The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study

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The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study

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I. INTRODUCTION

Law schools face the challenge of providing disabled students with reasonable accommodations in their academic setting in a fair and equitable manner. Disabled law students continue to demand academic modifications in course examinations by claiming to be persons with mental or physical disabilities. Law schools are also beginning to see requests for extension of time for degree completion, priority in course registration, and authorization to tape record classes, all by virtue of an entitlement under the mandates of the Americans with Disabilities Act (ADA).

Persons with a wide range of disabilities are seeking academic modifications from their law schools. What disabilities are most often represented? Are persons with learning disabilities inclined to seek additional time in completing their final exams? Are students with a mental illness more or less inclined to self-identify and seek similar reasonable accommodations? For those disabled students who are provided with additional time to complete their course examinations, how much additional time is fair and equitable? Should law schools provide readers for blind students and sign language interpreters for deaf students, or modify classroom equipment for physically disabled students?

When law schools consider providing reasonable accommodations in academic programs to their disabled students, what is the role of the law school professor in approving the requested modification? How does anonymous grading affect a disabled student’s request for an academic modification? Do most students who seek an accommodation have the request honored? Is there an administrative appeal process within the law school community? For those disabled law students who desire an academic modification, what, if any, medical, psychological,
or educational documentation is required? Do law schools have written policies and procedures for addressing requests by disabled students?

A fundamental issue underlying the provision of reasonable accommodations within a law school setting is the future impact such an accommodation may have when the disabled lawyer subsequently represents a client in a legal proceeding. Do law schools provide a disservice by offering an "advantage" to a disabled law student when as a lawyer, no such "benefit" is provided? Do law schools, under the mandate of the ADA, recognize that providing academic modifications to disabled students has a significant impact beyond legal education, affecting the bar admission process, bar examination, attorney grievance and disbarment procedures, and employment of lawyers in the work place in general?2

The empirical data contained in this Article is submitted to serve as a backdrop for purposes of elaboration and comparison of these and other questions. Eighty law schools from across the country were surveyed to obtain data and elicit their opinions on such questions relating to academic modifications.3 The significant number of disabled students seeking an academic modification in their law school education warrants such inquiry. Law schools continue to grapple with disabled students' claims for fair and equitable treatment, as well as the desire to avoid a backlash from the nondisabled students who want to avoid providing disabled students with an unfair advantage in the law school setting.

This Article discusses and analyzes court decisions in the area of reasonable accommodations in the academic arena in order to understand the impact of the ADA and the direction courts are heading as they tackle this difficult and important area of law. Finally, this Article offers recommendations regarding fair and equitable reasonable accommodations for disabled law students in the academic setting.

II. STATISTICAL REVIEW AND ANALYSIS OF LAW SCHOOLS' ACADEMIC MODIFICATIONS

The empirical data provided in this Article is submitted to demonstrate the extent and variety of academic modifications provided to disabled law students. Eighty law schools, representing a student body of 58,932, responded to the survey.4 During the 1994-95 academic

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3. DONALD STONE, ACADEMIC MODIFICATIONS SURVEY (May 1995) [hereinafter STONE SURVEY] (reproduced at Appendix A).
4. Id. at responses 1(a) and 1(c). The survey encompassed 80 law schools, which included
year, 1187 law students requesting reasonable accommodations in course examinations claimed to have a physical or mental disability.\(^5\)

Law schools that decide whether to provide an academic modification overwhelmingly authorized such a modification and denied such an accommodation in course examinations in only 2% of the cases.\(^6\) This surprisingly low number of denials may have been a reflection of the fact that students only made serious requests to law school administrators or that the law schools had difficulty distinguishing scientifically the valid requests from the bogus ones.

A closer look at the regional breakdown of the data reveals some interesting findings.\(^7\) Nationally, an average of fifteen law students per law school requested academic modifications during the 1994-95 academic year.\(^8\) Figure 1 indicates that the average in the South was

![Figure 1: Average No. of Law Students Requesting Academic Modification](image)

40 public and 40 private law schools. \textit{Id.} at response 1(a).

5. \textit{Id.} at response 2. Approximately 2% of the student body of law schools surveyed made a request for an academic modification in the 1994-95 academic year.

6. \textit{Id.} at response 4. Out of 1145 student requests for reasonable accommodations in course examinations during the 1994-95 academic year, the law schools denied only 25 such requests. \textit{Id.}

7. See \textit{id.} The data is divided among the following four regions based on the U.S. Bureau of Census: (1) the Northeast (Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Washington, D.C.), (2) the South (Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Mississippi, Alabama, Puerto Rico, Arkansas, Oklahoma, Louisiana, and Texas), (3) the Midwest (Ohio, Michigan, Indiana, Wisconsin, Illinois, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas), and (4) the West (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Nevada, Washington, Oregon, California, Alaska, and Hawaii).

8. \textit{Id.} at response 2.
ten students per law school, contrasted with the West at twenty-five students per law school. The 150% increase from the South to the West may have been a reflection of societal norms in these two regions. The western portion of our nation may take a more open-minded approach to dealing with such differences than the southern area.

Figure 2 shows that a significant number of law students with a disability who made a request for academic modifications were considered learning disabled. Approximately 54% of the requests for exam modifications were from learning disabled law students. A possible explanation for this high percentage of requests by learning disabled students may be that these students have been offered such accommodations in high schools and colleges as well as in law school admission tests. It may carry less of a stigma for a learning disabled student, who has in the past been offered additional time to complete exams or a separate exam room to reduce distractions, to make such a request in law school. In contrast, a student diagnosed with a mental disorder may believe the price is too high to self-identify and request a modification in course examinations. The danger of acknowledging a mental disorder may prove too significant a risk because the student fears that such information may affect his or her future ability to sit for the bar exam or to satisfy the character and fitness committee of a state’s bar examiners.

![Figure 2: Frequency Distribution for Types of Disabilities](image)

9. *Id.* at response 3(a).
When a disabled student sought a reasonable accommodation by reason of a disability, Figure 3 indicates that the primary request was for additional time in completing the course examination. Students, however, also requested other academic modifications, including separate examination rooms, extra rest time during the course examination, and the provision of a computer or other equipment. Among the 58,932 students attending the law schools in the survey, only four students sought a modification in the exam format, i.e., from essay exam to either multiple choice or short answer questions.

The survey data may explain why law schools deny such a low portion of students' requests. The academic modifications appear fair and equitable; they do not provide disabled students with an unfair advantage over nondisabled students. Because legal education is highly competitive for grades, law school administrators may recognize that the time extension for completion of final exams is mandated by the ADA. The administrators may also believe that a request for time extension is less controversial than a request to modify the format of the final examination.

Law schools in the West received significantly more requests for additional time for completing the final exam. Figure 4 shows that twenty disabled law students per law school in the West were provided additional time on their final exams during the 1994-95 academic year.

12. Id. Other requests, to a lesser degree, included an extension of time on written course assignments and enlarged print size for visually impaired students. Id.
13. Id. In addition, only four students sought a waiver or substitution of course work assignments. Id.
14. Of the 1145 students seeking course modifications, law schools denied only 25 such requests. Id. at response 4.
a number 150% greater than in the Midwest. Because virtually all requests for additional time for the completion of the law school exam were granted, it is puzzling why more disabled students did not make the request. The reason for allowing additional time for completing the law school exam is to level the playing field, not to give an unfair advantage to a particular student. Experts in the diagnosis and treatment of students with learning disabilities have provided documentation to law schools on behalf of disabled law students that a learning disability causes a student to be easily distracted and that therefore, disabled students need additional time to complete written work. The provision of additional time on the law school exam as a reasonable accommodation is mandated by ADA to prevent qualified individuals with a disability from being excluded from participation in educational programs.

