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GEORGIA’S POLICIES REGARDING HIGH SCHOOL SPECIAL EDUCATION DIPLOMAS: ARE TOO MANY CHILDREN LEFT BEHIND?

Jenna Rubin*

INTRODUCTION

In today’s fast-paced global economy, the emphasis on postsecondary degrees is growing.¹ Postsecondary degrees are increasingly necessary to obtain employment.² High school diplomas are the required steppingstone to higher education institutions,³ but for students without a standard high school diploma, the future is far less certain.⁴ Many states—including Georgia, Tennessee, and Oregon—award alternative diplomas to some students with documented disabilities.⁵ These diplomas—called “special

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1. Ryan Hartwig & Patricia L. Sitlington, *Employer Perspectives on High School Diploma Options for Adolescents with Disabilities*, 19 J. DISABILITY POL’Y STUD. 5, 6 (2008); *Fast Facts: Income of Young Adults*, NAT’L CTR. FOR EDUC. STAT., <http://nces.ed.gov/fastfacts/display.asp?id=77> (last visited Feb. 18, 2015).

2. Hartwig & Sitlington, *supra* note 1, at 6.

3. *Id.* (“The high school diploma has long been valued as the essential document for postschool success . . .”).

4. See Jackie Mader & Sarah Butrymowicz, *For Special Education Students, Diplomas, Jobs Increasingly Elusive*, HECHINGER REP. (Feb. 3, 2014), http://hechingerreport.org/content/for-special-education-students-diplomas-jobs-increasingly-elusive_14612 (“In the 2011-2012 school year, only 23 percent of special education students in Mississippi received a regular diploma . . . [T]he same year, more than 60 percent of all students who exited special education in Mississippi received a certificate or alternate diploma not recognized by most colleges and employers.”).

5. O.C.G.A. § 20-2-281(c) (West, Westlaw through 2015 Legis. Sess.) (explaining a special education diploma may be awarded to “any disabled student who is lawfully assigned to a special education program and who does not achieve a passing score on [an end-of-grade or end-of-course] test or who has not completed all of the requirements for a high school diploma but who has nevertheless completed his or her Individualized Education Program”); OR. REV. STAT. § 329.451(7) (2013) (explaining modified diplomas shall only be awarded to “students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations” and who have “significant” learning or medical conditions that bar “achievement”); TENN. CODE ANN. § 49-6-6005 (2011) (“A special education diploma shall be awarded to students who have satisfactorily completed an individualized education program and who have satisfactory records of attendance and conduct, but who have not met the proficiency testing requirements . . .”). *But see* IDAHO ADMIN. CODE r. 08.02.03.109(07) (2014) (noting that any modified

education,”⁶ “IEP,”⁷ or “modified”⁸ diplomas—are intended for special education students who cannot meet the same graduation standards as other students.⁹

Students with alternative diplomas face immense challenges both in school and after graduation.¹⁰ Notwithstanding the underlying policy goals of alternative diplomas to provide students with disabilities future opportunities,¹¹ the reality is that special education diplomas may limit potential options, which can be upsetting for students and their parents.¹² Students with disabilities already encounter challenges in school; twenty percent of students between the ages of fourteen and twenty-one who have disabilities dropped

diploma “may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities”). Although there are many forms of alternative diplomas (including certificates of completion, occupational diplomas or certificates of attendance) this Note uses “alternative diplomas” to refer exclusively to diplomas given to student with disabilities other than a standard high school diploma. The term “students with disabilities” in this Note refers to students with an Individualized Education Plan (IEP) and who receive special education services. See *infra* notes 46–48 and accompanying text, for an explanation of IEPs. Students with disabilities on a § 504-accommodation plan in lieu of an IEP are outside the scope of this Note.

6. *E.g.*, O.C.G.A. § 20-2-281(c) (West, Westlaw through 2015 Legis. Sess.).

7. *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 663 (2d Cir. 2012).

8. OR. REV. STAT. § 329.451(7) (2013).

9. NAT’L CTR. ON EDUC. OUTCOMES, GRADUATION REQUIREMENTS FOR STUDENTS WITH DISABILITIES: ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS 3 (2013), <http://www.achieve.org/files/Achieve%20-%20NCEO%20-%20Graduation%20Requirements%2013Nov2013.pdf> [hereinafter ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS]. Many states offer Individual Education Program (IEP) or special education diplomas although sources conflict on the exact number. Compare DAVID R. JOHNSON ET AL., NAT’L CTR. ON EDUC. OUTCOMES, DIPLOMA OPTIONS, GRADUATION REQUIREMENTS, AND EXIT EXAMS FOR YOUTH WITH DISABILITIES: 2011 NATIONAL STUDY 16–18 (2012) (citing eleven states), and Hartwig & Sitlington, *supra* note 1, at 6 (citing twelve states), with M. Thurlow & S. Thompson, *Diploma Options and Graduation Policies for Students with Disabilities*, NAT’L CTR. EDUC. OUTCOMES (Jan. 2000), <http://education.umn.edu/NCEO/OnlinePubs/Policy10.htm> (citing nine states).

10. See, *e.g.*, ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS, *supra* note 9, at 3–4. Students with disabilities are less likely to pursue a postsecondary degree, complete a postsecondary degree, or find employment compared to students without disabilities. *E.g.*, MARY WAGNER ET AL., NAT’L LONGITUDINAL TRANSITION STUDY, NLTS2, AFTER HIGH SCHOOL: A FIRST LOOK AT THE POSTSCHOOL EXPERIENCES OF YOUTH WITH DISABILITIES ES-2 (2005), http://www.nlts2.org/reports/2005_04/nlts2_report_2005_04_complete.pdf.

11. Mader & Butrymowicz, *supra* note 4.

12. *Id.*; see also Steven Holder, *Unstoppable Frank Gore*, INDIANAPOLIS STAR, Oct. 4 2015, at C11 (explaining that when Frank Gore was high school football star, he was on track for a special education diploma because of his severe dyslexia and without the help of his football coach to transfer Gore to the regular curriculum, Gore would not have been able to go to college and play professional football).

out of school without earning a diploma of any sort during the 2010–2011 school year.¹³

Students with alternative diplomas confront even greater obstacles.¹⁴ Employers are less likely to hire students with alternative diplomas,¹⁵ and many public postsecondary institutions require a standard high school diploma or General Educational Development (GED) to complete an application to the institution.¹⁶ Some postsecondary institutions impose conditions that prohibit students with special education diplomas from admission.¹⁷ Imposing such criteria inherently excludes some students with disabilities.¹⁸ Students with disabilities have lower rates of postsecondary education enrollment, postsecondary education completion, and employment,¹⁹ and the combination of an unrecognized diploma—along with a disability—can significantly restrict a student’s future

13. *E.g.*, ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS, *supra* note 9, at 4.

14. *See infra* text accompanying notes 15–19.

15. Hartwig & Sitlington, *supra* note 1, at 6.

16. *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, U. SYS. GA., <http://www.usg.edu/policymanual/section4/policy/C328> (last visited Feb. 25, 2016) (“[S]pecial education diplomas are not acceptable.”); *V.B.I. Admissions Requirements*, TECHNICAL C. SYS. GA., https://tcsg.edu/tcsgpolicy/docs/V.B.I.Admissions_Requirements.html (last revised July 15, 2015) (requiring a high school diploma or its equivalent and specifying that diplomas or certificates “where the student did not complete . . . testing required for a high school diploma . . . are not recognized for admissions purposes”). *Zeno v. Pine Plains* illustrates the problems a student with disabilities may face. *See generally* *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655 (2d Cir. 2012). In *Zeno*, the student’s classmates physically and verbally harassed the student for four years of high school. *Id.* at 659–61. In response to the child’s struggles, the school placed him on an IEP. *Id.* at 661. In his senior year, after finding himself short of graduation credits, the student and his mother decided to accept an IEP diploma rather than spend more time at the school working towards a standard diploma. *Id.* at 663. The court found that the school had been deliberately indifferent to the verbal and physical abuse of the student. *Id.* at 671. The court concluded a jury could reasonably find that the severe and pervasive harassment the child suffered at school resulted in a deprivation of educational benefits because IEP diplomas are “less likely to be accepted by employers or four-year colleges.” *Id.* at 667.

17. *See Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16 (“[S]pecial education diplomas are not acceptable.”); *V.B.I. Admissions Requirements*, *supra* note 16 (requiring a high school diploma or its equivalent and specifying that diplomas or certificates “where the student did not complete all required coursework or testing required for a high school diploma in that state are not recognized for admission purposes”).

18. *See* discussion *infra* Part II.C.

19. *See* ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS, *supra* note 9, at 4 (“Evidence about the postsecondary education and employment of individuals with disabilities illustrates the opportunities and challenges that lie ahead and the need to ensure that students with disabilities achieve college and career readiness . . .”).

opportunities.²⁰ The decision to incorrectly or improperly award special education students a special education diploma, when the student should have been given the opportunity to obtain a general diploma, fundamentally harms the student because that choice greatly limits the student's future. But more importantly, the college policies that categorically deny admissions to these students are likely a violation of anti-discrimination law.²¹

Students with disabilities are not without legal protection.²² The Americans with Disabilities Act Amended Act of 2008 (ADAAA) contains statutory provisions that afford protection to students with disabilities in educational settings.²³ Recognizing that discrimination “persists in such critical areas,”²⁴ the language of Congress's findings is ripe with references to educational opportunities.²⁵ Congress amended the Americans with Disabilities Act (ADA) intending to “re-establish[] the scope of protection to be generous and inclusive[,]”²⁶ hoping to “increase eligibility for the protections of the ADA.”²⁷ Categorical denial of access to postsecondary programs is exactly the type of action Congress intended the ADAAA to prevent.²⁸

20. *Id.*; accord Hartwig & Sitlington, *supra* note 1, at 6; Mader & Butrymowicz, *supra* note 4.

