

F. Rachel Magdalene, Appalachian State University



F. Rachel Magdalene is currently adjunct visiting assistant professor of Bible at Appalachian State University. She practiced and taught law for over a decade before earning her PhD in Biblical Interpretation. She is a member of the AAR Religion and Disability Task Force and co-chair of the SBL Biblical Scholarship and Disabilities Consultation.

Two important pieces of legislation protect the rights of persons with disabilities and seek to provide equal access to higher education: *Section 504 of the Rehabilitation Act of 1973* and *Title II of the Americans with Disabilities Act of 1990*

(ADA). Section 504 applies to all schools that receive any federal financial assistance. Virtually all colleges and universities, whether public or private, fall under this law. The ADA regulates public educational institutions, including state universities and community colleges. Together, these acts control a significant number of institutions. In 1999, the U.S. Department of Education (DOE, n.d.) reported that these laws covered approximately 4,100 colleges and universities.

Because of the enactment of these laws, postsecondary educational institutions have experienced rapid growth in their populations of persons with disabilities. The DOE (1999) has reported that, between 1978 and 1996, the percentage of full-time first-year students declaring a disability increased from 2.6 to 9. The percentage of students with a disability declaring a learning disability rose from 15 to 35 (ibid.). It is highly likely that every professor will find persons with disabilities in his or her classroom at some point. Consequently, understanding these laws is imperative for faculty members in higher education. This article will discuss briefly the scope of these acts and their impact on teaching.

The substantive provisions of Section 504 and the ADA are similar in a number of respects. The point of these laws is to prevent discrimination, both intentional and unintentional, against “an

individual with handicaps.” They seek to remove any barriers that prevent persons with disabilities from receiving the full benefits of an education and to “level the playing field” between persons with and persons without disabilities. This does not mean that the results between these two classes must be identical in all cases. The aim is to “afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s need” (DOE 2000).

Section 504 defines an individual with handicaps as including persons with any current “physical or mental impairment which substantially limits one or more major life activities.” It also includes persons with an actual or perceived history of such impairment. The U.S. Supreme Court has indicated that, for purposes of the ADA, these terms should be defined broadly (*Bragdon v. Abbott*). A disfigurement, a physically, emotionally, or intellectually disabling condition, or a chronic illness may meet the criterion. Hidden disabilities — that is, those not visible to the naked eye, such as low vision, learning disabilities, or diabetes — are covered. During the assessment of the disability, persons are expected to use any available mitigating measures, such as eyeglasses, hearing aids, or medication (*Sutton v. United Airlines*); *Murphy v. United Parcel Service*). Title IV specifically excludes homosexuals, bisexuals, those with certain gender identity and sexual behavior disorders, those with certain compulsive disorders, and active illicit drug users from the definition, but rehabilitated drug abusers are included. Class auditors and international students are protected persons, entitled to the same benefits as domestic or degree-seeking students.

These acts apply to the full scope of university life. Regulated activities include academic affairs, student services, special interest groups and clubs, social and cultural activities, athletics, and transportation, among others. Even activities of a college or university that occur off campus, such as class field trips and internships, may be controlled.

The institution must provide, upon request, auxiliary aids, benefits, or services to a student with disabilities if failure to provide such items would result in a denial of access to any program benefit. Consequently, with respect to coursework, the school must provide the student with whatever aid or service is necessary to make the learning experience accessible and meaningful. This varies considerably among students, which is a subject other authors take up in this issue of *Spotlight on Teaching*. The institution must bear the cost of the accommodation unless the student arranges to receive such benefits from third parties, such as a state vocational rehabilitation program.

Adaptive technology is advancing quickly, and students may request the best and latest of such technology. Although the ADA makes clear that the institution is to give primary consideration to student requests, the school is not required to provide any assistance that is unduly burdensome for it. Nor must it provide the most sophisticated aid or service available, so long as the provided aid effectively meets the student's needs. The determination of what will be an effective accommodation should be a cooperative effort between the student and the institution. Such effectiveness must be determined on an individual basis and in the specific context in which the student will use it. For instance, what the student needs in a large lecture hall may be different from what is needed in a seminar setting.