Another striking comparison among geographic regions was the provision of a separate examination room for disabled students. Often, disabled students are easily distracted by noise and by taking exams in a large room with many students. To diminish these distractions and enable disabled students to focus on the task in front of them, law schools may provide an alternative setting for taking the law school exam. Usually, this occurs in a smaller classroom or conference room at the school. Figure 5 indicates that the law schools in the West provided an average of twelve students per school with a separate exam room, which is double the number in the Northeast, Midwest, or South. Although law schools will be burdened administratively with

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15. The West saw an average of 20 students per law school receiving additional time on final examinations; the average nationwide was 12 students per law school. Id. at response 6.
18. See STONE SURVEY, supra note 3, at response 6(b). A nationwide average of seven law
providing a separate exam room for disabled students, the exam setting is crucial to ensure that disabled students will be given a fair and equitable opportunity to succeed in law school.

Figure 5: Average No. of Law Students Provided Separate Exam Room

For disabled students who sought an accommodation in a course examination, Figure 6 indicates that professors rarely made the final decision regarding the accommodation. Professors, however, did provide consultation in 28% of the cases. In a significant majority of the cases, professors had no input in the decision on whether to provide the accommodation.

Figure 6: Law Professor's Role in Requested Accommodations

19. Id. at response 7(b).
20. Id. at response 7(c). In 69% of the requests for exam accommodations, the law professor teaching and grading the exam had no input in providing the accommodation. Id.
Several plausible explanations suggest why in a majority of schools, the law professor who taught the course and graded the exam had no input as to whether a disabled student was offered an accommodation in taking the course examination. To protect the confidentiality of the disabled student, the law school most likely precluded the professor from making decisions about the examination modification. The survey indicates that the primary accommodations offered were additional time in completing the exam or a separate room for the location of the exam. Accordingly, the law school administrator, often the dean of students or dean of academic affairs, was the person with the authority to provide the academic modification. A disabled student who seeks an accommodation in taking the course examination apparently would be more inclined to make the request knowing that the law professor grading that student’s exam would not be aware the student has a disability. Society, unfortunately, has prejudices about the abilities of persons with disabilities. Law faculty presumably carry the same misunderstandings about persons with disabilities. According to one law school official completing the survey, “To protect anonymity, the professor has no knowledge of disability.” Another school official responded that “because our grading system is anonymous, we do not want faculty participating in these decisions.”

In a significant number of law schools, the decision regarding academic modifications for course examinations or course work assignments was made at the university level. One law school specifically indicated that the decision to provide the accommodation was university-affiliated in order to ensure that there was “no person at the law school that students contact when seeking an academic accommodation.” This procedure ensures an extra level of protection for the confidentiality of the disabled student.

In a comparison of law schools by geographical region, the role of the law professor in the decision to provide an academic modification in the course examination demonstrates the striking contrast of how law schools varied across the country. For example, law faculty had no input whatsoever in making the decision to provide or deny a student’s request for exam accommodation at 69% of the schools surveyed nationwide, but the percentage was 89% of law schools in the Northeast and 88% in the West. This figure dropped to 62% of the schools in the Midwest and to 48% of law schools in the South. In all geographical regions, however, the reason most often given for law professors being afforded no input in this decision was protection of the confidentiality of the law student. When law faculty are consulted, there is a

21. Id. at response 6.
22. Id. at response 7.
23. Id.
24. Id. at response 6(b). Sixty-five percent of the law schools placed the decision of authorizing the accommodation in the hands of a law school official, while at 35% of the law schools, the decision was made on a university-wide level. Id.
25. Id. at response 7.
26. Id.
27. Id.
28. Id.
perception that the student's name and disability may be disclosed to the faculty member, thus jeopardizing the anonymous grading system held in such high esteem by law schools.

At the other extreme, Figure 7 shows that faculty members rarely made the final decision in terms of the accommodated examination. In the Northeast and West, no law school reported that its faculty made the final decision, and in the South and Midwest, only one law school in each region reported that its faculty made the final decision.29

The majority of law schools consulted with law faculty to assist in the decision of providing a reasonable accommodation in the law school exam, while the law school administration primarily made the final decision.30 A regional comparison shows that 48% of the law schools in the South consulted with their law faculty, while only 11% of law schools in the Northeast did so.31 Law schools in the Northeast, followed closely behind by the West, appeared most likely to prevent the law faculty from receiving information about a disabled student's request for accommodation, ensuring that the student's confidentiality would be protected. Because there was a greater likelihood that such a student's identity would not be divulged to the law faculty, law students in the West and Northeast were probably more likely to make a request for an educational modification.

The risk may be too great for a disabled student to seek an academic modification if there is a perception, well grounded in fact or not, that the student's confidentiality will be compromised. Until society becomes more accepting of persons with disabilities, law students with disabilities will continue to fear that discrimination in legal education

29. Id.
30. Id.
31. Id.
will continue. Possibly the direction that some law schools are taking by keeping the law professor removed from the decision to provide academic modifications is the safest and fairest way to provide disabled students with equal access to legal education.

A further explanation for not involving individual faculty in providing law students with examination accommodations may be a recognition that law schools rely heavily on documentation from experts in the field of disabilities. Law faculty lack the training and expertise for determining the extent of a person’s disability. In contrast, they may be somewhat more qualified to determine the reasonable accommodations that should be provided to an individual to ensure a fair and equitable treatment of that person. As shown in Figure 8, 80% of law schools relied on documentation from a student’s psychologist or psychiatrist prior to considering the student’s accommodation request.

The required documentation also included a letter from the student’s family doctor at 60% of the law schools. In 43% of the cases, an independent psychological or medical examination was required, and in 24%, the law school administered its own form of psychological or medical exam in order to prove the student’s disability. Interestingly, a significant proportion of law schools required independent testing and thus prohibited documentation simply from the student’s own psychologist or physician. In 24% of law schools, the school administered the psychological or medical exam that documented the student’s disability. As costly as such an exam can be, these law schools found it an acceptable expense to administer the tests within the school. Whether it is to ensure uniformity and fairness or to prevent students from shopping for a favorable evaluator, the 24% figure may reflect that law schools are unwilling to rely on the student’s own hand-picked evaluator.

Figure 8: Documentation As To Disability and Accommodation

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32. See id. at response 12.
33. Id. at response 12(a).
34. Id. at response 12(c).
35. Id. at response 12(e).
36. Id.
37. Id. at response 12(f).
Figure 9 shows that independent evaluations were sought by schools in the South and West at significantly greater rates than in the Northeast and Midwest.38 Some law schools required documentation by a person trained in diagnosis of persons with learning disabilities, as opposed to a psychologist or physician without the specific training.39

Several law schools referred disabled students to university disability offices, which have experts trained in evaluating disabled students.40 These offices then made specific recommendations for educational modifications.41 Again, as shown by Figure 10, this trend was seen more frequently in the South and West, where law schools often administer their own psychological or medical exams.42 The examination conducted by school officials may ensure more consistent evaluations across the board. Students who have been seen by their own psychologist or physician over a long period of time, however, may be at a disadvantage. The school-administered evaluation may be deficient if the law school fails to consider fully a disabled student’s longstanding disability history. Prior to ruling on the proposed accommodation, the law school should consider the past accommodations provided, the change in the student’s disability, and other factors. In all cases, whether the school requests an independent evaluation or the school administers its own evaluation, the disabled student should be permitted to offer his or her own expert evaluations for consideration by the law school as it decides on the provision of an academic modification.

