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# An Analysis of Disability-Related Provisions in the 2008 Higher Education Opportunity Act (HEOA): What Universities and Policy Makers Should Know

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# POLICY BRIEF

October 2011

## An Analysis of Disability-Related Provisions in the 2008 Higher Education Opportunity Act (HEOA): What Universities and Policy Makers Should Know

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## **An Analysis of Disability-Related Provisions in the 2008 Higher Education Opportunity Act (HEOA): What Universities and Policy Makers Should Know<sup>1</sup>**

The Higher Education Opportunity Act (HEOA) of 2008 (PL 110-315) was signed into law on August 14, 2008, reauthorizing the Higher Education Act of 1965 as amended. The Higher Education Act was the authorizing legislation for most of the programs administered by the Office of Postsecondary Education (OPE) and Federal Student Aid Programs. In general, Congress sought to address issues in higher education related to access, affordability, accountability, and quality through this reauthorization.

One of the intended goals of the HEOA is to increase access to higher education for a diverse population of individuals, including those with disabilities. This legislation contains a number of new provisions designed specifically to facilitate the participation of students with disabilities in postsecondary education, including those with intellectual and print disabilities. Also included are provisions designed to increase the capacity of teacher education programs to prepare general and special education teachers to work more effectively with students with disabilities.

The purpose of the current summary is to provide state agencies, postsecondary institutions, and policy makers with an overview of changes in the HEOA affecting the access to education of postsecondary students with disabilities and the way teacher education programs at Institutions of Higher Learning (IHEs) prepare general and special educators to teach students with disabilities. Specifically, this analysis reviews disability-related terminology new to this revision of the HEOA, access to instructional materials for students with print disabilities, changes in access to financial aid for students with intellectual disabilities, model demonstration projects both for students with print and intellectual disabilities, and new requirements for teacher preparation programs. Finally, we discuss implications of HEOA for Maine's postsecondary institutions, Maine policy makers, and Maine students with disabilities.

### **Disability-Related Terminology New to the 2008 HEOA**

The HEOA uses several terms that were not used in previous versions of the bill that are important for understanding its various provisions related to students with disabilities:

- *Universal Design for Learning (UDL)* is defined in Title I, Section 103 as "a scientifically valid framework for guiding educational practice that provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and

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<sup>1</sup> A **comprehensive summary** of each provision the HEOA may be found on the Department of Education's Dear Colleague Letter (see <http://www2.ed.gov/policy/highered/leg/hea08/index.html>). The Council for Exceptional Children has also compiled a summary of selected provisions of HEOA that impact individuals with disabilities and those who support them. Please visit the Council's web page, "Higher Education Opportunity Act" <http://www.cec.sped.org/Content/NavigationMenu/PolicyAdvocacy/CECPolicyResources/HigherEducation/default.htm>.

skills, and in the ways students are engaged; and reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.”

- *Accessible Instructional Materials (AIM)* is a term used in the HEOA but not explicitly defined. An *Advisory Commission on Accessible Instructional Materials* is established in Title VII, Part D, Subpart 3, Section 772, however, in which AIM is described as instructional materials in specialized formats “such as Braille, audio or synthesized speech, and digital media” that can be accessed by students with print disabilities. This description is consistent with the *Maine AIM* definition: “Accessible Instructional Materials (AIM) are specialized formats of curricular content that can be used by and with learners with print disabilities. They include Braille, audio, digital text, and large print.”
- A *student with a print disability* is defined in Title VII, Part D, Subpart 3, Section 771 as “a student with a disability who experiences barriers to accessing instructional material in non-specialized formats, including an individual described in Section 121(d)(2) of Title 17, United States Code” (US Copyright Law). Again, this is similar to the definition that the *Maine AIM Community of Practice* has proposed to the Maine Department of Education as the functional definition of a print disability: “A condition related to blindness, visual impairment, specific learning disability or other physical condition in which the student needs an alternative or specialized format (i.e., Braille, large print, audio, digital text) in order to access and gain information from conventional printed materials.”
- A *student with an intellectual disability* is defined in Title VII, Part D, Section 760 as a student with mental retardation or cognitive impairment, characterized by significant limitations in intellectual and cognitive functioning; and adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and who is currently, or was formerly, eligible for a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

