

## Chapter 4

# Accessibility and Students With Autism Spectrum Disorder: Legal Perspectives in the United States

**Kirsten Brown**

*University of Wisconsin – Madison, USA*

### ABSTRACT

*This chapter contributes to important conversations about accessibility in higher education by examining legal issues that shape experiences of students with autism spectrum disorder (ASD). The chapter begins by outlining the relationship between reasonable accommodations and academic success. Then, it provides an overview of ASD in relation to postsecondary education. A substantive portion of the chapter delineates current legal topics, including federal law, case law, and Office of Civil Rights (OCR) letters. Functional limitations associated with ASD are social or sensory in nature. However, legal precedent in the United States defines the major life activity of learning in a manner that does not usually include these components, thereby limiting access to sensory and social accommodations. The chapter concludes by discussing Title IX and students with ASD that experience sexual assault, the value of neurodiversity, and future implications for accessibility as the number of students with ASD in postsecondary education increases.*

### INTRODUCTION

Historically, legal initiatives have played a significant role in shaping the educational experiences of students with disabilities. This topic is critical to the future of accessibility in higher education, as 11% of college students in the U.S. have a disability (Newman, Wagner, Cameto, Knokey, & Shaver, 2010). As members of this population, students with ASD are increasingly gaining access to higher education (Geller & Greenberg, 2010). A national survey of disability service professionals working at postsecondary institutions in the U.S. found that 93.7% of postsecondary institutions enrolled at least one student with ASD. On average, two-year public institutions serve 16.4 students with ASD per semester, which is a significantly greater number than four-year public institutions (12.0 students) and four-year private

DOI: 10.4018/978-1-5225-2665-0.ch004

institutions (6.4 students; Brown, in press). The current rate of childhood diagnosis is 1 in 68 individuals. Therefore, the number of students with ASD in postsecondary education will increase (Centers for Disease Control and Prevention, 2014).

Literature demonstrates that reasonable accommodations are important predictors of academic success for students with disabilities (Denhart, 2008; Kim & Lee, 2015; Mamiseishvili & Koch, 2011; Stein, 2013) and, specifically, students with ASD (Van Hees, Moyson, & Roeyers, 2015). Following legal precedent, reasonable accommodations are changes in the school environment that afford equal educational access or learning opportunities to students with disabilities. There is a paucity of information regarding reasonable accommodations for students with ASD in postsecondary education (Dallas, Ramisch, & McGowan, 2015). Much of the literature related to students with ASD focuses on K-12 education (e.g., Heflin & Alaimo, 2007; Hochman, Carter, Bottema-Beutel, Harvey, & Gustafson, 2015) and the transition to college (e.g., Hetherington, Durant-Jones, Johnson, Nolan, Smith, Taylor-Brown, & Tuttle, 2010; Roberts, 2010).

Although there are several excellent legal resources for higher education scholars and practitioners (e.g., Kaplin & Lee, 2013), these texts are general in nature and do not offer disability-specific analysis. Higher education legal journals (e.g., *Journal of College and University Law*) provide a more nuanced analysis. With the exception of short in-text mentions in articles on disruptive behavior (e.g., Rothstein, 2009) or accommodations within clinical programs (e.g., Babbitt & Lee, 2016), ASD is notably absent. Topics such as students with mental or psychiatric disabilities (e.g., Lee, 2014; Lee & Abbey, 2008) comprise the bulk of disability-focused articles in higher education legal journals. The functional limitations associated with ASD—sensory and social impairments—offer unique legal and social justice questions for scholars and practitioners interested in the future of accessibility in higher education.

The following questions guided this chapter:

1. How do current legal frameworks shape accommodations for students with ASD in higher education?
2. What could the functional limitations associated with ASD mean for how higher education understands accommodations within the learning environment?
3. Looking to the future, what pending legal topics may affect access to, or the experience of, students with ASD in postsecondary education?

This chapter focuses on student behavior and their postsecondary experiences, rather than a formal diagnostic process. Each student with ASD is unique and accommodations are individualized; therefore, it is important to prioritize functional limitations within the learning environment.

This chapter starts by examining the importance of reasonable accommodations in relation to academic success for students with disabilities. Then, the chapter describes the functional limitations associated with ASD in relation to postsecondary education and current accommodation practices. A substantive portion of the chapter delineates current and upcoming legal topics. This discussion outlines Section 504 of the Rehabilitation Act (Section 504; P.L. 93-112), the Americans with Disabilities Act (ADA; P.L. 101-336), and the Americans with Disabilities Act Amendments Act (ADAAA; P.L. 110-325) as three foundational pieces of legislation that shape access to postsecondary education for students with ASD. Using case law and OCR letters, the chapter examines application of legal precedent to admissions and transition to postsecondary education, self-identification, accommodation, learning as a major life activity, harm to other, and code of conduct violations. Topics that maybe salient to functional limitations associated with ASD but have already been covered within the literature (e.g., code of conduct violations) are

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