38. Id. at response 12(e). Nationwide, 43% of law schools seek independent evaluations.
39. Id. at responses 12(e) and 12(g).
40. Id. at response 12(g).
41. Id.
42. Id. at response 12.
Law schools, on the average, expected documentation of rather recent origin, requiring evidence of a student’s disability and needs to be obtained within the last three years.\textsuperscript{43} The need for current proof of the student’s disability is an additional safeguard for all parties concerned.

When law schools did provide a student with additional time to complete the course examination, Figure 11 shows that the majority of law schools supplied, on the average, one and one-half times the amount of time normally allowed for the exam.\textsuperscript{44} In such a school, disabled students were offered four and one-half hours to complete a typical three-hour final exam.

Law schools in different geographical regions displayed remarkable distinctions in approaching the provision of reasonable accommodations

\textsuperscript{43} Id. at response 13. The schools in the West required the most current documentation--within the past 2.4 years. \textit{Id.} The schools in the Northeast were willing to permit documentation within the last 4.3 years. \textit{Id.}

\textsuperscript{44} Id. at response 9(b).
in the law school environment. According to the data, law schools offering additional time to complete the traditional three-hour law school final exam ranged in the time provided from an additional one hour to three hours.\textsuperscript{45} In the West, 47\% of law schools surveyed provided twice the time to complete the exam.\textsuperscript{46} In contrast, only 9\% of law schools in the Midwest provided double the time.\textsuperscript{47}

On the rare occasion that a law school denied a disabled student's request for an accommodation in a course examination,\textsuperscript{48} 88\% of such law schools provided the student with a right to appeal the decision to a higher level.\textsuperscript{49} Forums for appeals varied widely and included the rules committee of the law school, the students with special needs committee, the dean of the law school, the vice-president for student and academic affairs, the university affirmative action office, the law school student affairs committee, and the university provost.\textsuperscript{50} The diversity of offices and individuals varied considerably among law schools. Regardless of who oversees the appeal, the right to appeal should exist in academic modification requests. The appeal should go directly to the dean of academic or student affairs, who should have the responsibility and authority to resolve the issue. Such an appeal should afford the student with an opportunity to testify and to offer expert testimony and documentation from individuals trained in disability and education issues.

\textbf{Figure 12: Right of Student To Appeal Denial of Accommodation}

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\end{center}

It is essential that law schools have written policies and procedures that address academic modifications for disabled students. Law students

\textsuperscript{45} Id. at response 9. Two schools even offered unlimited time to complete the exam. \textit{id.}
\textsuperscript{46} Id. at response 9(a).
\textsuperscript{47} Id. Fifty-four percent of law schools surveyed provided one and one-half times the amount of time normally allowed for the exam. \textit{id.} at response 9(b). Twenty-eight percent of law schools surveyed provided twice the time normally allowed for the exam, and 18\% of law schools surveyed provided one additional hour. \textit{id.} at responses 9(a) and 9(b). Additional academic modifications that present different regional approaches include extension of time for degree completion (2 students in the South and 14 in the Northeast), priority in registration (44 students in the West and 3 in the Midwest), and readers for blind students (12 students in the Northeast and only 5 students in the South). \textit{id.} at response 10.
\textsuperscript{48} Id. at response 4 (denial occurred in 2\% of the requests).
\textsuperscript{49} Id. at response 8.
\textsuperscript{50} See \textit{id.}
with disabilities should be provided with written notification explaining their rights and responsibilities with respect to academic modifications. Law schools likely will see an increase in requests for academic modifications and will find it essential to have a written policy and procedure to serve disabled students fairly. Sixty-three percent of law schools had written policies and procedures for addressing academic modifications. Regional differences still existed, with only 43% of law schools in the Midwest having written policies and procedures. At the time of the survey, nearly half the law schools nationwide were reviewing their procedures for providing academic modifications for disabled students.

In addition to examination modifications, Figure 13 shows that law students with disabilities have been provided a variety of academic modifications, including extension of time for degree completion, priority in course registration, authorization to tape record classes, readers and braille teaching material for blind students, sign language interpreters for deaf students, and modified classroom equipment for physically disabled students. The numbers of nonexamination-related academic modifications were significantly less than exam modifications. Law schools, however, may begin seeing a new wave of requests for accommodations into these broader areas of academia. Possibly, law students are beginning to recognize that the ADA provides for coverage and protection in all aspects of law school.

Figure 13: Other Academic Modifications

<table>
<thead>
<tr>
<th>Academic Modification</th>
<th>No. of Law Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign Language Interpreter</td>
<td>4</td>
</tr>
<tr>
<td>Modified Classroom Equipment</td>
<td>1</td>
</tr>
<tr>
<td>Priority in Course Registration</td>
<td>26</td>
</tr>
<tr>
<td>Extension of Time for Degree Completion</td>
<td>22</td>
</tr>
<tr>
<td>Readers for Blind or Braille Materials</td>
<td>1</td>
</tr>
<tr>
<td>Authorization to Tape Record Classes</td>
<td>46</td>
</tr>
</tbody>
</table>

51. Id. at response 15.
52. Id. Eighty-nine percent of law schools in the West had written policies and procedures.
53. Id. at response 14. Forty-eight percent of law schools were presently reviewing their procedures. Id. Sixty-one percent of law schools in the West were currently reviewing their procedures, while 35% of law schools in the South were doing so. Id.
54. See id. at response 10.
55. In 92% of the law schools, the law school provided and paid for the sign language interpreter or reader. Id. at response 11(a).
56. See id. at responses 6 and 10.
education in which disabled students could benefit from reasonable accommodations to ensure a fair and equitable legal education. Law school administration will be confronted with a growing number of demands that stretch the limits of fairness and challenge the way that legal education is administered. Challenges will, in all likelihood, surface in the law school admission process, job placement, extracurricular activities such as law review and student bar associations, graduation requirements, bar admission and bar examination procedures, and the disciplinary proceedings for licensed attorneys. The ADA has only begun to make its mark on legal education, and the administration of legal education will continue to experience challenges and conflicts as it approaches the twenty-first century.

III. REVIEW OF COURT DECISIONS

A. "Otherwise qualified:” Who is Protected?

The desire of disabled students to participate fully in legal education cannot be understated. Students with learning disabilities have overcome considerable adversity throughout college, and physically disabled students constantly face barriers in everyday life. Moreover, students with mental illnesses witness firsthand the stigma that society imposes on people with differences. The challenges faced by disabled students have made them even more determined to succeed in legal education. Disabled students continue to confront barriers and obstacles to success as an everyday occurrence. As a result, courts throughout the nation continue to address how far universities must modify their admission, retention, and graduation requirements to accommodate disabled students. The key federal statutes involving access of disabled students to higher education are the Rehabilitation Act of 1973 and the ADA.

The Rehabilitation Act defines a handicapped individual as a person who:

1. has a physical or mental impairment which substantially limits one or more of such person’s major life activities.
2. has a record of such an impairment, or
3. is regarded as having such an impairment.

To be accorded protection under the Rehabilitation Act, a student must be defined as a handicapped individual and must be “otherwise qualified.” The Supreme Court offered its perspective on the latter term in *Southeastern Community College v. Davis*, concluding that an otherwise qualified person is “one who is able to meet all of a

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60. 29 U.S.C. § 794(a).
program’s requirements in spite of his handicap." In Davis, the plaintiff, who suffered from a serious hearing disability, sought to be trained as a registered nurse, but was denied admission to the nursing program at Southeastern Community College. According to the Court’s interpretation of section 504 of the Rehabilitation Act, the law "does not compel educational institutions to disregard the disabilities of handicapped individuals or to make substantial modifications in their programs to allow disabled persons to participate." The Court continued by stating that all that was required was that an "otherwise qualified handicapped individual” not be excluded from participation in a federally funded program “solely by reason of his handicap.” The university maintained that the ability to understand speech without reliance on lipreading was necessary for patient safety. Might such a concern be extended to depriving hearing impaired law students from enrolling in law school because of the fear that clients could not communicate with hearing-impaired attorneys? 