21. See discussion *infra* Part II.C–D.

22. See 42 U.S.C. § 12131 (2012).

23. *Id.* Fourteenth Amendment Equal Protection issues can also arise in legal questions concerning students with disabilities. Equal Protection claims will not likely succeed for students with disabilities because the disabled are not considered a “suspect class” under the Fourteenth Amendment and are only afforded a “rational basis” level of scrutiny. See, e.g., *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 446–47 (1985) (interpreting U.S. CONST. amend. XIV, § 1). Traditionally, Equal Protection claims for students with disabilities have not been successful given the low standard of scrutiny. See Paul T. O’Neill, *Special Education and High Stakes Testing for High School Graduation: An Analysis of Current Law and Policy*, 30 J.L. & EDUC. 185, 204 (2001). But see Debra P. v. Turlington, 644 F.2d 397, 406 (5th Cir. 1981) (noting that if exit exams for students with disabilities lack curricular validity, they would fail the rational basis test and violate the Equal Protection Clause).

24. 42 U.S.C. § 12101(a)(3) (2012); see also § 12101(a)(2) (“[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.”).

25. See, e.g., § 12101(a)(3) (“[D]iscrimination against individuals with disabilities persists in such critical areas as . . . education . . .”); § 12101(a)(6) (“[P]eople with disabilities . . . are severely disadvantaged socially, vocationally, economically, and educationally.”).

26. 154 CONG. REC. E1841 (daily ed. Sept. 18, 2008) (statement of Rep. George Miller).

27. 154 CONG. REC. S8840–01, S8841 (daily ed. Sept. 16, 2008) (statement of managers).

28. See 42 U.S.C. § 12101(a)(7) (2012) (“[T]he Nation’s proper goals regarding individuals with

This Note examines whether denying a student with disabilities access to public postsecondary education because the student has received a special education diploma rather than a regular diploma amounts to a violation of the ADA. Part I examines the development of policies regarding special education diplomas, highlights the relevant procedures, and assesses the legal protections afforded students with disabilities.²⁹ Part II explores Georgia's current policies and procedures in awarding special education diplomas and the potential ramifications of such diplomas.³⁰ Part II also considers the legality of public universities and colleges denying a student with a disability admission to a postsecondary institution based on diploma type.³¹ Part III proposes changes to the Georgia Board of Education's policies and guidelines, and suggests the addition of meaningful guidelines to determine when a student should or should not be considered for a special education diploma.³² Further, Part III proposes the Georgia public college and university systems amend their policies not to categorically deny admission to special education diploma holders, and suggests alternative means of evaluating students for admission.³³

I. BACKGROUND

A. *The Problems with Special Education Diplomas: Where Did They Begin?*

Over the past few decades, secondary schools have developed various diploma options,³⁴ ranging from standard high school diplomas to special education diplomas.³⁵ State-created special

disabilities are to assure *equality of opportunity*, full participation, independent living, and economic self-sufficiency for such individuals") (emphasis added).

29. See discussion *infra* Part I.

30. See discussion *infra* Part II.

31. See discussion *infra* Part II.

32. See discussion *infra* Part III.

33. See discussion *infra* Part III.

34. E.g., Hartwig & Sitlington, *supra* note 1, at 6; Thurlow & Thompson, *supra* note 9.

35. See, e.g., Sherman Dorn, *High-Stakes Testing and the History of Graduation*, 11 EDUC. POL'Y ANALYSIS ARCHIVES, no. 1, Jan. 1, 2003, at 4, <http://epaa.asu.edu/ojs/article/view/229/355>; Maurice Dyson, *In Search of the Talented Tenth: Diversity, Affirmative Access, and University-Driven Reform*, 6

education diploma programs came about for various reasons.³⁶ Some states were motivated to change diploma requirements for students who do not adhere to the traditional curriculum to preserve the integrity of academic standards and the significance of a standard high school diploma.³⁷ Other states have implemented special education diploma plans to document the educational achievements of students with disabilities.³⁸

The No Child Left Behind Act renewed the emphasis on educational standards and test results,³⁹ and several states implemented alternative routes to graduation in light of the disparities between the test-passage rates of students with disabilities and those without disabilities.⁴⁰ In Georgia, “alternative assessment[s]” are used for students who cannot “reasonably participate in the regular assessment[s]” for graduation.⁴¹ Nonetheless, schools cannot deny a diploma to a student who meets state-established proficiency standards simply because the student has a disability,⁴² although there can be advantages to multiple

HARV. LATINO L. REV. 41, 64 (2003); Hartwig & Sitlington, *supra* note 1, at 6; Thurlow & Thompson, *supra* note 9. Diploma options include: occupational diplomas, certificates of attendance, certificates of completion and certificates of achievement. *See, e.g.*, Hartwig & Sitlington, *supra* note 1, at 5.

36. Derrick Olsen, OR. HOUSE COMM. ON EDUC., STAFF MEASURE SUMMARY, HB 2848, REGULAR SESS. (2007), <https://olis.leg.state.or.us/liz/2007R1/Downloads/MeasureAnalysisDocument/4090> (reflecting on a lack of consistency between school districts in awarding modified diplomas and proposing a statewide standard for such diplomas).

37. Lynn Moore, *State Halts Practice of Giving Diplomas to Special-Education Graduates*, MLIVE (Feb. 28, 2010, 11:51 PM), http://www.mlive.com/news/muskegon/index.ssf/2010/02/state_halts_practice_of_giving.html (citing a Michigan state law that prevented schools from giving out diplomas to students who completed an “adaptive curriculum”).

38. Bennett Hall, *Town Hall Covers Modified Diplomas*, CORVALLIS GAZETTE-TIMES (Feb. 9, 2010, 8:30 PM), http://www.gazettetimes.com/news/local/article_0bbc774e-15fe-11df-b236-001cc4c03286.html (“[Special education] diplomas are intended to provide meaningful documentation of educational attainment by students with developmental disabilities, autism, dyslexia and other special needs. . . . [Students with disabilities previously] weren’t earning credits, and in a lot of districts they weren’t even allowed to go through commencement exercises to receive a certificate of attendance.”).

39. 20 U.S.C. § 6301 (2012).

40. Kenlyn Foster-Spence, Comment, *Adding It Up: Implications of Tennessee’s New High School Transition Policy & Graduation Requirements for Students with Disabilities*, 76 TENN. L. REV. 447, 450 (2009) (“The rationale for annual assessments and proficiency based testing is that test scores mirror student learning. Lack of progress on these assessments and tests indicates either a failure of the student to learn or a failure of the school to effectively teach.”).

41. GA. COMP. R. & REGS. 160-4-.48(2)(d) (2011).

42. *See Letter to Anonymous*, 22 IDELR 456, 2 (OSEP Nov. 1, 1994).

pathways for diploma attainment.⁴³ But regardless of any idealistic intention behind diploma policies pertaining to students with disabilities, the ramifications of alternative diplomas—especially when unwarranted—are dire.⁴⁴

The intentions behind Georgia’s law are unknown. Georgia enacted legislation authorizing special education diplomas in 1985.⁴⁵ The student’s IEP team⁴⁶—usually comprised of the student’s special education teacher, general education teacher (if applicable), a school representative, the student’s parents, anyone else with relevant, special knowledge or expertise, and (when appropriate) the child⁴⁷—makes the decision to place special education students on track for a

43. See U.S. DEP’T OF LABOR OFFICE OF DISABILITY EMP’T, GRADUATION REQUIREMENTS AND DIPLOMA OPTIONS FOR STUDENTS WITH DISABILITIES: WHAT FAMILIES AND ADVOCATES NEED TO KNOW 5 (2009), <http://www.dol.gov/odep/ietoolkit/publications/375.pdf> (noting that special education diplomas recognize “that students with disabilities may be working on different standards”).

44. See ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS, *supra* note 9, at 4. *But see* Jessica Collier, *Special Education Graduation Rules Could Increase Dropouts*, ADIRONDACK DAILY ENTERPRISE (July 12, 2012) <http://adirondackdailyenterprise.com/page/content.detail/id/531809/Special-education-graduation-rules-could-increase-dropouts.html?nav=5008> (explaining that without IEP diplomas, students with disabilities may be more likely to drop out of high school).

45. 1985 Ga. Laws 1657, § 1 (codified at O.C.G.A. § 20-2-281 (effective 1985)).

46. Although the Georgia statutes and regulations use the phrase “Individual Education Program” when referring to a student’s IEP, some publications occasionally refer to the IEP as “Individual Education Plan.” See, e.g., O.C.G.A. § 20-2-329(4) (West, Westlaw through 2015 Legis. Sess.); GA. COMP. R. & REGS. 160-4-2.48(2)(d) (2011); Ulrich Bosser, *Special Education: A Better Perspective (Full Report)*, CTR. FOR PUB. EDUC. (Oct. 15, 2009), <http://www.centerforpubliceducation.org/Main-Menu/Evaluating-performance/Special-education-At-a-glance/Special-education-A-better-perspective-full-report.html>. The IEP team makes the educational “plan” for the student with a disability. Although the correct term—as used in the United States Code—is “Individual Education Program,” authors using “Individual Education Plan” presumably mean the same thing. 20 U.S.C. § 1414(d) (2012). The Individuals with Disabilities Education Act (IDEA) protects the educational rights of school-aged children with disabilities. 20 U.S.C. § 1400 (2012). Under the IDEA, students with disabilities are entitled to a free appropriate education. 20 U.S.C. § 1400(d)(1)(A). See *infra* note 132, for a discussion on the disability categories under the IDEA. The IDEA requires that the child be properly evaluated, individuals knowledgeable about the evolution meet and decide an appropriate placement, a placement in the least restrictive environment and the placement’s execution. 20 U.S.C. § 1400. The IDEA also provides due process procedures to challenge whether a placement is appropriate. 20 U.S.C. § 1415(b)(8).

