

Comments on Potential Updates to the Section 504 Regulations Related to Higher Education for Students with Intellectual Disability

The undersigned organizations are pleased to submit these comments to the US Department of Education, Office for Civil Rights, in response to its request for input regarding potential amendments to 34 C.F.R. pt. 104, implementing Section 504 of the Rehabilitation Act of 1973. While some of the undersigned organizations have submitted comprehensive comments directly or in collaboration with other organizations, the comments below specifically address students with intellectual disability (ID) in higher education. Each of our organizations promotes opportunities for students with ID to participate meaningfully in inclusive higher education.

Background

Postsecondary education opportunities for students with ID began to be developed in the United States in the 1980's with a handful of programs, partially as a result of increased opportunities for students with disabilities in K-12 education. An increase in inclusive K-12 educational practices led students and their families to want the same options that their peers had for education after high school. A significant increase in opportunities resulted from the passage of the Higher Education Opportunity Act of 2008 (HEOA), which for the first time included a provision to allow students with ID enrolled in Comprehensive Transition and Postsecondary Program (CTPs) to access federal financial aid (grants and work-study jobs). The HEOA defined a CTP as "a degree, certificate, or nondegree program" that meets certain criteria. The HEOA authorized funding for model Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSIDs) and a National Coordinating Center to provide resources, technical assistance, and evaluation of the TPSIDs. The HEOA also required the national coordinating center, which was awarded to Think College at the Institute for Community Inclusion, University of Massachusetts Boston, to create an Accreditation Workgroup to develop model program accreditation standards. The workgroup's 2021 report¹ to Congress and the Secretary² of Education contains these standards and other recommendations.

¹ See: *Report on Model Accreditation Standards for Higher Education Programs for Students with Intellectual Disability: Progress on the Path to Education, Employment, and Community Living* at <https://thinkcollege.net/resource/program-accreditation/report-on-model-accreditation-standards-for-higher-education-programs>

The changes to the Higher Education Act, along with student and parent advocacy, and appropriations starting in 2010 for TPSIDs and the NCC, have led to a significant growth in programs across the country, with over 300 programs today. This number includes over 130 approved CTPs that have submitted to review by the DOE to determine their eligibility to offer access to federal student aid to students with ID in their programs. See <https://thinkcollege.net> for more information about inclusive higher education.

As the opportunities for students with ID continue to grow within institutions of higher education (IHEs) across the US, it is important that regulations related to the protection of these students' rights under Section 504 of the Rehabilitation Act keep pace, and offer clear guidance related to assuring these students are not discriminated against as a result of their disability.

- **Recommendation: Clarify that students with intellectual disability in higher education, including students in inclusive postsecondary programs, are "qualified" under Section 504 and can avail themselves of the full panoply of rights under Section 504.**
- Rationale: The definition of "qualified" should be clarified to address the circumstances of students with intellectual disabilities. Students with an intellectual disability who have been admitted to a college program specifically designed for such students must be entitled to receive the same academic adjustments and auxiliary aids as all other students. As described above, CTPs are degree, certificate, or nondegree programs and students with ID in these programs typically do not receive a degree. While some of these students receive accommodations or services required by Section 504, others do not. The 504 regulations must be clarified so that IHEs understand that students with intellectual disability are otherwise qualified and eligible to receive aid, benefit, and services under Section 504 whether they are enrolled in CTPs or degree programs. For more information, please see the Association on Higher Education and Disability (AHEAD) document on this topic.³
- **Recommendation: Accommodations and communication support must be provided to students with intellectual and other disabilities, including in incidences related to Code of Conduct and Title IX violations, with enough time provided for the student to request the support or accommodation(s).**

² See *AHEAD White Paper on Students with Intellectual Disabilities and Campus Disability Service* at <https://www.ahead.org/professional-resources/white-papers-guiding-documents/intellectual-disabilities-white-paper>.

- **Rationale:**
During public input on the model accreditation program standards, the NCC Accreditation Workgroup found that “IPSE programs and families report students with ID do not always understand the formal language of the written rules and need support when complaints are raised by and against them and if they are at risk of early exit.” (page 39). The following two related program standards are included on page 57 of the above-cited report.

STUDENT COMPLAINTS STANDARD 2:

The institution’s grievance procedures are understandable, provided to, and discussed with students in the program and their parents.

Guidance

An accessible (i.e., written at an accessible reading level, uses graphics, explains abstract concepts, etc.) version of the code of conduct, including Title IX requirements, is provided to students and parents or other supporters, if applicable. Program staff review the code of conduct with students, related to both academic rights and responsibilities and expected student behavior in various contexts.

STUDENT COMPLAINTS STANDARD 3:

Support is provided to students who have complaints lodged against them as well as students who seek to lodge a formal written complaint. Support is available throughout the grievance process and throughout any actions that result and if a student is at risk of being expelled or urged to exit the program.

Guidance

Support must be provided for a student when a complaint is filed against a student in the program, when a student files a complaint, or when a student is in danger of being suspended, expelled, or asked to exit a program prior to program completion. Students may request support from/involvement of their parents/designated supporters in complaint procedures. Reasonable accommodations must be provided, as applicable. All due process procedures that are established by the IHE for students involved in complaints must be followed for students in the program, with support as needed.

- **Recommendation: We concur with the principles outlined on pages 9 and 10 of the *AHEAD Comments on Potential Updates to the Section 504 Regulations* related to Conduct Code Violations as follows and believe that the 504 regulations should be updated to include clarification of these principles:**
- It is a violation of Section 504 to provide a student with a disability with less opportunity for due process than non-disabled students or to use noncompliance with the code of conduct...as a pretext for disability

discrimination.

- The duty to accommodate extends to due process proceedings. The accommodations provided during due process proceedings may be different or in addition to those provided in other settings and may require additional interactive communication with the student prior to the proceeding. Rules prohibiting the presence of parents or counsel for students in due process hearings may have to be waived in order to provide some students with an equally effective due process opportunity.
- It is a violation of Section 504 to impose greater sanctions for similar misconduct on a student with a disability than is imposed on non-disabled students. Moreover, disability should be taken into account in determining which type and duration of sanction should be imposed on a disabled student who has violated the code of conduct...
- **Recommendation: Clarify that refusal to consider admitting a student who has a legal guardian is a violation of 504.**
 - Rationale: Some programs for students with ID have admission requirements that do not allow students who have legal guardians to apply. A blanket refusal to consider admission for such students, who may otherwise qualify for admission, is discriminatory and a violation of their civil rights.

For additional information regarding these recommendations, please contact Stephanie Smith Lee, National Down Syndrome Congress Senior Policy Advisor, at Stephanie@ndscenter.org.

Respectfully submitted by:

Access Ready
American Association of People with Disabilities
Association of People Supporting Employment First (APSE)
Association of University Centers on Disabilities
Autism Society of America
Bazelon Center for Mental Health Law
Council of Parent Attorneys and Advocates
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
RespectAbility
TASH
The Advocacy Institute

Think College at the Institute for Community Inclusion