The ADA defines a qualified individual with a disability in very similar terms to that of an individual with a handicap under the Rehabilitation Act:

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
(B) a record of such an impairment; or
(C) being regarded as having such an impairment.

Under the Public Entity subchapter of the ADA, a “[q]ualified individual with a disability” is defined as someone:

who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

The ADA mandates that despite reasonable modifications provided to a disabled individual, such an individual could still qualify for protection. In contrast, the Rehabilitation Act requires that a person meet a program’s eligibility requirements in spite of the disability. Often a disabled student will only be qualified for admission into a program if an accommodation is provided. If a disabled student must demonstrate admissibility into a program in spite of the disability, which the Rehabilitation Act requires, they often do not qualify. Thus, the ADA solves this dilemma.

62. Id. at 406 (emphasis added). Davis involved a hearing impaired applicant to a nursing program. The Court held that because Ms. Davis could not understand speech without lip reading, which was a necessary element of the program, the school was permitted to deny her admission. Id. at 407, 410.
63. Id. at 397.
64. Id. at 405.
65. Id.
66. Id. at 401, 407.
68. Id. § 12131(2) (emphasis added).
The problems with the Rehabilitation Act were clearly displayed in *Doe v. New York University*. In that case, a medical student suffering from a mental illness sought readmission into a medical school pursuant to the Rehabilitation Act. The United States Court of Appeals for the Second Circuit acknowledged that section 504 of the Rehabilitation Act mandates that the medical school provide even-handed treatment of a handicapped applicant who meets reasonable standards. "If the handicap could reasonably be viewed as posing a substantial risk that the applicant would be unable to meet its reasonable standards, [however,] the institution is not obligated by the Act to alter, dilute or bend [the standards] to admit the handicapped applicant." The *Doe* court then struggled with the relevant factors to determine whether a handicapped person is otherwise qualified for admission to an institution of higher education.

The *Doe* court acknowledged its "limited ability" in reviewing an applicant's qualifications in order to determine whether such a person would meet the reasonable standards for academic and professional achievement established by a university or a nonlegal profession. The court scrutinized whether the student was "otherwise qualified" under the Act by addressing the "substantiality of the risk that her mental disturbances will recur, resulting in behavior harmful to herself and others." The fault with the court's view is that predicting future behavior is an inexact science, lending itself to speculation and guesswork. To predict that a person suffering from a mental illness will exhibit future behavior that is harmful to herself or others is highly unreliable. To prevent a disabled person from enrolling in an educational program for fear that the person would endanger future patients, clients, or herself is unfair to all disabled persons. Society has a great deal of difficulty understanding persons who suffer from mental illness, and courts encourage this fear by depriving mentally ill students from enrolling in educational programs.

Another case depriving a disabled student of admission is *Crancer v. Board of Regents*. Amy Crancer, who suffered from post-traumatic stress disorder, sought redress from the Court of Appeals of Michigan under the Michigan Handicappers' Civil Rights Act. The court rebuked her request because she failed to establish that she was qualified for the educational opportunity sought in spite of her

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69. 666 F.2d 761 (2d Cir. 1981).
70. *Id.* at 768.
71. *Id.* at 775.
72. *Id.*
73. *Id.* at 775-77.
74. *Id.* at 775. The court confessed that it was ill-equipped to evaluate academic performance and that considerable judicial deference should be given to the university. *Id.* at 776.
75. *Id.* at 777. The standard adopted by the court to determine whether the student was "otherwise qualified" to be admitted to the medical school measured whether there was any appreciable risk that Doe posed a threat of harm to herself or others. *Id.* Thus, the institution could refuse to admit Doe "even if the chances of harm were less than 50%." *Id.*
77. *Id.*
handicap.78 Because Ms. Crancer could not establish that she was qualified for admission, she could not demonstrate that the university had to provide a reasonable accommodation to permit her to participate.79 The court failed to admit any demonstration that with a reasonable accommodation, Ms. Crancer could successfully participate in the educational program.80 Again, Crancer showed that in order for a disabled person to receive fair and equitable treatment, Congress needed to modify federal legislation to require that reasonable accommodations be provided to the disabled community to ensure equal protection.

Under the Rehabilitation Act, courts continue to find that disabled persons must meet all the program requirements in spite of their handicap. For example, in Wood v. President & Trustees of Spring Hill College,81 Jennifer Wood, who suffered from schizophrenia, claimed to have been dismissed from college due to her disability, in violation of the Rehabilitation Act.82 The United States Court of Appeals for the Eleventh Circuit stated that the basic test for determining whether a plaintiff is “otherwise qualified” was whether the individual “is able to meet all of a program’s requirements in spite of his handicap.”83

In Halasz v. University of New England,84 the United States District Court for the District of Maine also looked at who is protected from discrimination under the Rehabilitation Act by reviewing the term “otherwise qualified individual[s] with handicaps.”85 Ronald Halasz was a learning disabled student with Tourette’s Syndrome who sought admission to the University of New England’s baccalaureate program.86 The court was persuaded by the university’s evidence that a wide array of accommodations were offered to Mr. Halasz in order for him to have a fair and equitable opportunity for success.87 He was dismissed from school only after several accommodations were offered.88 Despite this, the court found that even after the university made reasonable accommodations for Mr. Halasz’s handicaps, he was not otherwise qualified for admission to the baccalaureate program, and thus, the university did not discriminate against him by dismissing him from school.89

Although Mr. Halasz was unsuccessful in his claim to remain a student at the University of New England, disabled students in general should feel optimistic, because the court correctly recognized that the university must offer reasonable accommodations before it can conclude that a disabled student is not “otherwise qualified” to participate in the

78. Id. at 93.
79. Id.
80. Id.
81. 978 F.2d 1214 (11th Cir. 1992).
82. Id. at 1217-18.
83. Id. at 1222 n.13; see also School Bd. v. Arline, 480 U.S. 273, 287 n.17 (1987).
85. Id. at 41.
86. Id. at 40.
87. Id. at 44.
88. Id.
89. Id. See also Rothman v. Emory Univ., No. 93-C-1240, 1994 WL 113080 (N.D. Ill. Apr. 1, 1994); Anderson v. University of Wisconsin, 841 F.2d 737 (7th Cir. 1988).
university's educational program. Courts previously allowed universities to dismiss disabled students from participation unless they could demonstrate they could compete successfully in spite of their disability, an unfair and often futile practice. Hopefully, courts will continue, pursuant to the mandate of the ADA, to call on universities to offer reasonable accommodations before they determine whether or not a student is entitled to receive an education in their hallowed halls.

B. Exam Modification

The Louisiana State University Paul M. Herbert Law Center withstood a challenge from Robert McGregor, a permanently disabled law student with orthopedic and neurological problems who was dismissed from law school, in the 1992 case of McGregor v. Louisiana State University Board of Supervisors. Mr. McGregor relied on the Rehabilitation Act and sought three specific program accommodations which would allow him to: (1) proceed to the junior level, (2) take a part-time schedule, and (3) take his examinations at home. Denying Mr. McGregor relief, the United States District Court for the Eastern District of Louisiana concluded that these three program accommodations constituted substantial changes to the defendant's program that were not required by law. The court pointed out that "[s]ection 504 does not mandate preferential treatment for handicapped individuals; rather, it prohibits disadvantageous treatment." The Louisiana State University Law Center provided extensive academic modifications for Mr. McGregor and thus demonstrated the options that may be available in any given situation. The academic modifications included:

- (1) giving the plaintiff additional time for course examinations;
- (2) assigning a professor to assist the plaintiff with some of his studies;
- (3) giving the plaintiff's assistance from members of faculty by keeping his housing at the Faculty Club;
- (4) providing a wheelchair-accessible table for the plaintiff's use;
- (5) providing accessibility to a bathroom in the Law Center;
- (6) scheduling the plaintiff's classes in an accessible building;
- (7) granting the plaintiff a handicapped parking permit;
- (8) permitting the plaintiff to take his exams at a choice of several locations in the Law Center.

