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What Law Schools Are Doing to Accommodate Students with Learning Disabilities

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# What Law Schools Are Doing to Accommodate Students with Learning Disabilities*

Donald H. Stone**

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* This article is an update to a piece that first appeared in the Kansas Law Review, 44 U. Kan. L. Rev. 567 (1996), entitled The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study. Additionally, the South Texas Law Review made significant contributions in editing and updating this article.

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I. INTRODUCTION

The year 2000 marks the tenth anniversary of the 1990 passage of the Americans with Disabilities Act ("ADA"). It also marks a quarter century since the passage of the Education for All Handicapped Children Act ("EAHCA"). The EAHCA opened the doors for disabled children to receive a free and appropriate education. As a result of this special education law, many disabled young people were able to succeed and are now knocking at law schools' doors seeking admission.

Higher education is something to which we can all relate. On a personal note, my involvement in disability law since 1978 with the Virginia Developmental Disability Protection and Advocacy Office and being involved in teaching in higher education since 1984, makes it extremely interesting to study the intersection of these topics. In my work, both as a faculty member and chair of the University of Baltimore School of Law Admissions Committee, I have had a chance to see "up close and personal" the inherent difficulties in verifying certain disabilities, and in implementing polices and practices to ensure reasonable accommodations. Further, in my work with the University of Baltimore School of Law Disability Law Clinic, I deal with extremely challenging issues facing persons with mental disabilities.

Relevant issues necessary to consider include:

1. admission;
2. standardized testing;
3. identifying and documenting the disability;
4. the enrolled student; auxiliary aids and services;
5. modification of requirements and services for graduation; and
6. the law school exam.

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2. 20 U.S.C. §§ 1400-1487 (1999). Congress enacted this statue, now known as the Individuals with Disabilities Education Act ("IDEA"), in 1975 to provide special education services and ensure additional school funding to states. Id.
According to the United States Congress, 43,000,000 Americans, one in every five, have a physical or mental disability. Congress recognized that society has a tendency to isolate and segregate individuals with disabilities, and such discrimination continues to be a significant problem facing society. Discrimination against individuals with disabilities takes many forms, covering areas of employment, housing, education, government services, transportation, health care and places of public accommodations. Society makes a subconscious assumption that people with disabilities are less than human and, therefore, not entitled to the opportunities, programs and support services available to others as a matter of right. The unfounded stereotypes of the alleged incapability of disabled people, as well as the stigmas associated with certain disabilities, resulted in Congressional action.

On July 26, 1990, Congress enacted the ADA, a landmark civil rights bill designed to open up all aspects of American life to individuals with disabilities. The stated purpose of this federal law is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The focus of the ADA is to furnish strong and consistent standards addressing discrimination against individuals with disabilities. Furthermore, Congress bestows on the federal government the primary responsibility for enforcing the standards established by the ADA.

According to the 1990 Census, of the almost 43,000,000 disabled Americans, 19,200,000 had trouble walking, 13,000,000 had visual impairments, 7,700,000 Americans had hearing impairments and 2,500,000 had trouble speaking. Of the total disabled population, 12,800,000 people have a work disability lasting greater than six months. The ADA contains four major titles: Employment, Public Services (state and local governments), Public Accommodations and

4. Id. § 12101(a)(2).
5. Id. § 12101(a)(3).
8. Id. § 12101(b)(2).
9. Id. § 12101(b)(3).
11. Id.
Services Operated by Private Entities and Miscellaneous Provisions.\textsuperscript{12} Congress intended to protect individuals with substantial impairments. To qualify under the ADA, a person must have a physical or mental impairment, a record of such impairment, or be regarded as having an impairment.\textsuperscript{13} In addition, the impairment must substantially limit one or more major life activities, for example, caring for oneself, walking, seeing, hearing, learning and working.\textsuperscript{14} Factors to determine if an individual has a substantial impairment include the nature and severity of the impairment, the duration of the impairment, and the permanent or long-term impact.\textsuperscript{15} For instance, a person with a broken leg would not be protected while a person with cerebral palsy would be covered. A person with a record of impairment, such as a person treated for mental illness five years ago or a person who has recovered from cancer, would be protected. Moreover, a person regarded as disabled, but not actually disabled, would be protected from discrimination, \textit{i.e.}, a person who is thought to have HIV or AIDS, but in fact does not have either disease, would be protected from discrimination.

