

## How College Disability Services Differ from K-12 Special Education Services



Elizabeth Rae-O'Donnell

Students with disabilities are entitled to accommodations in school, whether it is K-12 (public) or post-secondary education. The nature and delivery of those services, however, differ greatly between K-12 and college.

### LAWS THAT IMPACT ALL STUDENTS:

#### IDEA

The Individuals with Disabilities Education Act (IDEA) is a federal law governing special education service delivery for students aged 3-21 or until high school graduation. An educational team develops the Individualized Education Plan (IEP) for each child to ensure that the student is successful in the K-12 system.

#### Section 504

Section 504 of the Rehabilitation Act of 1973 protects individuals from discrimination on the basis of their disability. Subpart D of the Act applies to K-12 schools and subpart E applies to post-secondary institutions. The K-12 educational team will develop a 504 plan when a student is in need of certain accommodations to either the physical space or the learning environment. If there is a need for special education, the student will be given an IEP. Subpart E of the Rehabilitation Act indicates that post-secondary students must be given the opportunity to compete with their non-disabled peers.

#### ADA

The Americans with Disabilities Act of 1990 (ADA) is a federal law designed to provide equal opportunity for individuals with disabilities and protects these individuals from discrimination. In sum, the IDEA, §504 of the Rehabilitation Act and the ADA

are laws designed to ensure that students are successful in the K-12 system. The ADA and §504 of the Rehabilitation Act ensure equal access for college students.

### DIFFERING RESPONSIBILITIES:

#### Identification

**K-12:** At the K-12 level, the school is responsible for identifying students with disabilities, testing, and providing services.

**College:** Students must locate the office that provides services for students with disabilities, identify him or herself, request accommodations, and provide adequate documentation supporting the need for accommodation.

#### Services

**K-12:** Students may be assigned time to attend a resource room where a teacher who is specifically trained in working with students with disabilities provides instruction.

**College:** The student must make his/her own appointments at a learning center where services are usually the same for all students.

#### Communications

**K-12:** Students may have a plan that requires follow-up by school staff to inform the parents of the student's academic performance, completion of homework, and testing.

**College:** A college may not, by law, contact the student's parents regarding his/her academic performance unless the student gives the college permission to do so. Parents must ask the student directly or the student may give the college permission to release such information with written documentation.

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## How College Disability Services Differ (cont.)

### Accommodations

**K-12:** It is the school's responsibility to provide for and arrange a formal IEP or 504 plan for the student to receive accommodations.

**College:** The student must request his/her accommodations. For testing accommodations, the student must provide the appropriate office (e.g. Academic Support Center) with the dates and times of his/her exams. Colleges are not responsible for knowing a student's schedule and providing accommodations without some form of instruction by the student.

### Instruction and Tests

**K-12:** Teachers may change the curriculum or assignments as outlined in the IEP or 504 plan.

**College:** Colleges must provide qualified individuals with a disability equal access to their programs and activities. Access could include academic adjustments, auxiliary aids, more time on tests, and services that do not constitute an undue burden or fundamental alteration of the program or activity. Post-secondary institutions, however, do not need

to provide academic adjustments that would fundamentally alter the educational standards of the coursework or change the course requirements.

### **GOALS**

In the K-12 setting, accommodations and services are created to maximize a student's potential to ensure success. At the post-secondary level, accommodations are given to ensure equal access. In general, the burden of responsibility shifts from the school in the K-12 setting to the individual student in the college setting. College students must contact disability support services, prove eligibility for accommodations, and make their needs known. Accommodations do not apply retroactively and grades do not have to be changed for work completed before accommodation eligibility is established.

*Elizabeth Rae-O'Donnell*

*Elizabeth Rae-O'Donnell is an attorney in our Livonia office where she concentrates her practice on education law, municipal law and labor and employment law. She may be reached at (734) 261-2400 or brae@cmda-law.com.*

## Education and Title IX

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*Patrick R. Sturdy*

the facilities of the college or at a class or training program sponsored by the college at another location.

The Office for Civil Rights- U.S. Department of Education (OCR) has determined that colleges can be found in violation of Title IX if employees, in the context of carrying out their day-to-day job responsibilities in teaching, counseling, supervising, and advising students, deny or limit a student's ability to participate in or benefit from the college's program on the basis of gender.

Under Title IX regulations, colleges are responsible for discrimination/harassment whether or not it knew or should

have known about the discrimination/harassment, because the discrimination/harassment occurred as part of the college's undertaking to provide nondiscriminatory aid, benefits, and services to students. This is different than discrimination/harassment in the employment context, because in the employment context, a college's responsibilities are not triggered until a college knew or should have known about the discrimination/harassment.