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91. Id. at *3.
92. Id.
93. Id.
94. Id. at *2.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id.
100. Id.
101. Id. at *3.
(9) providing a modified exam schedule to allow the plaintiff time to rest between exams;\(^\text{102}\)
(10) assigning a student to assist the plaintiff during his exams;\(^\text{103}\)
(11) providing a bench to permit the plaintiff to rest more comfortably during his exams;\(^\text{104}\)
(12) permitting the plaintiff to dictate his exam answers with dictating equipment;\(^\text{105}\) and
(13) establishing a committee to work with the plaintiff on making reasonable accommodations for his reentry to the Law Center.\(^\text{106}\)

Although the Law Center provided extensive modifications and reasonable accommodations, the court refused to require the center to allow the plaintiff to take his exams at home because the court determined that such a restructure of the law school program was beyond the scope of section 504 of the Rehabilitation Act.\(^\text{107}\) Such a request, the court noted, would constitute preferential treatment for Mr. McGregor, not elimination of disadvantageous treatment.\(^\text{108}\) The courts have been clear in drawing a line that permits disabled students to have a fair and equitable solution which allows them to compete with nondisabled students, but does not give them an unfair advantage. Perhaps the McGregor court’s decision was a reflection of the competitive nature of legal education and the legal profession as a whole, emphasizing that any slight advantage to any one group will not be tolerated.

The question of how far a university is required to go in providing a modification in exam format was addressed in Wynne v. Tufts University School of Medicine.\(^\text{109}\) Steven Wynne, a learning disabled student enrolled in medical school, failed eight of fifteen courses by the conclusion of his first year.\(^\text{110}\) A psychologist performed extensive neuropsychological tests on Mr. Wynne in an effort to determine his educational needs.\(^\text{111}\) The United States Court of Appeals for the First Circuit formulated a test for determining whether an academic institu-

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\(^{102}\) Id.
\(^{103}\) Id.
\(^{104}\) Id.
\(^{105}\) Id.
\(^{106}\) Id. The Law Center supplied the dictating equipment. Id.
\(^{107}\) Id. See also Schuler v. University of Minn., 788 F.2d 510, 514-16 (8th Cir. 1986) (finding a student who attempted to challenge an oral exam for a doctoral program in psychology to be not otherwise qualified), cert. denied, 479 U.S. 1056 (1987).
\(^{108}\) McGregor, 1992 WL 189489, at *3. The court found that the law school often went beyond its obligations in making reasonable accommodations for the plaintiff. Id. at *4. The court specifically noted that legal education is highly competitive, and because the majority of course grades are based solely on the final exam grade, permitting an exam to be taken at a student’s home may provide that student with an unfair advantage. Id. at *3.
\(^{110}\) "Wynne," 932 F.2d at 21.
\(^{111}\) Id.
tion adequately explored the availability of reasonable accommodations by noting:

If the institution submits undisputed facts demonstrating that the relevant officials within the institution considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or requiring substantial program alteration, the court could rule as a matter of law that the institution had met its duty of seeking reasonable accommodations. 112

The court confronted the format of examinations required for medical students, namely the multiple choice test, and concluded that such a format provides the fairest way to test the students' mastery of the subject matter. 113 The court found that to alter this exam format to accommodate the needs of a disabled student would require substantial program alterations, resulting in lower academic standards as well as a devaluation of Tufts University's end product—highly trained physicians. 114 The court considered such modifications too drastic because they resulted in a watering down of the educational program. 115 The court, however, in considering the summary judgment motion, was unwilling to declare whether a disabled student was entitled, upon a timely request, to have an opportunity to take the medical course exam orally. 116 It is arguable that if a modification in the exam format from a multiple choice exam to an orally administered exam would still capture the student's knowledge level and would not result in lowering the standards for the medical degree, the school should provide such an accommodation. Courts, however, seem inclined to defer to the faculty's professional judgment in making such changes. 117

In Pandazides v. Virginia Board of Education, 118 the United States District Court for the Eastern District of Virginia addressed whether the National Teacher Examination (NTE), a teacher certification exam, could be required as a prerequisite for a professional teacher's certification. The NTE provides a comprehensive assessment of the basic knowledge and skills required for a beginning teacher. 119 Sophia Pandazides claimed that she had a learning disability which prevented

112. Id. at 26 (emphasis added). See also School Bd. v. Arline, 480 U.S. 273, 287 n.17 (1987) (stating in the employment context, an accommodation is not reasonable if it would necessitate a modification of the essential nature of the program or would impose undue financial burden) (citing Southeastern Community College v. Davis, 442 U.S. 397, 412 (1979)).

113. Wynne, 932 F.2d at 27.

114. Wynne v. Tufts Univ. School of Medicine, 976 F.3d 791, 795 (1st Cir. 1992), cert. denied, 113 S. Ct. 1845 (1993). To alter the exam format from multiple choice to some other means would pose an undue hardship on the Tufts's academic program. Id. According to the facts, Tufts did waive the rules by permitting Mr. Wynne to repeat the first year curriculum and providing him with tutoring, taped lectures, untimed exams, and make-up exams. Id.


116. Wynne, 976 F.3d at 796.


119. Id. at 796. The NTE consists of three tests, including communication skills, general knowledge, and professional knowledge. Id.
her from passing the communication skills portion of the test.\textsuperscript{120} She also introduced into evidence a statement from her physician, who concluded that she "suffers from test anxiety and should be granted exemption from the communication skills portion of the National Teacher Exam."\textsuperscript{121}

The \textit{Pandazides} court, relying on the Rehabilitation Act, concluded that there was no requirement that basic academic standards be altered or that substantial modifications in professional requirements be made to allow entry to a handicapped candidate.\textsuperscript{122} The court considered the Virginia Board of Education's requirement that prospective teachers pass the communication skills test of the NTE as "a reasonable and legitimate professional licensing requirement."\textsuperscript{123}

An analogy could be drawn from the \textit{Pandazides} decision to legal education, in which students are tested primarily through essay exams for an understanding and an ability to analyze substantive law, but they are also tested in the areas of legal writing, research, and advocacy skills. If, for example, a student claimed an inability to pass the research aspect of his legal education, should law schools permit the student to waive such a requirement? If each aspect tested is so fundamental to determining if the student possesses the basic understanding necessary to be a lawyer, then to waive such a requirement would significantly lower academic standards and would create potential harm to future clients. This type of modification would obviously be unreasonable. If such modifications in the exam format could take place and still ensure basic uniformity in the skills each graduate possesses, however, then perhaps the request would be considered reasonable.