47. GA. COMP. R. & REGS. 160-4-7-.06(5)(d) to (g) (2007). The school representative must be “qualified to provide,” or supervise, the resulting decisions of the IEP team, be “knowledgeable about the general education curriculum,” and be “knowledgeable about the availability of resources” of the local school. *Id.* State regulations dictate the members of a child’s IEP team but all state regulations must conform to Federal Regulations. 34 C.F.R. § 300.321(a) (2010) (requiring an IEP team to include: the child’s parents, at least one special education teacher, at least one regular education teacher (when applicable), a representative of the public agency, anyone who has special knowledge of the child and—when appropriate—the child with a disability).

special education diploma.⁴⁸ Georgia has no formal guidelines through either state law or from the state Department of Education for how this decision is made, leaving the choice entirely up to the members of the IEP team.⁴⁹

Alternative diplomas are extremely complex and members of a student's IEP team may not be well versed in the intricacies of the impact, lacking "information about the value and rigor of various diploma options and about the possible consequences for students of receiving an alternative diploma instead of a standard high school diploma."⁵⁰ Several factors may contribute to a lack of proper information, including poor teacher training, absence of administrative guidance, and prejudicial judgments about race or economic status.⁵¹ This has led to the over-use of special education diplomas.⁵² The consequences of a special education diploma are potentially very serious.⁵³ For example, students with a bachelor's degree earn—on average—63% more than those who only obtain a high school diploma.⁵⁴ Although a student with a disability who is *otherwise unable* to meet state-established graduation requirements may earn an alternative degree,⁵⁵ placing a student on an alternative diploma track without considering whether the student *could* earn a regular diploma may violate federal law.⁵⁶

48. O.C.G.A. § 20-2-281(d) (West, Westlaw through 2015 Legis. Sess.).

49. § 20-2-281(f) ("[A] student's Individual Education Program team shall determine appropriate participation in assessments . . ."). Additionally, even if a student with a disability cannot meet the requirements for a standard high school diploma, or the requirements for an alternative diploma, he will exit the public education system when he reaches the maximum age, 21 years old, for special education services. See 34 C.F.R. § 300.102(a)(2)(i) (2014).

50. ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS, *supra* note 9, at 7.

51. See discussion *infra* Part II.

52. *Id.*

53. See generally Hartwig & Sitlington, *supra* note 1, at 6; Mader & Butrymowicz, *supra* note 4.

54. *Fast Facts: Income of Young Adults*, *supra* note 1.

55. See, e.g., Salem-Keizer Sch. Dist., 30 IDELR 1024 (Or. Dep't of Educ. June 14, 1999) (finding the IEP team did not err in determining a 20-year student functioning at a first-grade level should work toward a certificate rather than a standard diploma).

56. See Forest Hills (MI) Pub. Schs., 62 IDELR 66 (OCR 2013) (finding district failed to accommodate student with a heart defect and in concluding the student could not succeed in core academic classes, placed the student on a certificate of completion track).

B. Special Education Diplomas & College Admission

A special education diploma is a hurdle for students who want to attend college.⁵⁷ Colleges and universities are wary of the value of a special education diploma and many have policies explicitly prohibiting students with such diplomas from applying for admission.⁵⁸ Georgia's two largest public postsecondary systems, The Technical College System of Georgia (TCSG) and the Board of Regents (BOR)—which governs the University System of Georgia—require students to hold a standard high school diploma as a condition of consideration for admission.⁵⁹ BOR schools explicitly prohibit special education diplomas from satisfying the admissions diploma requirement.⁶⁰ TCSG does not explicitly prohibit special education diplomas but does state that any diploma or certificate “where the student did not complete all required coursework or testing required for a high school diploma in that state [is] not recognized for admission purposes.”⁶¹ Because a student with a special education diploma does not complete the high school testing required for a standard high school diploma, TCSG will not accept a special education diploma. Thus, while some states are expanding opportunities for students with disabilities,⁶² Georgia's public higher education institutions are preventing a group of students with

57. See *supra* notes 15–19 and accompanying text.

58. See *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16 (“[S]pecial education diplomas are not acceptable.”).

59. See *id.*; *V.B.I. Admissions Requirements*, *supra* note 16 (“A high school diploma . . . or a state-authorized examination the state recognizes as the equivalent of a high school diploma will be required for admission . . .”).

60. See *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16.

61. *V.B.I. Admissions Requirements*, *supra* note 16.

62. See Amy Blakely, *UT to Offer Post-Secondary Program for Students with Intellectual Disabilities, Autism*, TENN. TODAY (Dec. 7, 2010), <http://tntoday.utk.edu/2010/12/07/postsecondary-program> (discussing University of Tennessee at Knoxville's decision to offer a two-year vocational certificate program for students with “mild to moderate intellectual disabilities and autism”):

Providing post-secondary educational opportunities to students with intellectual disabilities helps to fulfill the mission of . . . the University of Tennessee. There is no more important work to be done than helping students with special needs improve their life and job opportunities, and this will happen as a result of [the new certificate program].

Id.

disabilities—those that hold a special education diploma—from attending postsecondary school.⁶³

C. The Legal Standards that Apply to College Admissions

After Congress enacted the original ADA in 1990,⁶⁴ the Supreme Court handed down several limiting pro-defendant decisions,⁶⁵ effectively restricting who could seek remedies in the face of discrimination based on a disability.⁶⁶ In response, Congress enacted ADAAA.⁶⁷ Congress left the current definition of disability in the ADAAA,⁶⁸ but added “[r]ules of construction regarding the definition of disability”⁶⁹ which explain that the definition of disability “shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted”⁷⁰

ADAAA Title II governs all state-funded or state-supported institutions and prohibits them from discriminating based on disability.⁷¹ The Department of Justice’s Title II regulations prohibit a public postsecondary school from imposing “eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities . . . unless such criteria can be

63. See discussion *infra* Part II.C.

64. *E.g.*, RUTH COLKER & PAUL D. GROSSMAN, THE LAW OF DISABILITY DISCRIMINATION HANDBOOK 2 (Matthew Bender & Co. ed., 8th ed. 2013).

65. See, *e.g.*, Toyota Motor Mfg. Ky., Inc. v. Williams, 534 U.S. 184, 197–98 (2002); Sutton v. United Air Lines, Inc., 527 U.S. 471, 482 (1999); Murphy v. United Parcel Serv., Inc., 527 U.S. 516, 525 (1999); Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555, 577 (1999); COLKER & GROSSMAN, *supra* note 64, at 2; Andrew E. Henry, Comment, *The ADA Amendments Act of 2008: Why the Qualified Individual Analysis is the New Battleground for Employment Discrimination Suits*, 67 OKLA. L. REV. 111, 111 (2014).

66. 154 CONG. REC. E1841 (daily ed. Sept. 18, 2008) (statement of Rep. George Miller).

67. COLKER & GROSSMAN, *supra* note 64, at 2. Although the Americans with Disabilities Act Amended Act of 2008 has replaced the original ADA and is frequently referred to as ADA, this Note uses “ADAAA” to distinguish the 2008 amended version of the ADA.

68. 42 U.S.C. § 12102(1) (2012). The ADA and ADAAA define disability as: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” *Id.* The ADAAA now defines “major life activities.” § 12102(2). Major life activities include sleeping, seeing, hearing, walking, standing, lifting, learning, reading, concentrating, thinking, and communicating. *Id.* Major life activities also include the operation of major body systems such as respiratory, immune system, digestive and neurological. *Id.*

69. § 12102(4).

70. § 12102(4)(a).

71. § 12131.

shown to be necessary”⁷² Congress unambiguously indicated that Title II regulations should be consistent with the existing Rehabilitation Act § 504 regulations.⁷³ The Rehabilitation Act applies to any “program or activity receiving Federal financial assistance.”⁷⁴ The prohibition against discrimination in Title II and § 504 reads: “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁷⁵ A student excluded from an educational program can prove a violation of ADA Title II or § 504 when the student establishes that (1) he has a disability, (2) he is otherwise qualified to participate in the program, and (3) he was excluded from the program on the basis of his disability.⁷⁶ To succeed on a claim under the ADA, the disability must have been “a motivating cause of the exclusion.”⁷⁷

A plaintiff must establish that he is a qualified individual.⁷⁸ Title II defines “qualified individual” as “an individual with a disability who, with or without reasonable modifications . . . meets the essential eligibility requirements for the . . . participation in programs or activities provided by a public entity.”⁷⁹ A court must determine whether the plaintiff has presented sufficient evidence to demonstrate

72. 28 C.F.R. § 35.130(b)(8) (2014). The Department of Justice and the Equal Employment Opportunity Commission issue the regulations implementing the anti-discrimination sections of the ADA. See NAT’L COUNCIL ON DISABILITY, THE ROLE OF MITIGATING MEASURES IN NARROWING OF THE ADA’S COVERAGE, POLICY BRIEF SERIES: RIGHTING THE AMERICANS WITH DISABILITIES ACT’S COVERAGE 5 (2003), http://www.ncd.gov/rawmedia_repository/2c8e4061_1281_4e82_a1bc_9d1f38983f9b.pdf; Elliot Hamlet, Note, “Over-Accommodation” in *Higher Education: An ADA Sanctioned Injustice Exposed*, 12 CARDOZO PUB. L. POL’Y & ETHICS J. 491, 528 (2014).

73. 42 U.S.C. § 12134(b) (2012).

74. 29 U.S.C. § 794(a) (2012).

75. 42 U.S.C. § 12132 (2012).

76. See, e.g., *Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 461 (4th Cir. 2012); *Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 671–72 (5th Cir. 2004).

77. *Halpern*, 669 F.3d at 461 (noting that the ADA and the Rehabilitation Act differ on the causation element where a claim under the Rehabilitation Act requires the plaintiff to “establish he was excluded ‘solely by reason of’ his disability” but under the ADA a claim only requires that “the disability was ‘a motivating cause’” (quoting *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468–69 (4th Cir. 1999))).

78. E.g., *Melton*, 391 F.3d at 671 (explaining that a prima facie case of discrimination under the ADA requires the plaintiff to demonstrate that “he is a qualified individual within the meaning of the ADA”).