## **HEOA and Students with Disabilities in Higher Education**

### **HEOA and Students with Print Disabilities**

Postsecondary students with print disabilities often experience difficulty accessing accessible instructional materials (AIM) in a timely manner. Barriers include a lack of knowledge and technical expertise by college faculty and staff as well as systemic issues such as copyright restrictions, duplicative efforts by multiple institutions, and a lack of standardized electronic file formats. Title VII, Part D (Programs to Provide Students with Disabilities with a Higher

Quality Education) establishes three vehicles designed to increase access to AIM for students with print disabilities in postsecondary education. These include the following:

- *An Advisory Commission on Accessible Instructional Materials (AIM) in Postsecondary Education for Students with Disabilities* to assess the barriers and systemic issues to postsecondary students accessing quality AIM. In addition, they will make recommendations for a comprehensive approach for ensuring students with print disabilities can access instructional materials in specialized formats in a cost-effective and timely manner (Subpart 3, Section 772).
- *A Model Demonstration Program to Support Improved Access to Postsecondary Instructional Materials for Students with Print Disabilities*. This new program awards grants to eligible partnerships between IHEs and other entities with demonstrated expertise in developing and disseminating accessible instructional materials/formats for postsecondary students with print disabilities. Its purpose is to “encourage the development of systems to improve the quality of postsecondary instructional materials in specialized formats and such materials’ timely delivery to postsecondary students with print disabilities, including systems to improve efficiency and reduce duplicative efforts across multiple institutions of higher education” (Subpart 3, Section 773).
- *A National Center for Information and Technical Support for Postsecondary Students With Disabilities* will be established to “provide technical assistance and information on best and promising practices to students with disabilities, the families of students with disabilities, and entities awarded grants, contracts, or cooperative agreements under Subpart 1, 2, or 3 [Title VII, Part D] - to improve the postsecondary recruitment, transition, retention, and completion rates of students with disabilities. The National Center will also build and update a database of disability support information including AIM (Subpart 4, Sections 776 - 778).

### **Demonstration Projects to Support Postsecondary Faculty, Staff, and Administrators in Educating Students With Disabilities**

This 3-year grant program is described and authorized in Title VII, Part D, Subpart 1, Sections: 761-765. The goal of the program is to provide technical assistance or professional development for postsecondary faculty, staff, and administrators in IHEs receiving these grants to enable faculty, staff, and administrators to provide students with disabilities with a quality postsecondary education. At least two grants will be awarded to IHEs serving students with learning disabilities. Among the activities that will be required of grantees are the following:

- Development of innovative, effective, and efficient teaching methods and strategies, consistent with the principles of UDL, to provide postsecondary personnel with skills and supports necessary to meet the needs of students with disabilities;

- Development of innovative and effective methods to provide postsecondary personnel with skills and supports to ensure the successful and smooth transition of students with disabilities to postsecondary education;
- Synthesis of research and other information related to the provision of postsecondary educational services to students with disabilities;
- Development of innovative strategies to provide postsecondary personnel with the ability to provide accessible distance education programs or classes that would enhance the access of students with disabilities;
- Provision of information and technical assistance to postsecondary personnel to provide students with information about disability-related careers and to support their entry into those fields;
- Provision of professional development and training sessions for postsecondary personnel on meeting the educational needs of students with disabilities; and
- Making postsecondary education more accessible to students with disabilities through curriculum development consistent with the principles of UDL.

### **Access to Financial Aid for Students with Intellectual Disabilities**

For the first time, the HEOA contains a provision making students with intellectual disabilities eligible for Title IV federal financial aid, including Pell Grants, Supplemental Educational Opportunity Grants, and the Federal Work-Study Program (Title IV, Part G, Section 485). To be eligible, students must be enrolled at least half-time or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an IHE. Each institution determines the criteria for half-time status and satisfactory progress.