\textbf{C. Bar Exam and Bar Admission}

Several disabled applicants have challenged the licensing and admission of lawyers. In \textit{In re Kara B. Rubenstein},\textsuperscript{124} the plaintiff, who suffered from a learning disability, sought extra time to complete the bar examination.\textsuperscript{125} Before her learning disability was diagnosed, the plaintiff had passed the Multistate Bar Exam but failed the essay portion of the bar.\textsuperscript{126} Accordingly, when the learning disability became known, the bar examiners gave the plaintiff additional time only on the essay portion.\textsuperscript{127} The court noted that the purpose of the ADA is to place individuals with disabilities on an equal footing with nondisabled

\begin{itemize}
\item \textsuperscript{120} Id. at 798. Plaintiff failed this portion of the test eight times, claiming an inability to organize her thoughts and time pressure as the reason for the failure. \textit{Id.}
\item \textsuperscript{121} \textit{Id.}
\item \textsuperscript{122} \textit{Id.} at 802. \textit{See also} Southeastern Community College v. Davis, 442 U.S. 397, 413 (1978) (holding that it was not discrimination when a nursing program refused to accommodate a deaf student's inability to hear); Doherty v. Southern College of Optometry, 862 F.2d 570 (6th Cir. 1988).
\item \textsuperscript{123} \textit{Pandazides}, 804 F. Supp. at 803.
\item \textsuperscript{124} 637 A.2d 1131 (Del. 1994).
\item \textsuperscript{125} \textit{Id.} at 1134.
\item \textsuperscript{126} \textit{Id.} at 1132.
\item \textsuperscript{127} \textit{Id.} at 1134.
\end{itemize}
persons and not to give them an unfair advantage. The court found that the ADA undoubtedly recognizes that a person with a learning disability should be accommodated. Thus, the court determined, as an equitable remedy, that Kara Rubenstein had passed the bar examination.

Another bar examination challenge under the ADA resulted in disappointment for the bar applicant. In Pazer v. New York State Board of Law Examiners, Jonathan Pazer, who allegedly suffered from a learning disability, requested to take the bar exam over a period of four days rather than the two days normally provided, to use a computer, and to change the test site in order to minimize distractions. Although these requests may in fact have been reasonable for another applicant with a disability, the court was not persuaded that Mr. Pazer was disabled and denied the requested relief.

Argen v. New York State Board of Law Examiners also involved a request for special accommodations on the bar examination. Ralph Argen claimed to be a qualified individual with a disability within the meaning of the ADA because he suffered from a learning disability. The United States District Court for the Western District of New York, however, after reviewing expert testimony and reports, rejected Argen's claim that he was a qualified individual with a disability under the ADA and dismissed the complaint.

In D'Amico v. New York State Board of Law Examiners, the United States District Court for the Western District of New York heard another challenge to the administration of the bar exam from Marie D'Amico, a severely visually impaired bar applicant. D'Amico sought a reasonable accommodation in taking the bar exam by requesting additional time to complete the exam. The court drew a clear line between reasonable and unreasonable accommodations, mandating that every request for accommodations and the determination of reasonableness be made on a case-by-case basis. The court recognized the delicate balance that must be made in determining reasonableness, especially as it relates to examinations and testing procedures. In achieving this balance, the court noted that the purpose of the ADA is

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128. Id. at 1137. See also Riedel v. Board of Regents, Civ. A. No. 93-2117-GTV, 1993 WL 500892 (D. Kan. Nov. 17, 1993) (dismissing a medical student's claim under the ADA and the Rehabilitation Act for lack of standing when the student, who was learning disabled, failed the National Board examination and was dismissed from medical school).
129. Id.
130. Id. at 1140.
132. Id. at 286. See also Doe v. New York Univ., 666 F.2d 767, 773 (2d Cir. 1981) (requiring a showing of irreparable injury to mandate injunctive relief).
134. 860 F. Supp. 84 (W.D.N.Y. 1994).
135. Id. at 86. See supra note 67 and accompanying text (defining a qualified individual with a disability under the ADA).
136. Id. at 91. The court stated that not all underachievers are learningdisabled. Id.
138. Id. at 218.
139. Id. at 221.
140. Id.
to guarantee that those with disabilities are not disadvantaged. Additionally, the court recognized that the ADA was not meant to give the disabled advantages over other applicants, but to place those with disabilities on an equal footing. The court stated that the determination as to whether accommodations are needed is a medical one, and as such, affords the opinion of the applicant's treating physician great weight. Accordingly, the court gave such weight to the opinion of D'Amico's treating physician of twenty years and ruled that her disability required that the bar exam be conducted over a span of four days with only five hours of testing each day. The court held that the board of law examiners' proposal that D'Amico take the exam over two days, from 7:30 a.m. to 5:45 p.m., was unacceptable.

D. Non-Exam Academic Modifications

Situations will persistently arise on law school campuses that necessitate a closer look at how law students are treated. As law schools continuously strive for a more diverse student body, with older students and students from a wide variety of economic backgrounds, law schools will continue to enroll students with substance abuse problems, mental illness, and learning disabilities. Whether or not such disabilities are openly discussed and disclosed, law schools will be confronted with increased requests for academic modifications beyond simply the law school exam.

In Anderson v. University of Wisconsin, the United States Court of Appeals for the Seventh Circuit reviewed a disabled student's claim that university officials discriminated against him on the basis of his disability when they denied his request to be readmitted to law school. The student suffered from alcoholism and claimed protection within the scope of the Rehabilitation Act. The law school permitted the student to re-enter the law school program twice, aware that he was an alcoholic. According to the court, the student did not refrain from alcohol during any substantial portion of the period covered by the record. The court stated that the issue to be decided was not whether the student could handle the work, but "whether the [u]niversity discriminated against him because of his handicap—that is, excluded him even though it would have readmitted a student whose academic performance and prospects were as poor but whose difficulties did not

141. Id. See also Christian v. New York State Board of Law Examiners, No. 94 Civ. 0949, 1994 WL 62797 (S.D.N.Y. Feb. 23, 1994) (denying a preliminary injunction to a learning disabled student who was denied an accommodation of taking the bar exam over four days).
142. D’Amico, 813 F. Supp. at 221. The court noted that the Board of Law Examiners believed the plaintiff would have an unfair advantage over other bar applicants, a claim that the court rejected. Id.
143. Id. at 222.
144. Id.
145. Id.
146. 841 F.2d 737 (7th Cir. 1988).
147. Id. at 739.
148. Id. at 740.
149. Id. at 741.
150. Id.
stem from a 'handicap.' The student’s grades fell slightly below the minimum grade point average necessary to be allowed to continue. Although he missed the minimum grade point average, the university provided him with several opportunities for re-admission, an accommodation that was fair and reasonable under the circumstances. Accordingly, the appellate court upheld the trial court’s dismissal of the student’s Rehabilitation Act claim. Unfortunately, there comes a time, after a university provides an accommodation and a student still fails to make satisfactory progress, that a university is within its authority to dismiss the student.

On the horizon, courts will see student requests under the ADA to waive certain course requirements for graduation. For example, many law schools require an upper-level writing and advocacy component in order to fulfill degree requirements. A student may be required to complete a law review research paper or a skills course such as trial advocacy, or client interviewing, counseling, and negotiation. Situations may exist in which a law student claims that the ADA requires the law school to waive such a requirement. How might a law school respond to a deaf student’s request to waive the advocacy requirement or a dyslexic student’s request to waive the upper-level writing requirement? Are such modifications fair and equitable, or do they so change the curriculum as to prevent the student from receiving a well-rounded and complete legal education?