79. 42 U.S.C. § 12131(2) (2012).

that he could satisfy the essential eligibility requirements of the program,⁸⁰ and if he cannot, whether any “reasonable accommodation by the defendant would enable the plaintiff to meet these requirements.”⁸¹ Under § 504, an otherwise qualified individual is one “who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity.”⁸² An individual must be capable—with or without reasonable accommodation—of completing the essential program requirements.⁸³

II. ANALYSIS

For a student to claim the admission criteria of Georgia’s public postsecondary institutions violate ADA Title II, the student must prove (1) he has a disability; (2) he is otherwise qualified to participate in the program; and (3) he was excluded from the program on the basis of his disability.⁸⁴ As noted, students with special education diplomas must have an IEP, and only students with actual documented disabilities should have IEPs—but that is not always the case.⁸⁵

80. Under the Americans with Disabilities Act, the essential program requirements must “bear more than a marginal relationship to the program at issue” and the disability was “‘a motivating cause’ of the exclusion.” *Halpern*, 669 F.3d at 462 (quoting *Tyndall v. Nat’l Educ. Ctrs., Inc.*, 31 F.3d 209, 213 (4th Cir. 1994)).

81. *Id.* (adopting a deferential view to the defendant’s determination of whether the student was “qualified”). The *Halpern* court held, in consideration of the trend in other circuits, “‘great deference to a school’s determination of the qualifications of a hopeful student’ is appropriate ‘because courts are particularly ill-equipped to evaluate academic performance.’” *Id.* at 463 (quoting *Davis v. Univ. of N.C.*, 263 F.3d 95, 101–02 (4th Cir. 2001)).

82. 34 C.F.R. § 104.3(1)(3) (2014).

83. COLKER & GROSSMAN, *supra* note 64, at 477 (“A disability does not entitle a student to waive an essential program requirement.”).

84. *See, e.g., Halpern*, 669 F.3d at 461; *Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 671–72 (5th Cir. 2004). *See supra* note 68, for the definition of disability.

85. *See, e.g., U.C.L.A. Ctr. for Mental Health in Schs., Schools and the Challenge of LD and ADHD Misdiagnoses* 1 (2010), <http://smhp.psych.ucla.edu/pdfdocs/ldmisdiagnoses.pdf> (reporting “large numbers of false positive misdiagnoses resulting from indiscriminate use and classification practices” of learning disabilities and attention deficit/hyperactivity disorder).

A. The Troubles with Special Education Diplomas: Diagnosing the Wrong Problem

In a time where disability diagnosis is more prevalent than ever,⁸⁶ ensuring that IEPs—and by extension special education diplomas—are given only to eligible students with disabilities becomes more difficult.⁸⁷ Because “males, minorities, and children from lower-income families are more likely to be diagnosed with a disability,” primary and secondary schools must be vigilant in properly diagnosing a student with a disability and deciding to appropriately award a special education diploma rather than a regular diploma.⁸⁸ Questions about the correct diagnosis of minority students arise because black students are more frequently classified as having emotional disturbance disabilities and intellectual disabilities as compared to other students.⁸⁹ Minority students are also more likely to spend less than 40% of a school day inside a regular classroom and are more likely to be sent to a separate school or residential facility,⁹⁰ largely impairing their ability to keep up with their nondisabled

86. See, e.g., Marcus A. Winters, *The Promise of Special Education Vouchers*, 9 NAT'L AFFAIRS 146, 149–50 (2011) (“The most substantial portion of the growth in special education has come from its mildest category, [specific learning disability], which has increased enrollment by 211% since 1976.”); Denise Smith Amos, *Students with Learning Disabilities Can Succeed in College if Help is There*, CINCINNATI ENQUIRER, Mar. 14, 2010, LEXIS (“[M]ore than 15,000 seniors with disabilities made up 14 percent of the [Ohio] Class of 2008’s 105,700 graduates.”).

87. Cf. Winters, *supra* note 86, at 150 (discussing the increasing prevalence of disabilities among students).

88. *Id.*; accord CATHIE MAYES HUDSON ET AL., UNIV. SYS. OF GA., REPORT OF THE RESEARCH AND POLICY ANALYSIS SUBCOMMITTEE 6–8 (2003) http://www.usg.edu/aami/files/Research_and_Policy_Analysis_Subcommittee.pdf; JAN KETTLEWELL ET AL., UNIV. SYS. OF GA., REPORT OF THE K-12/PIPELINE ISSUES SUBCOMMITTEE 2–3, http://www.usg.edu/aami/files/K12_Pipeline_Issues_Subcommittee.pdf (finding black males are “two to three times more likely than any other ethnic/gender group to be labeled mentally retarded and/or behaviorally disturbed and placed in special education classes”). But see Paul L. Morgan & George Farkas, Op-Ed, *Is Special Education Racist?*, N.Y. TIMES, June 24, 2015, http://www.nytimes.com/2015/06/24/opinion/is-special-education-racist.html?emc=eta1&_r=0 (claiming “black children are less likely to be told they have disabilities, and to be treated for them, than otherwise similar white children”).

89. E.g., GA. DEP’T OF EDUC., GEORGIA DISPLAY DATA 8 (2014), <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/SPP-APR/GA-acc-statedatadisplay-12-13.pdf> [hereinafter GEORGIA DISPLAY DATA]. See *infra* note 132, for a discussion on various disability categories in Georgia.

90. GEORGIA DISPLAY DATA, *supra* note 89, at 9.

counterparts.⁹¹ Students in such restrictive placements perform significantly behind their peers with and without disabilities in integrated classroom settings.⁹² Black males are also disproportionately awarded special education diplomas.⁹³ In Georgia, black males represented 19.2% students enrolled in K-12 schools in 2001, but they made up 37.2% of students awarded special education diplomas.⁹⁴

Awareness of over-diagnosis does little to stem the underlying problems; too little information is available for meaningful diagnosis of some disabilities,⁹⁵ and those in crucial special education decision-making positions need to understand all of the relevant processes. Unfortunately, even though decision-makers should have all the requisite knowledge required to make a special-education decision, this is not always the case.⁹⁶ There remains a substantial probability that students who could otherwise succeed in grade school in a regular education setting—with the right tools and instruction—are incorrectly and unfairly placed into special education programs.⁹⁷

1. Teacher Preparation

IEPs can be developed as early as preschool and therefore decisions that will impact a student's diploma type can start as soon

91. See Kathleen Lynne Lane et al., *Academic Performance of Students with Emotional and Behavioral Disorders Served in a Self-Contained Setting*, 17 J. BEHAV. EDUC. 43, 46 (2008).

92. *Id.* (suggesting that a separate school results in even lower performance than a self-contained classroom). See also Letter of Findings from Vanita Gupta, Principal Deputy Assistant Attorney General, Department of Justice, to Nathan Deal, Governor of Ga., and Samuel Olens, Attorney Gen. of Ga., 2 (July 15, 2015), <http://docplayer.net/1707283-United-states-investigation-of-the-georgia-network-for-educational-and-therapeutic-support-d-j-no-169-19-71.html> (noting that the State “fails to ensure that admissions to [the separated school setting] are limited to only those students for whom [it] may be necessary” and students in such settings “do not receive grade-level instruction that meets Georgia’s State Standards like their peers in general education classrooms”).

93. *E.g.*, HUDSON ET AL., *supra* note 88, at 8.

94. *Id.*

95. Paul Steinberg, Op-Ed, *Asperger’s History of Overdiagnosis*, N.Y. TIMES (Jan. 31, 2012), <http://www.nytimes.com/2012/02/01/opinion/aspergers-history-of-over-diagnosis.html> (reflecting that there is “[t]oo little science and too many unintended consequences” in the overdiagnosis of Asperger’s syndrome); U.C.L.A. Ctr. for Mental Health in Schs., *supra* note 85, at 6 (“The problems in making a valid diagnoses of ADHD and LD will continue as long as they are based on clinical assessment of behavioral symptoms, rather than on signs identified in laboratory tests.”).

96. See discussion *infra* Part II.A.1.

97. See discussion *infra* Part B.

as the student begins school.⁹⁸ Teachers and school administrators are in crucial decision-making positions, and must have all the requisite knowledge and experience to make decisions related to a student's initial special education eligibility, IEP, and diploma type.⁹⁹ Most certified teachers attain their training at a college or university teaching program.¹⁰⁰ However, a recent review of teacher preparation programs across the United States placed only two Georgia programs in the top fifty programs.¹⁰¹

Inadequate teacher preparation programs—despite good intentions—are not unique to Georgia and potentially leave school districts nationwide with under-prepared and under-trained teachers.¹⁰² A majority of teacher preparation programs are of questionable quality.¹⁰³ Teachers undoubtedly improve their skills as they gain more experience, but in the meantime, students may suffer the consequences.¹⁰⁴ Although special education teachers undergo specialized training,¹⁰⁵ regular education teachers are often responsible for several components of a child's special education documentation.¹⁰⁶ Despite a teacher's best intentions, any deficiency

98. See 34 C.F.R. § 300.323(b) (2014).

99. See GA. COMP. R. & REGS. 160-4-7-.05 (2010).

100. See *Routes to Initial Certification*, GA. PROF. STANDARDS COMMISSION, <http://www.gapsc.com/ProspectiveEducator/routesToInitialCertification.aspx> (last updated June 16, 2014, 1:15 PM).

101. Press Release, Nat'l Council on Teacher Quality, Push for Quality Faces Uphill Climb for Georgia's Teacher Preparation Programs (June 17, 2014), http://www.nctq.org/dmsView/2014_Teacher_Prep_Review_Georgia_Press_Release (highlighting Clayton State University's secondary education program and Georgia Southern University's elementary education program among fifty-six Georgia programs evaluated).

102. E.g., Alisha Trusty & Rhonda Richetta, *Poor Training for New Teachers Does Permanent Harm to Students*, BALT. SUN (June 24, 2013), http://articles.baltimoresun.com/2013-06-24/news/bs-ed-teacher-training-20130624_1_new-teachers-novice-teachers-young-teachers.