Discrimination/harassment can be either gender- or sex-based in nature. Both forms of discrimination/harassment fall within the protections afforded by Title IX. Gender-based discrimination/harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature. It is a form of sex discrimination to which the college must respond if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program.

Sex-based discrimination/harassment is unwelcome conduct of a sexual nature sufficiently severe, persistent, or pervasive

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## Education and Title IX (cont.)

to limit a student's ability to participate in or benefit from the education program or creates a hostile or abusive educational environment. Conduct is unwelcome if the student did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct, is included within this definition. Sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment. Hostile environment harassment is evaluated from a subjective and objective viewpoint, and the totality of the circumstances are considered in determining the severity and pervasiveness of the harassment.

Sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a teacher's consoling hug for a student with a skinned knee will not be considered sexual harassment. Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

Colleges are required to adopt policies designed to address various circumstances under which both sexual and non-sexual harassment/discrimination can occur. The policies must contain guidelines for compliance with the requirements imposed under State and Federal discrimination law, as well as Title IX. The circumstances addressed include the following: (1) employee-on-employee harassment/discrimination; (2) employee-on-student harassment/discrimination; (3) student-on-student harassment/discrimination; and (4) third-party-on-student harassment/discrimination.

It is not necessary to have separate policies for each circumstance or kind of harassment/discrimination so long as the

single policy comports with Title IX requirements. Also, while gender-based harassment/discrimination differs from sexual-based discrimination/harassment, the OCR has explained that the same standards usually apply, and a policy that contains provisions for sexual-based discrimination/harassment will also meet the requirement for gender-based discrimination/harassment. The OCR guidance has identified a number of elements that must be addressed in a policy for it to be considered Title IX compliance.

In addition to the adoption of a policy, colleges are required to provide training to those employees likely to witness or receive reports of sexual violence, including professors, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors. There is no minimum number of hours of training required, however, it should be provided annually. The training should be accompanied by an annual employee survey seeking to determine the employee's knowledge of a college's obligations under Title IX. This training can be accomplished by and under the direction of the Title IX Coordinator.

Likewise, colleges need to provide training for its students. The training should encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a hostile environment before reporting the incident. This training can incorporate preventive education programs to the campus community as a whole, which includes reviewing sexual assault policies and conducting climate surveys to learn more about the prevalence of sexual violence at the college.

The Michigan Community College Risk Management Authority (MCCRMA), sponsored in part by CMDA, will be providing training regarding the requirements of Title IX on December 2, 2014 at Oakland Community College- Auburn Hills Campus. If you are interested in attending the training, please contact Patrick Sturdy at (734) 261-2400 or [psturdy@cnda-law.com](mailto:psturdy@cnda-law.com) for additional details.

*Patrick R. Sturdy*

*Patrick R. Sturdy is a partner in our Livonia office where he concentrates his practice on education law, employment and labor law, corporate and business law, and intellectual property. He may be reached at (734) 261-2400 or [psturdy@cnda-law.com](mailto:psturdy@cnda-law.com).*

### MCCRMA TITLE IX TRAINING

Tuesday, December 2, 2014 • Oakland Community College- Auburn Hills Campus

*Co-Sponsored by Cummings, McClorey, Davis & Acho, P.L.C.*

For further details, please contact Patrick R. Sturdy at (734) 261-2400 or [psturdy@cnda-law.com](mailto:psturdy@cnda-law.com).

## Office Locations

### MICHIGAN

#### Livonia

33900 Schoolcraft Road  
Livonia, MI 48150  
Telephone: 734.261.2400  
Facsimile: 734.261.4510

#### Clinton Township

19176 Hall Road  
Suite 220  
Clinton Township, MI 48038  
Telephone: 586.228.5600  
Facsimile: 586.228.5601

#### Traverse City

400 West Front Street  
Suite 200  
Traverse City, MI 49684  
Telephone: 231.922.1888  
Facsimile: 231.922.9888

#### Grand Rapids

2851 Charlevoix Drive, S.E.  
Suite 327  
Grand Rapids, MI 49546  
Telephone: 616.975.7470  
Facsimile: 616.975.7471

### CALIFORNIA

#### Riverside

3801 University Avenue  
Suite 560  
Riverside, CA 92501  
Telephone: 951.276.4420  
Facsimile: 951.276.4405

### MISSOURI

#### Kansas City

1600 Baltimore Avenue  
Suite 200B  
Kansas City, MO 64108  
Telephone: 816.842.1880  
Facsimile: 816.221.0353

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#### CMDA: On Law

33900 Schoolcraft Road  
Livonia, Michigan 48150  
(734) 261-2400  
E-Mail: [jsherman@cmda-law.com](mailto:jsherman@cmda-law.com)



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