Accommodations may also require making appropriate academic modifications for the student. This can be the most difficult type of accommodation for a faculty member to make. No teacher is required to lower, or make substantial modifications to, the essential requirements of the course. Questions may arise, however, regarding what is essential. Furthermore, certain adaptations to assessment tools may be fitting. The DOE (1998) states: "A test should ultimately measure a student's achievements and not the extent of the disability." Substitution of a more helpful assessment tool is permissible and often most appropriate. Faculty might wish to employ a variety of assessment tools in a class so that no particular academic strength or weakness becomes the entire basis for a student's grade.

Occasionally, faculty object to the use of provided accommodations on grounds unrelated to the disability, such as the use of a tape recorder because it may infringe on a copyright or the free speech of those in the classroom. The laws demand, in this instance, that the professor allow the aid. The institution may oblige the student, however, to act in such a way as to protect the rights of others, such as by signing a copyright protection agreement.

Both Section 504 and the ADA place the burden on the student to obtain a diagnosis of the disability and to give notice to the institution concerning the disability. The school has no responsibility to identify students who need assistance; its duty is only to inform students as to the availability of services generally and provide the name of a contact person. Furthermore, an institution may not make a pre-admission inquiry concerning a student's disabilities. After admission, however, the school is free, if it so chooses, to make confidential inquiries in order to ascertain what services might be needed. Nonetheless, the student has the fundamental responsibility to self-identify. Documentation of the disability is required. Often, schools will reject documentation that is more than three years old for conditions that are subject to change. A student may give notice to Disability Student Services (DDS), an appropriate dean, the student's advisor, or a professor. A notified professor should contact DDS and encourage the student to do the same.

Once the student provides documentation, he or she must assist the school in identifying the appropriate auxiliary aids. This may include supplying a prescription from a qualified professional as to the proper accommodation. The school may decide, however, to secure its own professional determination regarding the need for specific requested aids and services. Once a student gives notice that he or she may be, or is, a person with a disability in need of accommodation, the provisions of the acts apply. The presumption is that the student requires the accommodation, which should be provided until such time as it is determined that the student is not, in fact, in need.

Generally, making accommodations for students without involving DDS is ill-advised. First, DDS may ultimately determine that the student does not have a legitimate request. Second, either under- or overaccommodating the student can be detrimental to his or her ultimate success. The DDS professionals are experienced in finding the right accommodation. Hidden disabilities often go undiagnosed. Faculty members are well situated to notice certain learning disabilities and may come to suspect that a student, who has not declared him- or herself to be a person with a disability, in fact has a disability. The law allows professors to approach the student. Broaching the subject, however, is a delicate issue. Many students know that they have a disability but choose not to identify themselves for various reasons — including a fear of discrimination. Others simply are unaware, and the news might not be welcome. Consequently, if the faculty member chooses to approach the student, he or she should do it sensitively. At times, a student provides an excellent opportunity to raise the subject when they come in for academic assistance or to have a deadline postponed. Nonetheless, one may feel free to enlist the aid of DDS before one makes contact.

Faculty members are on the front line of compliance with Section 504 and the ADA. Knowing the school's legal obligations toward students with disabilities can assist faculty in giving such students a positive academic experience.

References

Americans with Disabilities Act of 1990. U.S. Code 42 (1990) § 12010–212.

Rehabilitation Act of 1973, Section 504. U.S. Code 29 (1973) § 794.

Bragdon v. Abbott, 524 U.S. 624 (1998).

Murphy v. United Parcel Service, 527 U.S. 516 (1999).

Sutton v. United Airlines, 527 U.S. 471 (1999).

U.S. Department of Education. *Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*. 34 CFR 104.4(b)(2), as amended 2000.

_____. “ [Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education’s Obligations under Section 504 and Title II of the ADA](#) .” September 1998. (accessed July 28, 2004).

_____. “ [Impact of the Civil Rights Laws](#) .” January 1999. (accessed July 28, 2004).

_____. “ [The Laws Apply to Educational Institutions](#) .” N.d. (accessed July 28, 2004).