103. See, e.g., Press Release, Educ. Trust, Principal and Teacher Preparatory Programs Leave Educators Unprepared for the Demands of Today (Sept. 23, 2013), https://edtrust.org/press_release/principal-and-teacher-preparatory-programs-leave-educators-unprepared-for-the-demands-of-todays-classrooms. Student teaching programs that prepare future teachers also fall short. See Tamar Lewin, *Training of Teachers is Flawed, Study Says*, N.Y. TIMES (July 21, 2011), http://www.nytimes.com/2011/07/21/education/21teaching.html?_r=0 (reporting the finding from National Council on Teacher Quality that three-quarters of student-teaching programs “did not meet five basic standards for high-quality” programs).

104. Press Release, Educ. Trust, *supra* note 103.

105. See generally *Certification Rules*, GA. PROF. STANDARDS COMM'N, <http://www.gapsc.com/Commission/Rules/Current/Certification/CertRules.aspx> (last updated Jan. 19, 2016).

106. See, e.g., *Protecting Students with Disabilities*, U.S. DEP'T OF EDUC.: OFF. FOR C.R.,

in a teacher's knowledge of special education and its mechanisms can have long-lasting consequences for a child. These problems are compounded in areas with low-income students who are often "disproportionately assigned to novice teachers."¹⁰⁷

The United States Department of Education, recognizing the impact poor teacher preparation can have on students, announced new regulations about teacher quality in December 2014.¹⁰⁸ The proposed new regulations would clarify and implement teacher preparation program requirements, seeking to heighten the criteria for quality teacher performance and, by extension, student academic performance.¹⁰⁹ However, teacher performance is just one part of improving the process of qualifying students as disabled and, later, assigning special education diplomas.

2. Parental Involvement

Parents of students with disabilities should be involved in as many special education decisions as possible.¹¹⁰ Parental consent is required for (1) initial evaluations; (2) special education services; and (3) reevaluations.¹¹¹ Once a child has been evaluated and qualified for special education services, schools must notify parents of subsequent IEP team meetings.¹¹² Parents must be "afforded the

<http://www2.ed.gov/about/offices/list/ocr/504faq.html> (last modified Oct. 16, 2015) (noting a regular education teacher's role in providing recommendations during the evaluation process, implementing special education plans in the classroom, and monitoring a student's progress).

107. See Press Release, Educ. Trust, *supra* note 103; accord KETTLEWELL ET AL., *supra* note 88, at 3–4 ("The most influential variable on student learning is the quality of teaching . . . high-poverty and high-minority schools have nearly double the number of inexperienced teachers than schools with the lowest poverty and lowest minority enrollment.").

108. Teacher Preparation Issues, 79 Fed. Reg. 71819 (proposed Dec. 3, 2014) (to be codified at 34 C.F.R. pt. 612, 686).

109. *Id.*

110. See 34 C.F.R. § 300.300 (2014).

111. See *id.*

112. § 300.322(a)(1). The area of parental notification has been thoroughly litigated. Courts have recognized that the purpose of notification is to "provide [parents] with sufficient information to protect [their] rights, allow them to make informed judgments, and fully participate in due process hearings, if necessary." ALLAN G. OSBORNE & CHARLES J. RUSSO, SPECIAL EDUCATION AND THE LAW: A GUIDE FOR PRACTITIONERS 97 (Arnis Burvikos ed., 3d ed. 2014); accord *Kroot v. District of Columbia*, 800 F. Supp. 977 (D.D.C. 1992).

opportunity to participate”¹¹³ in IEP meetings. Congress included significant parental rights in statutes governing special education so that parents could advocate on behalf of their children.¹¹⁴ Parental involvement is crucial to ensure a fair process for the students because parents know the children’s “needs, desires, strengths, weaknesses, personality, and history in nuanced ways that others cannot come close to approaching.”¹¹⁵

Yet, parental involvement does not always provide the intended protective barrier.¹¹⁶ Courts agree that parental presence at an IEP meeting is “meaningless if parents do not understand the proceedings of IEP conferences.”¹¹⁷ In addition to the logistical barriers working parents face in attending IEP meetings,¹¹⁸ parents may have difficulty “understand[ing] what schools are saying to them,”¹¹⁹ both literally and figuratively. The special education system is complex and parents can have difficulty negotiating the personal and procedural requirements involved.¹²⁰ Less-educated parents often defer or delegate decision-making to school officials because “parents have not developed the requisite language to discuss educational programming”¹²¹ with school personnel, thereby undermining the

113. 34 C.F.R. § 300.322(a) (2014).

114. OSBORNE & RUSSO, *supra* note 112, at 96.

115. Christine Gottlieb, *Children’s Attorneys’ Obligation to Turn to Parents to Assess Best Interests*, 6 NEV. L.J. 1263, 1264 (2006).

116. See Debra Chopp, *School Districts and Families Under the Idea: Collaborative in Theory, Adversarial in Fact*, 32 J. NAT’L ASS’N ADMIN. L. JUDICIARY 423, 458–59 (2012); Joanne Karger, *A New Perspective on Schaffer v. Weast: Using A Social-Relations Approach to Determine the Allocation of the Burden of Proof in Special Education Due Process Hearings*, 12 U.C. DAVIS J. JUV. L. & POL’Y 133, 154 (2008).

117. OSBORNE & RUSSO, *supra* note 112, at 101; see also E.H. v. Tirozzi, 735 F. Supp. 53, 57 (D. Conn. 1990).

118. Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 FORDHAM URB. L.J. 403, 452–53 (2013).

119. See Chopp, *supra* note 116, at 459; Karger, *supra* note 116, at 154 (“[R]esearch has shown that many parents feel denigrated in their relationships with school personnel, who are in positions of power.”).

120. Erin Phillips, Note, *When Parents Aren’t Enough: External Advocacy in Special Education*, 117 YALE L.J. 1802, 1833 (2008) (“If the system now requires parents to make smart, consumer-like decisions, those without the requisite material, social, and cultural capital are at a marked disadvantage in their role as advocates for their children.”).

121. *Id.*; see also Daniela Caruso, *Bargaining and Distribution in Special Education*, 14 CORNELL J.L. & PUB. POL’Y 171, 172–73 (2005) (“The current [special education] system yields lower payoffs for

significance of parental participation.¹²² Besides, parental involvement is not always guaranteed.¹²³ Still, should a parent disagree with an IEP or reject it (by not signing), the Individuals with Disabilities Education Act's dispute resolution procedures begin and pending a final resolution of the dispute, the school's proposed IEP remains in effect.¹²⁴ Parents cannot always protect their children from flaws in the special education system.

B. The Problems with Special Education Diplomas: Awarding, Assigning, or Arresting?

For a claim under Title II, the student must prove that he is otherwise qualified to participate in the educational program.¹²⁵ Undoubtedly, students with certain disabilities have little trouble completing a college-level program because 10% of college students have disabilities.¹²⁶ But the special education diploma is not reserved only for students with severe disabilities.¹²⁷ Students with an IEP who "do not pass all the [Georgia High School Graduation Tests] but have met all other graduation requirements may be eligible for a . . . special education diploma."¹²⁸ Consequently, students with an IEP who fail one of the graduation tests can elect to graduate high

needier families, which are on average less endowed with bargaining power and therefore less capable of taking advantage of participation opportunities.").

122. Cf. GEORGIA DISPLAY DATA, *supra* note 89, at 10 (reporting only 40% of parents with a child receiving special education services felt schools facilitated parent involvement as a means of improving services and results for children with disabilities). It is also interesting to note that low-income families responsible for a child with disabilities may pursue a higher classification of disability to qualify for social security benefits. See SOC. SECURITY ADMIN., DISABILITY REPORT—CHILD—FORM SSA-3820-BK, at 9–10 (2014), <http://www.socialsecurity.gov/forms/ssa-3820.pdf> (requesting information about any testing for behavioral or learning problems and special education placement).

123. Lynn Newman, *Family Expectations and Involvement for Youth with Disabilities*, NAT'L CTR. ON SECONDARY EDUC. AND TRANSITION, Sept. 2005, at 3, http://www.ncset.org/publications/nlts2/NCSETNLTS2Brief_4.2.pdf (noting between 83–88% familial involvement at IEP meetings).

124. 20 U.S.C. § 1415 (2012); see also 34 C.F.R. § 300.504(c) (2014); OSBORNE & RUSSO, *supra* note 112, at 123–24.

125. See *supra* note 84 and accompanying text.

126. See *Fast Facts: Students with Disabilities*, NAT'L CTR. FOR EDUC. STAT., <http://nces.ed.gov/fastfacts/display.asp?id=60> (last visited Feb. 25, 2016).

127. See *supra* notes 41–49 and accompanying text.

128. *Graduating from a Georgia Public High School*, GA. CAREER INFO. CTR. 4 (Mar. 2008), http://www.gcic.peachnet.edu/Newsletter/March2008/HHSC_grad_req.pdf.

school with a special education diploma rather than retake the test.¹²⁹ In 2011, 18.4% (2,584 students) of Georgia high-school seniors with disabilities graduated with a special education diploma.¹³⁰

Although each child and each disability is different, the data indicates a discrepancy between the number of students in Georgia with disabilities severe enough to warrant a special education diploma and the number of students actually awarded a special education diploma.¹³¹

There are twelve categories of disabilities at the high school level in Georgia.¹³² The categories are defined in federal and state regulations.¹³³ Some categories encompass a wide range of ability level.¹³⁴ For example, students with autism “vary widely in their abilities and behavior” and autism as an eligibility category includes a wide range of students from higher-functioning Asperger’s Syndrome to low-functioning Childhood Disintegrative Disorder.¹³⁵

129. *Id.* (“[S]tudents can return to retake the test(s) as often as they wish in order to qualify for a high school diploma.”). All students who fail the tests are also eligible to receive a “high school certificate” instead of diploma. *Id.*

130. See Governor’s Office of Student Achievement, *Exiting Credentials for 2011 High School Completers*, 2010–2011 REPORT CARD, <https://gosa.georgia.gov/report-card> (follow “K-12 Public Schools” hyperlink; then follow “Indicators & Demographics” hyperlink; then select “Retained & HS Completer Student”; then filter by “2010-11” school year); GA. DEP’T. OF EDUC., STATE PERFORMANCE PLAN 9 (2014), http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/SPP-APR/Final_PartB_FFY%202012_SPP_4-25-14.pdf [hereinafter STATE PERFORMANCE PLAN]. This calculation used the number of students with disabilities reported in the State Performance Plan and the number of students graduating with a special education diploma reported in the Report Card. *Id.*

131. See STATE PERFORMANCE PLAN, *supra* note 130, at 9; GEORGIA DISPLAY DATA, *supra* note 89, at 2–3; Governor’s Office of Student Achievement, *supra* note 130.

