



Overview of the Federal Higher Education Opportunities Act Reauthorization

By Stephanie Smith Lee

The Higher Education Opportunity Act (P.L. 110-315) (HEOA) was enacted on August 14, 2008 and it reauthorized the Higher Education Act of 1965. This law contains a number of important new provisions that will improve access to postsecondary education for students with intellectual disabilities. Of particular note are several provisions that address financial aid and that create a new model demonstration program and coordinating center for students with intellectual disabilities.

NEW ELIGIBILITY FOR FINANCIAL AID

HEOA allows for students with intellectual disabilities to be eligible for the first time for Pell Grants, Supplemental Educational Opportunity Grants, and the Federal Work-Study Program. In the past, such students were usually not eligible for financial aid because they did not meet certain criteria—they often lacked a regular high school diploma or a General Educational Development equivalency and they often did not meet an “ability to benefit” test. HEOA provides broad authority to the Secretary of Education to waive these and other sections of the law and it requires the Secretary to promulgate regulations that will allow eligibility for Work Study jobs and certain grants for students with intellectual disabilities who are accepted for enrollment or are enrolled in comprehensive transition and postsecondary education programs (and specify how these students will become eligible).

These regulations are part of Title IV of the Act, which are subject to a “negotiated rule-making process” conducted by the U.S. Department of Education with representatives of the constituencies who will be significantly affected by the regulations. Once the negotiations are concluded, the Department will publish a Notice of Proposed Rulemaking (NPRM), accept public comments on the NPRM, and then publish final regulations in the *Federal Register*. (Think College will publish more information about the regulations in coming months.)

BASIC REQUIREMENTS AND WAIVER AUTHORITY

Under Title IV, to be eligible for these benefits there are requirements that the student with intellectual disabilities is enrolled or accepted for enrollment in a comprehensive transition and postsecondary program at specific institution of higher education (IHE) and maintain satisfactory progress in the program in accordance with standards established by the institution.

These follow definitions found in Title VII, Part D, Section 760 of the Act:

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The term “comprehensive transition and postsecondary program for students with intellectual disabilities” means a degree, certificate, or non-degree program that is—

- offered by an institution of higher education;
- designed to support students with [intellectual disabilities] who are seeking to continue academic, career and technical, and independent living instruction at an IHE in order to prepare for gainful employment;
- includes an advising and curriculum structure; and
- requires students with intellectual disabilities to participate on not less than a half-time basis, as determined by the institution, with such participation focusing on academic components.

The term “student with an intellectual disability” means a student:

- with mental retardation or a cognitive impairment, characterized by significant limitations in intellectual and cognitive functioning; and adaptive behavior as expressed in conceptual, social, and practical adaptive skills;
- who is currently, or was formerly, eligible for a free appropriate public education under the Individuals with Disabilities Education Act; and
- who is currently, or was formerly, eligible for a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act.

The conference report accompanying H.R. 4137 clarifies that some students with disabilities who are eligible for FAPE under IDEA may choose not enroll in public school or choose to not receive special education services. The Conferees intend to include these students if they can otherwise demonstrate that they meet the eligibility criteria. The Conferees also state in the report that they “intend to encourage such programs to integrate students with intellectual disabilities into inclusive activities, coursework and campus settings with nondisabled postsecondary students.”

MODEL DEMONSTRATION PROGRAMS AND COORDINATING CENTER

HEOA also authorizes a model demonstration program for the development and expansion of high-quality, inclusive model comprehensive transition and postsecondary education programs to meet the rising interest and demand for this type of educational experience among students with ID and their families. In addition, the reauthorization includes the establishment of a coordinating center to coordinate the model programs and to provide for technical assistance, evaluation, and development of recommendations for model accreditation standards. The center will convene a stakeholder group to develop model accreditation criteria, standards, and procedures for such programs. It will also analyze possible funding streams, and develop model memoranda of agreement between institutions of higher education and agencies providing funding for such programs. Appropriations for the model demonstration programs and coordinating center are necessary.