

HOUSE BILL REPORT

HB 1172

As Reported By House Committee On:
Higher Education

Title: An act relating to students with disabilities.

Brief Description: Accommodating students with disabilities at institutions of higher education.

Sponsors: Representatives Jacobsen, Brumsickle, Ogden, G. Cole, R. Fisher, Johanson, Shin, Jones, Cothorn, J. Kohl, Flemming, Wood, Leonard and Kessler.

Brief History:

Reported by House Committee on:
Higher Education, February 12, 1993, DPA.

HOUSE COMMITTEE ON HIGHER EDUCATION

Majority Report: Do pass as amended. Signed by 17 members: Representatives Jacobsen, Chair; Quall, Vice Chair; Brumsickle, Ranking Minority Member; Sheahan, Assistant Ranking Minority Member; Basich; Bray; Carlson; Casada; Finkbeiner; Flemming; Kessler; J. Kohl; Ogden; Orr; Rayburn; Shin; and Wood.

Staff: Marilee Scarbrough (786-7196).

Background: According to congressional data, 43 million Americans have one or more physical or mental disabilities. In 1986, approximately 10.5 percent of the nation's 12.5 million post-secondary students reported a disability. Disabilities include: learning, hearing, speech and visual disabilities, orthopedic handicaps and health impairments.

In recent years, Congress has passed several major pieces of legislation providing protection to persons with disabilities. The ultimate goal of the legislation is to eliminate discrimination by providing standards to the public and private sector, and by ensuring adequate enforcement of federal agency regulations.

The Education for All Handicapped Children Act of 1975 identified K-12 handicapped students and provided services and accommodations for them. These services created an increased awareness and expectation for these students upon entering college, professional and graduate schools.

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 of the Rehabilitation Act was enacted by Congress in 1973. The relevant portion of the act provides:

"No otherwise qualified handicapped individual...shall, solely by reason of his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance..."

Section 504 applies to all recipients of federal financial assistance and to all programs or activities that receive or benefit from such assistance. Recipients of federal financial assistance from the U.S. Department of Education (ED) include public school districts, public institutions of higher education, and other state and local education agencies. The Department of Education enforces Section 504 through an Office for Civil Rights (OCR).

WASHINGTON STATE STATUTE AGAINST DISCRIMINATION (RCW 49.60.010)

Washington's statute prohibits discrimination against any of its citizens because of the presence of any sensory, mental or physical handicap. The Washington statute prohibits discrimination in places of public accommodation. Places of public accommodation include public and private schools. The Washington State law may be enforced either by a civil law suit or through a complaint to the Washington State Human Rights Commission.

THE AMERICANS WITH DISABILITIES ACT

The purpose of the Americans with Disabilities Act (ADA) is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and bring persons with disabilities into the economic and social mainstream of American life. The ADA covers five major areas: (1) employment in the private sector; (2) public accommodations; (3) activities of state and local government; (4) public and private transportation; and (5) telecommunications for persons with hearing impairments and communications disorders.

The central focus of the ADA is mainstreaming. Where goods, facilities, privileges, advantages, accommodations and services are available, the disabled must take part in the most integrated setting appropriate to the needs of the individual. Discrimination occurs if a public accommodation fails to make reasonable modifications in policies, practices, and procedures when such modifications are

necessary to afford such goods and privileges to disabled persons.

Title III Public Accommodations and Services Operated by Private Entities

Under the ADA, private entities must provide auxiliary aids and services if, in their absence, a disabled person, "is excluded, denied services, segregated or otherwise treated differently than another individual...unless entity can show that such steps would fundamentally alter the nature of the goods and privileges or would result in an undue burden." The ADA defines the private entities that are considered public accommodations as, "a nursery, elementary, secondary, undergraduate, or postgraduate private school or other place of education."

The ADA places a responsibility on institutions and other entities to take affirmative steps to eliminate architectural barriers. Discrimination occurs if an entity fails to remove architectural and communication barriers from existing facilities and transportation barriers from existing vehicles. Removal of barriers must be readily achievable. Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."

If not readily achievable, the institution or entity must use a readily achievable alternative method to accommodate the disabled individual. For example, if access is denied because of class location, instead of installing an elevator, the class could become readily achievable by moving the location of the classroom.

Major structural changes, remodelling or new facilities must accommodate disabled persons. The act requires elevators in every new facility unless the facility has fewer than three stories or less than 3,000 square feet per story.

ADA enforcement provisions are the remedies available in the Civil Rights Act of 1964. These remedies include attorney fees, payment of expert witness fees, injunction, back pay for intentional discrimination and other equitable remedies at the discretion of the trial court. Nothing in the ADA is to be construed as establishing lesser standards than those required in Title V of the Rehabilitation Act of 1973.

Summary of Amended Bill: Institutions are required to provide one or more core services for disabled students. The service must be reasonably needed to accommodate the student's disability. The responsibility for providing a core service in a timely manner shall be shared equally by

the student and the institution. Reasonable accommodations shall occur, as appropriate, in all phases of the institution including: recruitment; the application, enrollment and registration processes; financial aid; course work; research; academic counseling and housing.

The suggested core services are: (1) flexible procedures in the admissions process; (2) early registration; (3) sign language and oral and tactile interpreter services; (4) textbooks and other education materials in alternative media; (5) provision of readers, note takers, scribes, and proofreaders; (6) ongoing review and coordination of efforts to improve campus accessibility; (7) facilitation of physical access including: relocating of classes and institution-sponsored activities and services; (8) orientation to the campus at the beginning of a quarter or semester; (9) access to and training in the use of adaptive equipment such as close caption devices, amplified telephone receivers, braille devices; (10) referral to appropriate on and off campus support resources; (11) arrangement of educational materials in advance; (12) tutoring, mentoring, peer counseling and academic advising accessible to students with disabilities; (13) test taking arrangements; (14) referral to an organization for diagnostic assessment and documentation of disability; (15) flexibility in timelines for completion of course certification and degree; (16) flexibility in load requirements and institutional eligibility periods for financial aid; and (17) notification of the institution's policy of nondiscrimination on the basis of disability and the procedure an aggrieved student must follow.

Amended Bill Compared to Original Bill: A summary of the federal statutes that describes the rights and responsibilities of students with disabilities will be provided to all registered students with disabilities and their instructors.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: In 1990, the Legislature directed the Governor's Committee on Disability Issues and Employment to convene a task force on student's with disabilities in higher education. The task force discovered that students encountered barriers at institutions of higher education. Students were forced to choose an institution based on the level of services provided for a student with a disability, rather than based on the types of courses offered. One of the recommendations of the task force was for legislation

that would describe core services that would be available on each college campus. There is a very high unemployment rate for students with disabilities. Therefore, there is an economic benefit of providing services to students with disabilities. The state should be committed to students with disabilities. Instructors need more knowledge and skills to support students, and institutions need access to more support equipment. The state provides support for K-12 students with disabilities, and minority students. The state should also support college students with disabilities. Many core services are no-cost or low-cost. This legislation reaffirms federal statutory requirements that institutions of higher education provide students with disabilities with reasonable accommodations.

Testimony Against: None.

Witnesses: (in favor) Jana Norton, citizen; Jane Sherman, Higher Education Coordinating Board; Crista Shaw, Disabled Student Services; Margaret Hunsperger, student; Clarice McCartan, DDP Council; and Gretchen Wipper, Eastern Washington University.