132. *E.g.*, *Special Education Services and Supports*, GA. DEP’T OF EDUC., <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/default.aspx> (last visited Feb. 25, 2016). Georgia’s disability categories include (1) autism; (2) deaf/blind; (3) deaf/hard of hearing; (4) emotional & behavior disorder; (5) intellectual disabilities; (6) orthopedic impairment; (7) other health impairment; (8) significant developmental delay; (9) significant learning disability; (10) speech language impairment; (11) traumatic brain injury; and (12) visual impairment & blindness. *Id.* Federal disability categories include: (1) autism; (2) visual impairment; (3) speech or language impairment; (4) emotional disturbance; (5) hearing impairment; (6) deaf-blindness; (7) mental retardation; (8) multiple disabilities; (9) orthopedic impairments; (10) other health impairment; and (11) specific learning disability. 34 C.F.R. § 300.8 (2014).

133. § 300.8; GA. COMP. R. & REGS. 160-4-7-.05 (2010).

134. See GA. COMP. R. & REGS. 160-4-7-.05(3); GA. COMP. R. & REGS. 160-4-7-.05(1)(e) (“Intellectual disability (mild, moderate, severe, profound).”).

135. See *Autism*, GA. DEP’T OF EDUC., <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Autism.aspx> (last visited Feb. 25, 2016); *Autism*

A Georgia Department of Education report reveals that autism, intellectual disabilities, and traumatic brain injuries made up approximately 15% of all disabilities in students ages six through twenty-one.¹³⁶ Because students with disabilities—particularly autism and intellectual disabilities—have such a wide range of ability level, almost every single student with these disabilities would need to be incapable of obtaining a regular diploma a regular diploma to match the 18.4% of students with disabilities awarded special education diplomas in 2011. These numbers are too close for logic and, indicate a tendency to over-qualify students with disabilities for special education diplomas.

C. The Problem with College Admissions Policies: You Can't Sit at Our Lunch Table

Georgia's public colleges and universities refuse to consider admittance for students with special education diplomas.¹³⁷ The Technical College System of Georgia (TCSG)—a network of all twenty-four¹³⁸ public technical colleges in Georgia¹³⁹—explicitly stated in its admissions policy: “special education diplomas are not

Spectrum Disorder Fact Sheet, NAT'L INST. NEUROLOGICAL DISORDERS & STROKE, http://www.ninds.nih.gov/disorders/asperger/detail_asperger.htm (last visited Feb. 25, 2016) (Asperger syndrome is on the spectrum of autism spectrum disorder.); *Diseases and Conditions: Autism Spectrum Disorder*, MAYO CLINIC (June 3, 2014), <http://www.mayoclinic.org/diseases-conditions/childhood-disintegrative-disorder/basics/definition/con-20026858> (explaining childhood disintegrative disorder involves severe regression and dramatic loss of skills).

136. See GEORGIA DISPLAY DATA, *supra* note 89, at 3. There are other types of disabilities that could render a student unable to complete a standard high school diploma program but given the wide range of disabilities in students and the uniqueness of each disability this Note uses the more typically severe disabilities to estimate projected student performance.

137. See *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16 (“[S]pecial education diplomas are not acceptable.”); *V.B.1. Admissions Requirements*, *supra* note 16 (requiring a high school diploma or its equivalent and specifying that diplomas or certificates “where the student did not complete . . . testing required for a high school diploma . . . are not recognized for admissions purposes”).

138. *College Campuses*, TECHNICAL C. SYS. GA., https://tcsgeu.edu/college_campuses.php (last visited Feb. 25, 2016).

139. *E.g., About the Technical College System of Georgia*, TECHNICAL C. SYS. GA., https://tcsgeu/about_tcsgeu.php (last visited Nov. 8, 2015) (“The Technical College System of Georgia (TCSG) oversees the state’s technical colleges, adult literacy programs, and a host of economic and workforce development programs.”).

recognized for admission purposes” to any of its institutions,¹⁴⁰ until January 6, 2015.¹⁴¹ In January 2015, TCSG changed its admissions policies and removed the explicit prohibition on special education diplomas and instead added a provision that “[h]igh school diplomas from unaccredited institutions, Certificates of Attendance or other certificates, credentials or other documents where the student did not complete all required coursework or testing required for a high school diploma in that state are not recognized for admission purposes.”¹⁴² A student earning a special education diploma does not complete all the testing required for a regular high school diploma.¹⁴³ Therefore, even though TCSG removed its explicit prohibition against accepting special education diplomas,¹⁴⁴ the revised policy still functions in the same way and has the same effect.

TCSG’s policy does have one potential safety net for students with special education diplomas; students with alternative diplomas may be accepted at the discretion of the College president.¹⁴⁵ This discretionary exception has the potential to protect qualified students with disabilities from being denied the opportunity to apply for admission at one of Georgia’s technical colleges.¹⁴⁶ Still, this exception to TCSG’s admissions policies rests on the assumption that a college’s president has the requisite knowledge and experience to understand the intricacies of IEP and special education programs. Background knowledge of the primary and secondary education system is not a core requirement of becoming a college or university president.¹⁴⁷

140. *V.B.I. Admissions Requirements: Archived 7-30-13*, TECHNICAL C. SYS. GA, https://tcsge.edu/tcsgepolicy/docs/V.B.I.Admissions_2.doc (last visited Feb. 25, 2016).

141. *V.B.I. Admissions Requirements*, *supra* note 16.

142. *Id.*

143. *See supra* notes 40–41 and accompanying text.

144. *Compare V.B.I. Admissions Requirements*, *supra* note 16, with *V.B.I. Admissions Requirements: Archived 7-30-13*, *supra* note 140.

145. *See V.B.I. Admissions Requirements*, *supra* note 16 (“Presidents of Technical Colleges may waive the high school diploma/high school equivalency requirement for those secondary students or those pursuing a high school equivalency who are otherwise eligible to enroll in a specific program of study.”).

146. *Id.*

147. *Cf. ENSURING MEANINGFUL DIPLOMAS FOR ALL STUDENTS*, *supra* note 9, at 6 (explaining the difficulty of understanding the significance of special education diplomas). *See generally* Sydney

The Georgia Board of Regents (BOR) oversees four-year public colleges and universities in Georgia.¹⁴⁸ The thirty-one public colleges and universities that make up the BOR must subscribe to the minimum admissions policies that the BOR sets forth.¹⁴⁹ The BOR's admissions policies explicitly state, "special education diplomas are not acceptable."¹⁵⁰ The BOR does not have an exception similar to TCSG for special education diploma holders.¹⁵¹ A plain reading of the BOR's admissions policies reveals that the thirty-one colleges and universities that make up the BOR will never consider admitting a student with a special education diploma.¹⁵² In contrast, various colleges and universities across the country are trying to accommodate students with disabilities.¹⁵³ Private Georgia universities and colleges do not specify diploma requirements but rather, these institutions specify curriculum requirements.¹⁵⁴

Freeman, Jr. & Frances K. Kochan, *University Presidents' Perspectives of the Knowledge and Competencies Needed in 21st Century Higher Education Leadership*, J. EDUC. LEADERSHIP ACTION (2013), <http://www.lindenwood.edu/ELA/issue01/freemanKochan.html>. In a recent study of university presidents, three core knowledge areas were identified as "essential for an effective presidency." *Id.* The core knowledge areas were "Foundational Knowledge (History of Higher Education and Finance); Knowledge Acquisition of Cultural Knowledge (Context and Public Image); and Complex Cognitive Knowledge." *Id.* The presidents involved in the study repeatedly reflected on the required skills in the *higher education* context and made no mention of any knowledge related to secondary education or secondary education policies. *Id.* The study concludes "[t]he findings suggest that it is important to those aspiring to a university presidency to have foundational knowledge in higher education and to have a mastery of information related to the history and finance in higher education." *Id.*

148. See *USG Institutions by Name*, U. SYS. GA., <http://www.usg.edu/inst/> (last visited Feb. 25, 2016).

149. See *Section 4.0: Student Affairs*, U. SYS. GA., <http://www.usg.edu/policymanual/section4> (last visited Feb. 25, 2016) (governing "all University System of Georgia (USG) institutions"). See *USG Institutions by Name*, *supra* note 148, for a complete list of BOR schools.

150. See *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16; see also Office of Student Affairs, *Staying on Course: University System of Georgia High School Curriculum Requirements*, U. SYS. GA 2 (last revised Dec. 21, 2015), http://www.usg.edu/student_affairs/documents/Staying_on_Course.pdf (explaining that students who participated in the Georgia Alternative Assessments instead of the standard high school end-of-year tests are "not eligible for admission to a University System of Georgia institution").

151. *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16.

152. *Id.* ("[S]pecial education diplomas are not acceptable.").