In an important case involving a student with a visual disability, Doherty v. Southern College of Optometry, the United States Court of Appeals for the Sixth Circuit elaborated on a student’s request to eliminate course requirements for completion of an optometry degree. The optometry college offered evidence that the clinical proficiency requirements that the student was unable to pass by reason of his disability were a necessary part of the curriculum. According to evidence presented, his disability prevented him from being able to use four instruments that formed the required exam, although evidence was elicited that those instruments were often not used by optometrists in practice. Unfortunately, the court permitted the educational institution to maintain the course requirement, finding that "[a]n educational institution is not required to accommodate a handicapped individual by eliminating a course requirement which is reasonably necessary to
proper use of the degree conferred at the end of a course of study.\textsuperscript{159} The court specifically stated that the "[w]aiver of a necessary requirement would have been a substantial rather than merely a reasonable accommodation,"\textsuperscript{160} suggesting that such a waiver poses a potential danger to the public.\textsuperscript{161}

This concern for the public, as is seen in the need to provide a specific course of study for law students to ensure competent representation to the public, is admirable, but is also dangerous when used as the rationale for excluding disabled individuals from entering the legal profession. For example, could such an argument be made to prevent a blind or hearing impaired law school applicant from entering law school because of course requirements that would be nearly impossible to complete? What about a law student with a history of mental illness or substance abuse, who may pose a real or imagined threat to the public? If a learning disabled student may face some additional challenges as a lawyer in the judicial system interacting with judges and other lawyers, do we prevent such a person from even entering the legal profession, or do we have enough confidence that such a person's strengths and abilities will allow him to recognize his limitations and seek assistance and collaboration, as many individuals in the work place seem to do?

E. Auxiliary Aids

Recognizing a university's obligation to provide auxiliary aids to disabled students, the United States Justice Department filed suit to require the provision of sign language interpreters to deaf students in \textit{United States v. Board of Trustees}.
\textsuperscript{162} In that case, a university's auxiliary aids policy provided some aids to deaf students, such as notetakers and transcriptions of tape recordings of classes.\textsuperscript{163} The university did not, however, provide interpreters or other "costly" aids.\textsuperscript{164} The university acknowledged that the lack of an interpreter may deny a deaf student meaningful access to education, but claimed that requiring the university to provide auxiliary aids exceeded the scope of section 504 of the Rehabilitation Act.\textsuperscript{165} Rejecting this claim, the United States Court of Appeals for the Eleventh Circuit held that the university could not deprive deaf students of interpreters and required the university to provide an interpreter if the student could not secure one elsewhere.\textsuperscript{166}

\textsuperscript{159} \textit{Id.} at 575 (citing Hall v. United States Postal Serv., 857 F.2d 1073, 1079 (6th Cir. 1988)).
\textsuperscript{160} \textit{Id.} (citing Doherty v. Southern College of Optometry, 659 F. Supp. 662, 673 (W.D. Tenn. 1987)).
\textsuperscript{161} \textit{Id.} See also Alexander v. Choate, 469 U.S. 287, 303 (1985) (holding that Tennessee need not alter its Medicaid coverage "simply to meet the reality that the handicapped have greater medical needs").
\textsuperscript{162} 908 F.2d 740 (11th Cir. 1990).
\textsuperscript{163} \textit{Id.} at 742.
\textsuperscript{164} \textit{Id.} The university required students to demonstrate the need for financial aid to pay for an interpreter in order to secure such services from the university. \textit{Id.}
\textsuperscript{165} \textit{Id.} at 748. See also Southeastern Community College v. Davis, 442 U.S. 397 (1979); Alexander v. Choate, 469 U.S. 287 (1985).
\textsuperscript{166} \textit{Board of Trustees}, 908 F.2d at 749 n.5; see also University of Tex. v. Camenisch, 451 U.S. 390 (1981) (involving a deaf graduate student seeking an interpreter from a university).
Courts continue to scrutinize carefully a university’s blanket policy as it effects the disabled. In Coleman v. Zatechka,167 a student claimed that a university student housing policy violated both the Rehabilitation Act and the ADA. The university prohibited the assignment of roommates to students with disabilities, such as the plaintiff, a twenty-one-year-old student with cerebral palsy.168 The university’s policy prohibited students without disabilities from being matched with roommates with disabilities if the disabled student required attendant care.169 The United States District Court for the District of Nebraska found that the policy violated both statutes because of the university’s failure to review each case on an individual basis and instead to promulgate a blanket policy effecting all disabled students.170

IV. RECOMMENDATIONS TO LAW SCHOOLS FOR PROVIDING ACADEMIC MODIFICATIONS

Law schools will continue to respond to requests from disabled law students for reasonable accommodations in academic programs. The mandate of the ADA has created sweeping changes on the face of legal education by protecting the rights of disabled students. The scope and variety of modifications to educational programs has just begun to be seen across law school campuses, and only time will tell how fair and equitable law schools will be in responding to this challenge. Disabled law students are demanding inclusion into the legal education arena, and nondisabled law students are curiously watching to see what, if any, impact such modifications will have on their legal education. On the other hand, law faculty are often out of the loop when it comes to consultation regarding the appropriateness of the academic modifications. Finally, bar examiners and attorney grievance commissions, on behalf of potential clients, are studying the law schools’ responses with a watchful eye as they face the challenges of providing legal education to the future lawyers of our nation.

As law schools continue to study and refine their policies and procedures for providing academic services to students with disabilities, this Article offers a number of suggestions:

(1) The student should be required to provide documentation from a psychologist, physician, or educational consultant trained in diagnosis of the disabled and who has examined the law student since the student has been enrolled in law school. Specific recommendations as to the academic modification necessary to accommodate the student’s disability should be included in the report.

(2) The student should submit in writing requests for academic modification to either the law school dean or another designee, such as the dean of student services or the dean of academic affairs.

(3) For exam modifications and other academic modifications, the law school dean or designee should consult the law faculty teaching the

168. Id. at 1362-63.
169. Id. at 1363.
170. Id. at 1373.
specific student. At this time, the faculty member should offer suggestions as to appropriate academic modifications. The final decision, however, should be made by the dean or designee. The student’s name should not be disclosed to the faculty member, in order to protect the confidentiality of the student.

(4) For exam modifications, such as extra time, rest time, or a separate room, law schools should make decisions on a case-by-case basis, relying heavily on documentation provided by the expert evaluating the student.

(5) Law schools should provide students with a right of appeal to an independent decision-making board composed of faculty, administration, and a student representative. The board should afford the student a right to present evidence, to testify, and to confront and cross-examine witnesses in an expedited procedure.

(6) Law schools should be required, in appropriate cases, to provide free auxiliary aids, including tutors, note takers, librarian assistance, sign language interpreters, and readers, in order to afford disabled students access to their educational programs.

(7) Law schools should develop written policies and procedures for academic modifications for disabled students, including the following areas:

- documentation and verification of the disability;
- exam modifications (e.g., additional time, deferrals, and rest time);
- provision of computer and other equipment;
- modification of exam format (e.g., changing from essay to short answer);
- provision of enlarged print size and braille teaching materials;
- extension of time for written assignments;
- waiver or substitution of course work assignments;
- waiver of specific course requirements for graduation;
- extension of time for degree completion;
- substitution of specific course requirements for graduation;
- allowance of priority in course registration;
- authorization to tape record classes;
- provision of sign language interpreters for deaf or hearing impaired students;
- provision of readers for blind students;
- access to modified classroom equipment;
- access to parking;
- participation in extracurricular activities (e.g., law review and other writing competitions, moot court, and student bar association);
- allowance of waiver or priority in enrollment for advocacy skills and clinical education;
- admission to law school;
- discharge from law school;
- provision of counseling services;
- assurance of confidentiality;
- modification of the add/drop policy on course changes; and
- indication of the academic modification on the transcript.

V. CONCLUSION

Law schools are under the microscope to see how they respond to requests from disabled law students for academic modifications. Will law schools respond in a positive fashion, and open their doors to
disabled law students? What is the impact of providing accommodations to law students who in the future will seek accommodations in bar examination and admission? Should law schools protect the confidentiality of disabled students as they provide information to bar examiners, prospective employers, and bar associations?