### **Model Comprehensive Transition and Postsecondary Programs for Students with Intellectual Disabilities**

Model comprehensive transition and postsecondary programs for students with intellectual disabilities are authorized in Title VII, Part D, Subpart 2, Sections 766 and 767 of the HEOA. This provision provides funding through competitive grants for IHEs to establish model comprehensive programs that will provide individual supports to students with intellectual disabilities and promote their inclusion in academic, extracurricular, and other institutional programming for students without disabilities. The HEOA defines the term “comprehensive transition and postsecondary program for students with intellectual disabilities” as a degree, certificate, or non-degree program that:

- Is offered by an institution of higher education;
- Supports students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction to prepare for gainful employment;

- Includes an advising and curriculum structure; and
- Requires students to participate on not less than a half-time basis with non-disabled students as determined by the institution.

Students enrolled in these model comprehensive transition and postsecondary education programs may be eligible for Title IV financial aid, based on need.

### **Comprehensive Transition and Postsecondary Program Coordinating Center**

Title VII, Part D, Subpart 2, Section 777 establishes a coordinating center for IHEs that offers inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities. This entity will provide technical assistance to all postsecondary programs that provide such programs, develop an evaluation protocol for all programs, assist model demonstration projects to develop meaningful credentials for students completing programs, and develop recommendations for standards for these postsecondary education programs for students with intellectual disabilities at IHEs.

### **HEOA and Teacher Education**

Title II of the HEOA (Teacher Quality Enhancement) contains several provisions designed to transform and reform teacher education. The act places special emphasis on preparing prospective special and general education teachers in teacher education programs to use instructional technologies consistent with the principles of UDL. If fully implemented and funded, the HEOA will increase the ability of both general and special educators to teach all children, including those with disabilities, by (1) funding several grants that will be used enhance the ability of teachers and administrators to meet the needs of an increasingly diverse student population, (2) by establishing new accountability standards for all IHE teacher education programs and alternative teacher preparation programs, and (3) by establishing fellowships to prepare faculty in high need areas, including special education, at colleges of education. In addition, the act establishes a number of loan forgiveness or cancellation programs designed to increase the number of individuals prepared to support individuals with disabilities in schools.

### **Grant Programs for Enhancing Teacher Quality**

*Teach to Reach Grants – Preparing General Education Teachers to More Effectively Educate Students with Disabilities.* These 3-year grants are established in Part B, Subpart 3, Section 251 (Preparing General Education Teachers to More Effectively Educate Students with Disabilities) to prepare pre-service general educators by providing the knowledge and skills necessary to effectively instruct students with disabilities expected to be in their classrooms. The grants will be awarded to teacher education programs that are part of funded partnerships. Partnerships will consist of an IHE with a teacher education programs, an IHE department of special education, an IHE department or program providing degrees in core academic



subjects, and a high-need local educational agency. Participants in funded IHE teacher education programs will learn skills related to *differentiated instruction, positive behavioral support, universal design for learning, response to intervention, accommodations for instruction and assessment, and collaboration with special educators, parents, and related service providers*. Programs will utilize extensive clinical experiences, mentoring, and induction programs.

*Teacher Quality Partnership Grants* are authorized in Title II, Part A, Sections 201-209. The purpose of these 5-year grants is to improve the ability of teachers and school administrators in participating partnerships to meet the needs of all students, including those with disabilities. Grants will be awarded to partnerships consisting of colleges or departments of education, IHE schools of arts and sciences, a high-need local education agency and high-need schools in that agency. The grants are designed both to prepare prospective teachers and to enhance the professional development activities for new teachers through high-quality pre-service clinical programs, induction programs, and residency programs. Partnerships will be required to prepare pre-service and new teachers to use instructional techniques and strategies consistent with the principles of universal design for learning, positive behavioral interventions and support, effective instructional strategies across all applicable content areas, teaching strategies that meet the specific learning needs of all students including students with disabilities, and to effectively participate as a member of the individualized education program team.