153. See Smith Amos, *supra* note 86 (Colleges and universities are "willing to make more accommodations and alter some classes to help students who *learn* differently than most.") (emphasis added); see also Leslie Mann, *College Special Ed: More Institutions Serving Students with Intellectual Disabilities*, CHI. TRIB. (Nov. 9, 2011), <http://www.chicagotribune.com/lifestyles/health/ct-x-college-special-ed-20111109-story.html> (praising Elmhurst College's four-year Elmhurst Learning and Success Academy developed specifically for students with intellectual disabilities).

154. See *Admission*, AGNES SCOTT C., <http://www.agnesscott.edu/admission/index.html> (last visited

D. The Problem with College Admission Policies: Categories - Not Just a Game Anymore

The ADAAA requires an individualized assessment of accommodations,¹⁵⁵ meaning the entity must consider each person as an individual rather than a member of a group.¹⁵⁶ The TCSG and BOR admissions policies make broad determinations about a group without considering the merits of each individual. If the standard high school diploma admissions requirement is truly essential to the nature of the program, the school must then consider—on an individual basis—whether a particular student’s special education diploma is a reasonable modification of the admissions policies.¹⁵⁷

If a student alleges a policy discriminates based on disability, the college must show that modifications to that policy would fundamentally alter the nature of the program.¹⁵⁸ Therefore, TCSG and BOR must demonstrate that their admission policies are essential to the integrity of their college degree programs and that accepting a student with a special education diploma instead of a standard diploma would fundamentally alter the essential nature of the program.¹⁵⁹ The admissions decision-makers must be capable of determining whether a student with special education diploma is qualified to undertake the proposed program of study.¹⁶⁰ However, neither the ADAAA nor § 504 requires a school to admit or allow a

Feb. 25, 2016); *Admissions: Applying to Spelman*, SPELMAN C., <http://www.spelman.edu/admissions/getting-into-selman> (last visited Feb. 25, 2016); *Freshman Admissions*, MERCER U., <http://bethebear.com/freshman-admissions.cfm> (last visited Feb. 25, 2016); *Freshman Requirements*, MOREHOUSE C., <http://www.morehouse.edu/admissions/requirements/freshman.html> (last visited Feb. 25, 2016); *Frequently Asked Questions: Applying*, BERRY C., <http://www.berry.edu/admission/FAQapplying> (last visited Feb. 25, 2016); *Undergraduate Admission*, OGLETHORPE U., <http://oglethorpe.edu/admission/undergraduate-admission/> (last visited Feb. 25, 2016).

155. *See, e.g.*, *PGA Tour, Inc., v. Martin*, 532 U.S. 661, 688 (2001) (requiring an “individualized inquiry”).

156. *See Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 483–84 (1999) (“[A] system in which persons often must be treated as members of a group of people with similar impairments, rather than as individuals . . . is contrary to both the letter and the spirit of the ADA.”).

157. *Id.* at 483–84.

158. 28 C.F.R. § 35.130(b)(7) (2013).

159. *Id.*

160. § 35.130(b)(5).

student to continue in school in the hopes that he will someday be able to complete the program requirements.¹⁶¹

III. PROPOSAL

Students with disabilities already face immense challenges, and a categorical prohibition to college admission should not be one of them.¹⁶² To avoid ADAAA implications, several pieces need to change. The procedures, or lack thereof, for determining which students are awarded special education diplomas are egregiously harmful to the students because that choice greatly limits the student's future. All students should be encouraged to attain the highest education levels possible to procure a successful career that will allow them to participate in and contribute to society. But most importantly, college policies that categorically deny admissions to these students are likely a violation of federal anti-discrimination laws such as the ADA.

A. *Diploma Decisions*

Awarding a student a special education diploma can have long-lasting and stigmatizing consequences.¹⁶³ Even if Georgia's public postsecondary systems change their admissions policies, Georgia should still reevaluate the current procedures for awarding students special education diplomas in lieu of standard high school diplomas.

Presently, a student's IEP team decides whether a student will participate in alternative assessments and consequently, whether a student will receive a special education diploma or a standard diploma.¹⁶⁴ IEP teams meet annually to discuss a child's progress and during these meetings should discuss whether a special education

161. *See Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 466 (4th Cir. 2012) (noting neither the student nor an expert could specify when the requirements could be completed nor could they guarantee the student's treatments would be successful and therefore it was unreasonable to ask the school to wait to determine whether the student could meet the program requirements).

162. *See supra* notes 10–20 and accompanying text.

163. *See supra* text accompanying notes 12–20.

164. *See supra* notes 41–49 and accompanying text.

diploma is appropriate.¹⁶⁵ Schools may award a special education diploma to “any disabled student who is lawfully assigned to a special education program and who does not achieve a passing score on [State Assessment Tests] or who has not completed all of the requirements for a high school diploma but who has nevertheless completed his or her Individualized Education Program.”¹⁶⁶ Therefore, an IEP team can exempt students with disabilities from testing and course requirements.¹⁶⁷

Parental involvement should deter unfounded decisions placing a student on track for a special education diploma. However, several factors may render parental involvement useless in diploma decisions. First, even though parents are invited to IEP team meetings, parents cannot always attend.¹⁶⁸ Parents who are able to attend may concede to school personnel’s judgment.¹⁶⁹ Lastly, even though a parent may attend the IEP meeting, there is no indication that a parent knows anything about the effects of an alternative diploma type.¹⁷⁰ The Georgia Department of Education Parents’ Rights Handout does not mention anything about diploma types, let alone the potential consequences.¹⁷¹

Georgia’s Department of Education should update their Parents’ Rights Handout and any other handouts utilized in IEP meetings with parents to reflect the true potential consequences of a special education diploma. Without the proper information, parental consent

165. *See supra* notes 41–49 and accompanying text.

166. O.C.G.A. § 20-2-281 (West, Westlaw through 2015 Legis. Sess.).

167. O.C.G.A. § 20-2-329 (West, Westlaw through 2015 Legis. Sess.).

168. *See A.M. ex rel. Marshall v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 780 (9th Cir. 2010). *See generally Toledo City Sch. Dist. v. Horen*, 55 IDELR 102 (N.D. Ohio 2010) (finding parents could not recover where they refused to meet with the school and impeded the IEP process); *B.H. v. Joliet Sch. Dist. No. 86*, 54 IDELR 121 (N.D. Ill. 2010) (finding school did not err in refusing acquiesce to mother’s requests for an IEP meeting at 6:30pm to accommodate her work schedule).

169. *See supra* notes 119–22 and accompanying text.

170. OSBORNE & RUSSO, *supra* note 112, at 101; *see also E.H. v. Tirozzi*, 735 F. Supp. 53, 57 (D. Conn. 1990).

171. *See generally* GA. DEP’T OF EDUC., YOUR RIGHTS AS PARENTS - REGARDING SPECIAL EDUCATION (2014), http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/Parents%20Rights/Parents_Rights_English%20r%201-14.pdf (offering information about parental rights related to: confidentiality, education records, educational evaluations, notice, consent, dispute resolution, least restrictive environment, surrogate parents, private school placement and discipline).

to an IEP team's decision is meaningless. All IEP team members should understand what the future for a student with a special education diploma would look like: long-lasting struggles obtaining a job or attending a postsecondary institution.

In addition, the Georgia Department of Education should publish guidelines for how to decide when a student should or should not be tracked for a special education diploma. The evidence of wrongfully qualifying students for IEPs and special education diplomas highlights the need for meaningful guidance.¹⁷² The State Department of Education should put forth criteria and procedures for making diploma decisions. Even information about types of academic struggles that required students to attain special education diplomas would help IEP team members understand when such decisions should be made and why.

B. College Admission Procedures

The current policies and regulations of the public colleges and universities in Georgia prevent students with special education diplomas access to higher education.¹⁷³ BOR and TCSG's refusal to accept special education diplomas results in a categorical denial to a group of students with disabilities.¹⁷⁴ The Federal Department of Education Office of Civil Rights (OCR)'s policy guidance unequivocally states that schools may not deny postsecondary admission "simply because [a student] ha[s] a disability."¹⁷⁵ Additionally, an institution may not "categorically exclude an applicant with a particular disability as not being qualified for its program."¹⁷⁶ Moreover, the Department of Justice's ADA

172. See *supra* Part II.A–B.

173. Board of Regents Policy Manual: 4.2 Undergraduate Admissions, *supra* note 16; V.B.I. Admissions Requirements, *supra* note 16.

174. Board of Regents Policy Manual: 4.2 Undergraduate Admissions, *supra* note 16; V.B.I. Admissions Requirements, *supra* note 16.

175. Office for Civil Rights, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities*, U.S. DEP'T OF EDUC. (Sept. 2011), <http://www2.ed.gov/about/offices/list/ocr/transition.html> [hereinafter Office for Civil Rights, *Preparing for Postsecondary Education*].

176. Office for Civil Rights, *Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators*, U.S. DEP'T OF EDUC. (Mar. 2011), <http://www2.ed.gov/about/offices/>

regulations for Title II prohibits “eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities.”¹⁷⁷ Although schools are allowed to deny admission to any student who does not meet its “essential” requirements,¹⁷⁸ BOR and TCSG’s admissions policies undoubtedly screen out a class of individuals with disabilities: those who possess special education diplomas.

Notably, private colleges and universities in Georgia do not impose the same restrictions.¹⁷⁹ Private colleges and universities in Georgia do not even mention high school diploma types in their admissions criteria.¹⁸⁰ In fact, many public college and university systems in other states do not explicitly prohibit special education diplomas either.¹⁸¹ Some schools require a standard high school diploma but also allow for exceptions.¹⁸² Most college and university

list/ocr/transitionguide.html#_edn9 [hereinafter Office for Civil Rights, *Transition of Students with Disabilities*].

177. 28 C.F.R. § 36.301(a) (2014).

