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Should Handicapped People Be Allowed To Attend Nursing School?

by Kent Hull, Esq.

The recent Supreme Court decision in the *Davis* case,¹ which allowed a federally-assisted college to exclude a severely hearing impaired woman from its registered nurse training program, has caused great concern among handicapped people and their advocates. Institutions of higher education also have reason for dissatisfaction with the decision since it fails to provide sufficient guidance for those recipients of federal funding to measure their compliance with section 504 of the Rehabilitation Act of 1973. A letter dated October 5, 1979, from Patricia Harris, Secretary of Health, Education and Welfare (HEW), to college presidents is the latest official statement concerning the decision.

The letter indicates a middle-of-the-road approach to *Davis*. While recognizing that colleges can establish legitimate academic requirements, it states that they must demonstrate the necessity and legitimacy of policies which result in the exclusion of handicapped people, and affirms the Department's determination to continue enforcing the section 504 regulations much as they are presently written. However, the letter may invest a legitimacy in the *Davis* decision which it does not merit.

The plaintiff in *Davis* was a severely hearing impaired woman who, after working for several years as a licensed practical nurse, sought admission to

the registered nursing program of a college which received federal financial assistance. The college rejected her application, apparently on the grounds that her hearing impairment would present such a safety hazard to patients that she would not be able either to complete the clinical portion of her training or become licensed. She brought suit against the college partially on the grounds that the college had violated section 504 in rejecting her. That law prohibits discrimination against "otherwise qualified handicapped individuals" on the basis of handicap by recipients of federal financial assistance.

The federal district court rejected her claim stating that her handicap prevented her from being "otherwise qualified."² The court's decision uncritically accepted the assertions of the college without considering evidence of her actual abilities (the extent of her hearing loss is still in debate) or of the achievements of other hearing impaired nurses in their professional work.

... the college decided that the applicant was physically unqualified without conducting a thorough examination of her abilities or of the capacities of other hearing impaired nurses.

After the case was appealed to the Fourth Circuit,³ HEW promulgated regulations which defined the obligations of post-secondary recipients of HEW assistance.⁴ For purposes of these programs, the term "otherwise qualified handicapped person" was de-

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defined as an individual who met "the academic and technical standards requisite to admission or participation in the recipient's education program or activity."⁵ Additionally, the HEW regulations mandated accommodations for handicapped individuals to insure that academic requirements did not discriminate against the handicapped.

However, the regulations provided: "Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory. . . ."⁶

Commentary published with the regulations noted that the requirement did "not obligate an institution to waive course or other academic requirements to the needs of individual handicapped students." As an example, the comment said an institution "might permit

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