*Preparing All Teachers for Digital Age Learners*. These five-year grants are authorized in Title II, Part B, Subpart 1, Sections: 231-234. The grants will be made to consortia consisting of at least one IHE, a state or local educational agency, and one or more public or private entities with the capacity to contribute to technology-related reform of teacher education programs. The purposes of the funded consortia are to: (1) increase the capacity of graduate teacher candidates in these consortia to use modern information, communication, and learning tools to improve student learning, assessment, and learning management; 2) strengthen and develop partnerships among the stakeholders in teacher preparation to transform teacher education and ensure technology-rich teaching and learning environments, consistent with the principles of universal design for learning, in a teacher candidate's pre-service education; and (3) assess the effectiveness of departments, schools, and colleges of education at IHE in preparing teacher candidates for successful implementation of technology-teaching and learning environments. Consortia will also provide professional development in the use of technology in education to other school personnel and IHE faculty.

### **New Accountability Standards For All Teacher Education Programs**

Title II, Part A, Section 205 (Accountability for Programs that Prepare Teachers) will soon require that all new special and general education teachers receive the training necessary to more effectively serve a diverse population, including students with disabilities. Among the requirements are the following:

- Teacher education programs will need to prepare all new teachers – those preparing for careers in both special and general education – to more effectively address the learning needs of all students, including those with disabilities.
- Special educators will need to be prepared to provide instruction in core academic subjects.
- Teacher education programs will need to provide all prospective teachers with the skills, knowledge, and practical experience to use technology, in a manner consistent with UDL, to improve assessment, instruction and student performance.
- Teacher education programs will need to establish plans for increasing the number of prospective teachers prepared to be special educators.

A number of steps will be taken to ensure that teacher education programs meet these accountability standards. First, under Section 205, each IHE offering a teacher preparation program that enrolls students receiving federal assistance under the Act will report annually to the State and general public on whether goals set under Section 206 of the ACT have been met. Among the assurances that IHE teacher preparation programs must provide in an annual “report card” are the following:

- They will increase the number of prospective teachers in teacher shortage areas, including special education.
- Prospective special education teachers will receive course work in core academic subjects and receive training in providing instruction in core academic subjects; and
- General education teachers will receive training in providing instruction to diverse populations, including children with disabilities.

In addition, under Section 205, each State receiving funds under HEOA will need to submit an annual state report card to the U.S. Department of Education. The report card will contain information on a number of activities related to improving teacher education, including several that have implications for the education of students with disabilities. These include the following:

- The extent to which teacher preparation programs are addressing shortages of highly qualified teachers;
- A description of how both general and special educators are being prepared to teach students with disabilities; and
- A description of how teacher education programs are integrating technology consistent with UDL into instruction and curricula.

Each State will be required to conduct an assessment to identify low-performing teacher preparation programs in the State and to assist such programs through the provision of technical assistance. Any teacher preparation program from which the State has withdrawn the State’s approval, or terminated the State’s financial support, due to the low performance of the program based upon the State assessment described, (1) shall be ineligible for any

funding for professional development activities awarded by the Department; and (2) may not be permitted to accept or enroll any student who receives aid under Title IV in the institution's teacher preparation program.

### **Graduate Fellowships to Prepare Faculty in High Need Areas at Colleges of Education**

This legislation authorizes the Secretary of Education to make grants to institutions offering doctoral degrees to provide fellowships for future faculty members who will prepare teachers in high need areas. These high need areas include science, technology engineering, mathematics, and special education.

### **Loan Forgiveness**

The HEOA contains several provisions related to loan forgiveness or cancellation that could have implications for the number of professionals prepared to work with children with disabilities. Title IV, Part B, Sections 430-431 expands the number of individuals who would be eligible for forgiveness of Federal Family Education Loans. Those eligible for such loan forgiveness include speech-language pathologists, early childhood educators, physical and occupational therapists, and mental health professionals with at least a master's degree, who are providing services to children, adolescents, and veterans. Title IV, Part B, Section 451 authorizes loan forgiveness under the Federal Direct Student Loans Program for certain public service employees including those in public education, social work in a public or family service agency, early childhood education, and those working in public service for individuals with disabilities. Loan cancellation for Federal Perkins Loans is authorized in Title IV, Part B, Section 465 for those employed full-time in pre-kindergarten or child care programs licensed and regulated by the state. Speech-language pathologists with master's degrees working exclusively in Title 1 schools are also eligible for loan cancellation.