178. See Office for Civil Rights, *Transition of Students with Disabilities*, *supra* note 176.

179. See sources cited *supra* note 154.

180. *Id.*

181. See generally BD. OF TRS. OF THE UNIV. OF ALA., BOARD MANUAL (2013), <http://uasystem.ua.edu/wp-content/uploads/2012/05/2013-Combined-Board-Manual1.pdf>; *Admission Requirements*, U. TENN., <http://admissions.utk.edu/apply/requirements/> (last visited Feb. 25, 2016) (listing GPA, completion of courses and standardized test scores as factors for admission); *Board Policies*, U. ARK. SYS., <http://www.uasys.edu/leadership/board-of-trustees/board-policies/> (last visited Feb. 25, 2016); *Freshman Admission Requirements Overview*, CSU MENTOR, https://secure.csumentor.edu/planning/high_school (last visited Feb. 25, 2016) (listing “specific high school courses,” grades, test scores and “graduation from high school” as factors to determine eligibility for admission); *General Freshmen Requirements*, U.S.C., http://www.sc.edu/about/offices_and_divisions/undergraduate_admissions/requirements/for_freshmen/index.php (last visited Feb. 25, 2016); *Minimum Admission Requirements*, U.N.C., <http://www.northcarolina.edu/?q=prospective-students/minimum-admission-requirements> (last visited Feb. 25, 2016); *Minimum Admission Standards*, U. LA. SYS., <http://ulsystem.net/index.cfm?md=pagebuilder&tmp=home&pid=236> (last visited Feb. 25, 2016) (listing completion of specified coursework, minimum high school GPA of 2.0 and either a GPA of 2.6, ACT score of 24 or graduation rank in the top 25% as minimum requirements for admission); OR. U. SYS., OUS VIEWBOOK 2015–2016, at 5 (2015), <http://staffblogs.canby.k12.or.us/chscounseling/wp-content/uploads/sites/57/2015/06/ousviewbook2015.pdf> (explaining the freshmen admissions requirements to include: 1) graduation from high school or home schooling program, 2) minimum GPA, 3) completion of 15 units of subject requirements, and 4) completion of the SAT/ACT and also noting that “[a]ll Oregon public universities conduct more comprehensive reviews of students to assess strengths for those who do not meet the minimum requirements.”).

182. FLA. STAT. § 1007.263(2)(a) (2013) (requiring a “standard high school diploma” but specifically allowing for “reasonable substitutions” for students with disabilities). *But see* City Univ. of N.Y., *Freshman Applicants: Admission Application Worksheet*, CUNY.EDU, <http://www.cuny.edu/admissions/undergraduate/downloads/Freshman-Worksheet.pdf> (last visited Feb. 25, 2016) (noting that students

systems only impose course and standardized test score requirements.¹⁸³ Although eliminating the diploma requirement may result in students who are not able to complete the postsecondary coursework, BOR and TCSG schools already impose high school course requirements.¹⁸⁴ Diploma requirements in addition to course requirements are superfluous. Course, GPA, and SAT/ACT requirements ensure that applicants are academically qualified for matriculation. BOR's strict exclusion policy denies students with special education diplomas admission consideration even if they meet all other requirements.¹⁸⁵ TCSG's admissions policy does allow for a presidential exception to the diploma requirement,¹⁸⁶ but the requirement itself is problematic.

When a student with a disability attends a postsecondary institution, the ADA requires the college or university to provide accessible facilities and necessary academic adjustments.¹⁸⁷ Certainly as more students with disabilities attend a particular school, the burden on the school to provide accommodations increases. Although it may be more beneficial and efficient for a postsecondary school to use a blanket policy against special education diplomas, the federal regulations are clear: such policies cannot be accepted.¹⁸⁸

The BOR should rescind its explicit policies about special education diplomas and instead, BOR and TCSG schools should implement one of two policies: (1) remove the diploma requirement altogether and use academic criteria to evaluate applicants, or (2) develop criteria for special education diploma holders similar to home-schooled students. The BOR and the TCSG should look to other postsecondary schools for guidance.

Home-schooled students may not receive standard curriculum instruction or even standard diplomas.¹⁸⁹ Both the BOR and the

with an IEP diploma “must earn a High School Equivalency Diploma before they apply”).

183. *See supra* note 181.

184. *See supra* note 173.

185. *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16.

186. *V.B.I. Admissions Requirements*, *supra* note 16.

187. *See* Office for Civil Rights, *Preparing for Postsecondary Education*, *supra* note 175.

188. Office for Civil Rights, *Transition of Students with Disabilities*, *supra* note 176.

189. *See Home Schools*, GA. DEP'T OF EDUC., <http://www.gadoe.org/Curriculum-Instruction-and->

TCSG admissions policies include alternate criteria for evaluating home-schooled students.¹⁹⁰ Colleges and universities could easily use these procedures for students with special education diplomas. Home-schooled students may submit SAT scores and “satisfactory documentation of equivalent competence” in the high school curriculum requirements.¹⁹¹ Home-schooled students do not take the same classes as students in public schools. In this way, they are very similar to students enrolled in special education classes. BOR policies provide that home-schooled students qualify for admission consideration when certain conditions are met:

A student whose SAT . . . score is at or above the average SAT score of the previous year’s . . . freshmen . . . and who has completed the equivalent of each of the areas as documented by a portfolio of work and/or other evidence that substantiates completion of the Required High School Curriculum qualifies for consideration for admission.¹⁹²

TCSG policies provide that home-schooled students must “[s]ubmit a Certificate of Attendance form from the local superintendent’s office . . . verifying that the parent or legal guardian complied with the requirements of home study programs [Students must also] [s]ubmit annual progress reports or a final transcript for the equivalent of the home-schooled student’s junior and senior years.”¹⁹³ Because Georgia colleges and universities already use these procedures, implementing them for additional students should not pose any significant burden on either school system.

Although federal regulations protect a student’s ability to participate in postsecondary programs, nothing can guarantee a

Assessment/Pages/Home-Schools.aspx (last visited Feb. 25, 2016) (explaining that officials of the public school system should not attempt to monitor the curriculum, test program, assessment process, student records or instruction time of home schools).

190. See *supra* note 173.

191. *Board of Regents Policy Manual: 4.2 Undergraduate Admissions*, *supra* note 16.

192. *Id.*

193. See *V.B.I. Admissions Requirements*, *supra* note 16.

student's success in postsecondary school.¹⁹⁴ Assuming that at least some students with special education diplomas will meet the other academic requirements for admission,¹⁹⁵ these students must have the skills to complete a postsecondary program successfully.

CONCLUSION

Georgia needs to take a critical look at the loosely defined policies and procedures that currently govern the issuance of special education diplomas, as well as the policies regarding their acceptance. With one of the highest dropout rates in the nation, and a consistently low ranking nationwide for educational quality,¹⁹⁶ Georgia's diploma practices leave much to be desired. The Georgia Department of Education needs to ensure that schools only assign special education diplomas *as needed*. Georgia's two major postsecondary college systems should revise their policies so that students with special education diplomas are considered for admission based on their merits and not simply the name of their diploma.

Congress intended the ADA to increase opportunities and protections for people with disabilities.¹⁹⁷ The Department of Justice and OCR regulations protect students with disabilities and forbid barriers to higher education.¹⁹⁸ The ADA's Title II regulations prohibit higher education institutions from imposing "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities . . . unless such criteria can be shown to be necessary."¹⁹⁹ Georgia's public colleges and universities are using "eligibility criteria that screen out" students

194. Office for Civil Rights, *Transition of Students with Disabilities*, *supra* note 176.

195. *See supra* Part II.A–B.

196. *See* Richie Bernardo, *2015's States with the Best and Worst School Systems*, WALLETHUB, <http://wallethub.com/edu/states-with-the-best-schools/5335/> (last visited Feb. 25, 2016). *See generally* Nat'l Educ. Ass'n, *Rankings and Estimates: Rankings of the States 2013 and Estimates of School Statistics 2014* (Mar. 2014), <http://www.nea.org/assets/docs/NEA-Rankings-and-Estimates-2013-2014.pdf>.

197. *See supra* notes 26–27, 66–70 and accompanying text.

198. *See supra* note 72 and accompanying text.

199. *See supra* note 72.

with special education diplomas and these students have such diplomas because they have disabilities.²⁰⁰ Notably, other public college and university systems in states that offer some form of special education diplomas—Oregon and Tennessee—do not utilize the same exclusionary policy as Georgia’s BOR and TCSG.²⁰¹ In fact, the University of Tennessee, Knoxville offers a special postsecondary program for students who have special education diplomas.²⁰²

With approximately 545,358 students enrolled in all postsecondary programs in Georgia and 471,165 of those enrolled in BOR and TCSG schools, these two systems account for 86% of students attending college in Georgia.²⁰³ The BOR and TCSG policies affect the greatest number of students enrolled in colleges in Georgia and so their admissions policies should be the most open, rather than the most restrictive. An inclusive approach to higher education would give all students access to the wide-range of opportunities available and encourage students with disabilities—as much as possible—to grow into productive and self-sufficient adults.²⁰⁴

200. *See supra* Part II.D.

201. *See* OR. UNIV. SYS., OUS VIEWBOOK 2015–2016, at 5 (2014), <http://staffblogs.canby.k12.or.us/chscounseling/wp-content/uploads/sites/57/2015/06/ousviewbook2015.pdf>; *Admission Requirements*, U. TENN., <http://admissions.utk.edu/apply/requirements/> (last visited Feb. 25, 2016).

202. *See supra* note 62.

203. OFFICE OF RESEARCH AND POLICY ANALYSIS, SEMESTER ENROLLMENT REPORT 1 (Fall 2012), http://www.usg.edu/research/documents/enrollment_reports/Fall_2012_Report_complete.pdf; *Table 304.10: Total Fall Enrollment in Degree-Granting Postsecondary Institutions, by State or Jurisdiction*, NAT’L CTR. FOR EDUC. STATISTICS (Nov. 2013), http://nces.ed.gov/programs/digest/d13/tables/dt13_304.10.asp; *Technical College System of Georgia: Fast Facts and 2014 College Directory*, TCSG, at 3 (2014), https://tcsgeu/download/TCSG_Fast_Facts_Directory_v.2014_web.pdf.

204. *See supra* notes 1–4 and accompanying text.

