successful internship/externship placements for students who require accommodations for a disability.

Conclusion

For disability service providers, the legal considerations related to career-focused experiential education point to several key issues: staying informed about experiential education on campus, addressing policy development around access to experiential education, and counseling individual students.

As the number of students with disabilities on college campuses grows, ideally, more students will be participating in internships and Co-Op, increasing its importance in the day-to-day work of the disability service office. Disability service providers must maintain an awareness of the many forms of experiential education that are available or emerging on campus. Developing a working relationship with faculty members involved with internships and Co-Op as well as student development and career service offices creates two-way avenues of communication and ongoing professional development. This, in turn, creates a foundation for policy development.

It is important that institutions develop clear, well-reasoned, and written policies and procedures around access to career-based experiential education for students with disabilities. This must include a mechanism for students to negotiate reasonable accommodations and/or academic modifications in sites outside the classroom, an understanding of confidentiality around issues of disability, a method to decide who will take financial responsibility for those services that have a direct cost, and a system for the institution to stay informed about the adequacy of service provision.

Individual students will need additional counseling to include information on academic adjustments, job accommodations, and the gray area in between. Ways to assist students in gathering any documentation they may need and helping to consider the overall timetable of arranging a semester's internship or Co-Op should be included in current scheduling activities and advisement. Students with non-apparent disabilities are often concerned over whether to disclose a disability and what to disclose at work sites they might potentially approach for employment after graduation. Helping these students weigh the options is an important activity.

Considering the needs of students with disabilities around employment, disability service providers must forge a strong relationship with the institution's career placement and student development offices so that students have full access to these institutional resources. While some student service departments are well versed in serving students with disabilities, others are not. Discussing access to the college's on-campus services is a common starting place and there several resources for this (see Zafft, Sezun, & Jordan, 2004).

Lastly, many students forgo internships or Co-Op because they are concerned that their disability-related benefits might be disrupted. Disability service providers must develop referrals to professional benefits counselors and other community resources students may need as they move in the direction of a new career.

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Endnotes

[1] This is an example where states may have additional requirements. For example, some states include employers with five or more employees under employment discrimination statutes..

[2] Modern technology may have changed the landscape as it relates to safety for individuals with a disability in medical clinical placements. However, concerns related to safety remain a valid defense for a school's refusal to accommodate a student with a disability.