## **Implications of the HEOA for Maine**

### **For Institutions of Higher Education**

Maine's IHEs will have increased access to national coordinating and technical assistance centers that provide information and resources about supporting students with disabilities, including those with print or intellectual disabilities. In order for IHEs to take advantage of these resources, they will need to create processes for faculty and students to obtain accessible instructional materials in a timely manner. This will require that faculty and staff receive instruction in the following areas:

- Understanding the effects of a print disability on the student and on their own approach to designing, delivering, and evaluating the effects of instruction;

- Copyright law and reproducing and disseminating instructional materials;
- Obtaining and using accessible instructional materials (i.e. textbooks); and
- Universal design for developing, delivering, and assessing instruction.

The National Technical Assistance Center will make such assistance available to IHE faculty, staff, and administrators through the following:

- Dissemination of information about best and promising practices and materials for accommodating and supporting students with disabilities;
- Development of technology-based tutorials for IHE faculty and staff; and
- Development of training modules on exemplary practices for IHE faculty and staff accommodating and supporting postsecondary students with disabilities across a range of academic fields.

The National Technical Assistance Center will also make it possible for the public to compare services provided by Offices of Disability Support Services at IHEs by establishing a database on an accessible website. Disability Support Services offices will need to provide the Center with information for that database. Included in the database will be information regarding: the IHE's disability documentation requirements, support services available, links to financial aid, accommodation policies, accessible instructional materials, and other topics of interest to students with disabilities (Title VII, Part D, Subpart 4, Section 777).

Within three years of establishing the National Center and every two years thereafter, the Center will prepare a report that will review the effectiveness of programs authorized in this part and include the following: information on the annual enrollment and graduation rates of students with disabilities in IHEs; recommendations for effective postsecondary supports and services for students with disabilities and how such supports and services may be widely implemented at institutions of higher education; recommendations on reducing barriers to full participation for students with disabilities in higher education; and a description of strategies with a demonstrated record of effectiveness in improving the success of such students in postsecondary education. In addition, IHEs will be required to develop policies and sanctions related to copyright infringement, including unauthorized peer-to-peer sharing, and to disclose these to students and faculty.

Finally, revisions in the HEOA facilitate the participation of students with intellectual disabilities in higher education. This is done primarily through targeted grants and the revision of financial aid requirements. All IHEs, however, will need to prepare to support an increasingly diverse population of students that includes those with print disabilities and intellectual disabilities.

### **For the State of Maine**

The State of Maine will be required to review the quality of teacher preparation in Maine Institutions of Higher Education (IHEs) on an annual basis. Title II, Part B, Section 205 also

requires The Secretary of Education to provide Congress with and make widely available a report card on teacher qualifications and preparation in the U.S. each year. This report will allow Maine citizens to compare Maine's efforts to improve the quality of the current and future teaching force with the efforts of other states.

### **For Students with Disabilities in Maine**

The HEOA could have a number of positive benefits for students with disabilities in Maine and their families. Most notably, students with disabilities may have increased access to higher education. Improvements in teacher education programs may also result in the training of new general and special education teachers who are better prepared to help all students access the general curriculum.

Currently, the supports that are provided to students with disabilities at IHEs differ dramatically from those provided in primary and secondary schools. Students in the latter are entitled, through IDEA, to accommodations and supports necessary for them to access the general curriculum in the least restrictive environment. No such entitlement exists at a postsecondary level. Students with disabilities are entitled to accommodations in higher education, but it is the responsibility of the student to request them. Furthermore, faculty and staff at IHEs often receive little or no training in providing accommodations to students with disabilities or in accessing course materials. While transition planning is required under IDEA, there is no requirement that IHEs participate in this planning. The general absence of the supports and protections provided under IDEA can be a significant barrier to postsecondary education for students with disabilities.