Law schools appear to have responded fairly to requests from law students to provide exam modifications, specifically additional time to complete their exams. As the requests become more significant, however, such as waiver of degree requirements or modification of exam format, only time will tell if law schools keep their doors open to students with disabilities.
APPENDIX A: ACADEMIC MODIFICATIONS SURVEY RESULTS

1. a. Type of law school

   Public law schools: 40
   Private law schools: 40

   b. Total law student body:

   Average student body of school: 737 students
   Total number of students: 58,952 total

   c. In which state is your law school located?

Variable answers

2. During the 1994-95 academic year, approximately how many law students have requested "reasonable accommodations" (academic modifications) in course examinations (includes additional time; separate room; extra rest time; provision of computer, dictaphone, calculator or other equipment; modification of exam format) by reason of claiming to be a person with a disability (mental or physical disability)?

   1187 total students
   14.8 students per law school

3. During the 1994-95 academic year, the law students requesting reasonable accommodations in course examinations claimed to have which one of the below listed disabilities?

<table>
<thead>
<tr>
<th>Disability</th>
<th>Number of Students</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Learning disabled</td>
<td>641</td>
<td>53.6</td>
</tr>
<tr>
<td>b. Mental illness</td>
<td>23</td>
<td>1.9</td>
</tr>
<tr>
<td>c. Blind</td>
<td>79</td>
<td>6.6</td>
</tr>
<tr>
<td>d. Deaf or hearing impaired</td>
<td>14</td>
<td>1.2</td>
</tr>
<tr>
<td>e. Physical disability</td>
<td>375</td>
<td>31.3</td>
</tr>
<tr>
<td>f. Other (please list)</td>
<td>65</td>
<td>5.4</td>
</tr>
<tr>
<td>Total</td>
<td>1197</td>
<td>100.0</td>
</tr>
</tbody>
</table>
4. In each category, during the 1994-95 academic year, approximately how many disabled law students were provided with some form of reasonable accommodation in course examinations (includes additional time; separate room; extra rest time; provision of computer, dictaphone, calculator or other equipment; modification of exam format), and how many were denied an accommodation?

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Students Provided Accommodation</th>
<th>Number of Students Denied Accommodation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning disabled</td>
<td>619</td>
<td>17</td>
</tr>
<tr>
<td>Mental illness</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>Blind</td>
<td>75</td>
<td>0</td>
</tr>
<tr>
<td>Deaf or hearing impaired</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Physical disability</td>
<td>353</td>
<td>2</td>
</tr>
<tr>
<td>Other (please list)</td>
<td>64</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>1145</td>
<td>25</td>
</tr>
</tbody>
</table>

5. a. Please list the title and educational background of the individual or name of the office or program that makes the determination as to whether or not a law student is provided an accommodation in course examinations or course work assignments.

Variable answers

b. Is this person or office affiliated with the law school only or university?

Law school affiliation: 52 schools (65%)
University affiliation: 27 schools (35%)

6. During the 1994-95 academic year, approximately how many law students have requested (were provided or denied) a reasonable accommodation (an academic modification) by reason of claiming to be a person with a disability, for the following:

<table>
<thead>
<tr>
<th>Accommodation</th>
<th>Number of Students Provided Accommodation</th>
<th>Number of Students Denied Accommodation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional time for course examination</td>
<td>928</td>
<td>13</td>
</tr>
<tr>
<td>Separate examination room</td>
<td>560</td>
<td>5</td>
</tr>
<tr>
<td>Extra rest time during course examination</td>
<td>246</td>
<td>0</td>
</tr>
<tr>
<td>Provision of computer, dictaphone, tape recorder, calculator, other equipment</td>
<td>234</td>
<td>3</td>
</tr>
<tr>
<td>Modification in exam format (ie. from essay to multiple choice, short answer, etc.)</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>
f. Enlarged print size for visually impaired
   52 0

g. Extension on time for written assignments
   54 2

h. Waiver or substitution of course work assignments
   4 0

Other, please list ___________  35 0

Total 2024 25

Please feel free to explain any of your answers.

7. When the disabled law student seeks an accommodation in a course examination, does the student's professor:

   a. Make the final decision  Yes 2.0  3%  No __
   b. Get consulted  Yes 22.5  28%  No __
   c. Have no input in the decision  Yes 55.5  69%  No __

   Please explain your answer:

8. When the law student who seeks an accommodation in a course examination is denied such an accommodation, does the student have a right to appeal the denial? 67 responses

   Yes 59 88%  No 8 12%

   If yes, to whom (or what office, committee, or program) does the student seek an appeal?

9. For those disabled law students who were provided with additional time to complete their course examination, how much additional time was provided, on the average, during the 1994-95 academic year? Select only one:

   Number of Schools  Percentage of Schools

   a. Twice the time normally allowed for the exam 20 28
   b. 1½ times the amount of time normally allowed for the exam 39 54
   c. Additional 1 hour 13 18
   d. Additional 2 hours 1 1
   e. Additional 3 hours 1 1
   f. Unlimited time 2 3

   Total 76 100
10. During the 1994-95 academic year, approximately how many law students with a disability requested (were provided or denied a reasonable accommodation, academic accommodations), in the following areas?

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of Students Provided Accommodation</th>
<th>Number of Students Denied Accommodation</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Waiver of specific course requirements for graduation</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>b. Substitution of specific course requirements for graduation</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>c. Extension of time for degree completion</td>
<td>38</td>
<td>0</td>
</tr>
<tr>
<td>d. Priority in course registration</td>
<td>67</td>
<td>2</td>
</tr>
<tr>
<td>e. Authorization to tape record classes</td>
<td>95</td>
<td>9</td>
</tr>
<tr>
<td>f. Provision of sign language interpreter for deaf or hearing impaired students</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>g. Braille teaching materials for blind students</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>h. Readers for blind students</td>
<td>33</td>
<td>0</td>
</tr>
<tr>
<td>i. Modified classroom equipment (if yes, please explain)</td>
<td>19</td>
<td>0</td>
</tr>
</tbody>
</table>

11. For the provision of a sign language interpreter for deaf/hearing impaired students, and readers for blind students:

a. Does your law school provide the service and pay the cost?

   Yes \(47\frac{1}{2}\)  No __

b. Does your law school provide the service and the student pay the cost?

   Yes \(1\frac{1}{2}\)  No __

c. Does the student provide the service and the student pay the cost?

   Yes \(2\)  No __

d. Does the student provide the service and law school pay the cost?

   Yes \(1\)  No __
12. For those disabled law students requesting an academic modification, what, if any documentation is required? [check applicable box(es)]

<table>
<thead>
<tr>
<th>Number of Schools</th>
<th>Percentage of Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Letter from student's psychologist or psychiatrist</td>
<td>64</td>
</tr>
<tr>
<td>b. Letter from student's social worker</td>
<td>12</td>
</tr>
<tr>
<td>c. Letter from student's family doctor</td>
<td>48</td>
</tr>
<tr>
<td>d. Letter from student only</td>
<td>4</td>
</tr>
<tr>
<td>e. Independent psychological or medical examination required</td>
<td>34</td>
</tr>
<tr>
<td>f. School administered psychological or medical examination</td>
<td>19</td>
</tr>
<tr>
<td>g. Other, please explain:</td>
<td>12</td>
</tr>
</tbody>
</table>

13. How recent must the documentation be? 3 yrs. avg.

14. Is your law school presently reviewing or studying its procedures for providing academic modifications for disabled students?

   Yes 37 (48%)  No 40 (52%)

15. Does your law school have written policies and procedures for addressing requests by disabled students for accommodations?

   Yes 50 (63%)  No 29 (37%)

16. Any additional comments:

   ____________________________

If I can use direct quotations from this questionnaire, please sign authorization below.

   Yes 45  No 35