While the HEOA certainly does not create the entitlements in postsecondary education that are available through IDEA, it does take some small steps in reducing the differences, especially for students with print disabilities. This is clear when one examines the congruence between the goals of the Maine Department of Education and the HEOA. Through model demonstration projects, the Advisory Commission on AIM, and the National Center for Information and Technical Support for Postsecondary Students with Disabilities, HEOA is attempting to improve the ability of IHE faculty, staff, and administrators to support students with disabilities in a manner consistent with UDL and AIM. Demonstration Projects to Support Postsecondary Faculty, Staff and Administrators in Educating Students with Disabilities also provide technical assistance to personnel at those IHEs receiving 3-year grants. These specific grantees will be required to further develop strategies to support students with disabilities at the postsecondary level, including the provision of transition supports.

Similarly, the Maine Department of Education is attempting to improve access to instructional material for Maine K-12 students with print disabilities through *Maine CITE* and *Maine AIM*. One significant difference, however, is that Maine K-12 students are entitled to AIM under the Individuals with Disabilities Act (2004) and under Maine State Statute Sec. 2. 20-A MRSAS7201, sub-§5, as corrected by RR 2005, c. 2, §13. Maine AIM states on its homepage: "In keeping with the Maine Department of Education's goal of improving student outcomes and graduation rates through the use of the principles of Universal Design for Learning, the Maine

AIM Program is a resource to Maine educators and families for information on how to identify students with print disabilities, and select, acquire and use AIM.”<sup>2</sup> Much of the terminology used by Maine AIM is identical to that used in HEOA. This includes the use of the terms: *Universal Design for Learning, Print Disability and Accessible Instructional Materials*. Also consistent with the goals outlined in HEOA, the Maine Department of Education has also demonstrated a commitment to providing access to alternative instructional materials in a “timely manner.”<sup>3</sup>

The consistency between the activities of the Maine Department of Education and those of the HEOA regarding students with print disabilities could benefit students in Maine with disabilities who want to obtain a higher education. The supports that Maine AIM is trying to make available to all such students in the K-12 years may soon be available at many IHEs. By accessing the National Technical Assistance Center database, students and their families should be able to determine the types and quality of supports available at various IHEs.

The HEOA contains a number of provisions designed to support the inclusion in IHEs of students with disabilities who have a wider range of support needs than those previously enrolled in those institutions. Recognizing that some of these students may require greater support for the transition to college, the HEOA provides competitive funding for IHEs to establish model comprehensive transition programs for students with intellectual disabilities. Funded programs will need to provide a much greater level of support to students as they transition from secondary to postsecondary status. Unfortunately, no such programs have yet been funded in Maine.

For the first time, students with intellectual disabilities from Maine will be eligible for federal student aid. Federal funding for programs for students with intellectual disabilities is limited to IHEs receiving Model Comprehensive Transition and Postsecondary Programs for Students with Intellectual Disabilities grants, however.

Finally, students from Maine with a range of disabilities should benefit from the changes required of teacher education programs by HEOA. New teachers graduating from these programs will be required to have extensive knowledge about using technology consistent with the principles of UDL to help all students to access the general curriculum. Moreover, both those preparing to be general educators and special educators will be required to have the skills and knowledge necessary to teach all students, including those with disabilities. Provisions in the HEOA for increasing the number of professionals with expertise in supporting students with disabilities may also lead to improved educational supports for Maine students.

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<sup>2</sup> Maine AIM. Welcome to Maine AIM. Retrieved from <http://maine-aim.org/>.

<sup>3</sup> Maine AIM. Maine Requirements and Interpretations of Federal Laws. “Timely Manner.” Retrieved from <http://maine-aim.org/legal#tm>.

Together, the activities of the Maine Department of Education and Maine AIM, HEOA projects related to supporting the education of students with disabilities in higher education, and the reform of teacher education programs could have a synergistic effect. Educational personnel may learn from each other as they research and develop more effective strategies for supporting access to instruction at all levels of education.

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