In \textit{Sutton v. United Air Lines}, the United States Supreme Court, confronted the issue of whether measures that "mitigate" an individual's impairment, such as eye glasses for the visually impaired, should be referenced when determining disability.\textsuperscript{16} Bad facts make bad law. In \textit{Sutton}, the Court held that if eyeglasses or contacts caused an individual to function as a non-disabled person, then the person is not disabled.\textsuperscript{17} The implication for persons with epilepsy or diabetes receiving corrective medication is that mitigating measures may be considered, thus rendering them non-disabled. According to the National Center for Learning Disabilities, Inc., fifteen to twenty percent of the United States population has some form of learning disability.\textsuperscript{18} It has been noted that only nine percent of full-time college freshmen claim to have a disability, while forty-one percent

\begin{itemize}
\item \textsuperscript{12} \textsuperscript{42} U.S.C. §§ 12101-12213 (1995)
\item \textsuperscript{13} \textit{Id.} §§ 12102(2)(A)-(C).
\item \textsuperscript{14} \textit{Id.} § 12101(2)(A).
\item \textsuperscript{15} 29 C.F.R. § 1630.2(j)(2) (1998); see also National Joint Committee on Learning Disabilities, http://www.ld.org/info/index.cfm [hereinafter NJCLD].
\item \textsuperscript{16} 527 U.S. 471, 482 (1999); see also Murphy v. U.P.S., Inc., 527 U.S. 516 (1999) (involving a person with high blood pressure, who, with medication, functioned normally).
\item \textsuperscript{17} \textit{Sutton}, 527 U.S. at 482-83.
\item \textsuperscript{18} Learning disabilities are defined by "significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities." NJCLD, \textit{supra} note 15.
\end{itemize}
are considered persons with learning disabilities.\textsuperscript{19}

Law schools face the challenge of providing disabled students reasonable accommodations in a fair and equitable manner. Disabled law students are demanding academic modifications in course examinations—claiming to be persons with mental and physical disabilities. Law schools, by virtue of the entitlements under the ADA, are witnessing requests for exam modifications, including: changes in exam format; additional test time to complete an exam; and test relocation for environmental control purposes.

Persons with a wide range of disabilities assert a need for academic modifications in law schools. Learning disabled students seek additional time to complete their final exams, blind students request readers, deaf students seek sign language interpreters, physically disabled students desire adaptive equipment and mentally ill students often require take home tests or exams with no time limit.\textsuperscript{20} These are examples of requests made upon law schools as they educate and integrate disabled students within their school.

What specific disabilities are most often accommodated in the law school exam arena? What is a reasonable additional amount of time for a student with a learning disability to complete an exam, and should it be extended over a period of several days? Are students with a mental illnesses more or less inclined to self-identify? Are they more or less likely to seek accommodations? Should law schools, in the evaluation and grading process, provide tutors to disabled students to put them on equal footing with non-disabled students? For those disabled students who are provided with additional time to complete their course examinations, should there be attention given to the perception that non-disabled students are being adversely impacted?\textsuperscript{21}

When law schools contemplate providing reasonable accommodations in exams to their disabled students, what, if any, medical, psychological or educational documentation is required? Should law schools have written policies and procedures for addressing academic modification requests by disabled students?

\textsuperscript{19} AMERICAN COUNCIL ON EDUCATION, 1999 College Freshmen with Disabilities: A Biennial Statistical Profile 2, 5 (1999).

\textsuperscript{20} Learning disabilities are defined as significant difficulties in acquiring and using listening, speaking, reading, writing, reasoning, or mathematical abilities. NJCLD, supra note 15.

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 exam modification? Do most students who seek an accommodation have the request honored? Is there an administrative appeals process within the law school community?

A fundamental issue underlying the provision of reasonable accommodations to law students is the future impact such an accommodation may have on a disabled lawyer who subsequently represents a client in a legal proceeding. Do law schools provide a disservice by offering an “advantage” to a disabled 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 have significant impact beyond legal education, affecting the bar admission process, the bar examination, attorney grievance and disbarment procedures, and employment of lawyers in the workplace in general?22

This article discusses and analyzes court decisions addressing reasonable accommodations in the academic arena of law school examinations. The text illustrates the impact of the ADA and the direction courts are heading as they tackle this difficult and important area of law. In a prior study, eighty law schools from across the country were surveyed to obtain data and elicit their opinions on questions relating to academic modifications.23 The empirical data is intended to serve as a backdrop for elaboration and comparison of these and other questions. The significant number of disabled students seeking academic modifications in their law school education warrants such an inquiry. Law schools continue to grapple with claims from disabled students for fair and equitable treatment. An additional concern is the desire to avoid a backlash from the non-disabled students who want to prevent providing disabled students an unfair advantage in the law school setting.

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

The empirical data discussed in this section demonstrates the extent and variety of academic modifications provided to disabled law students. Eighty law schools, representing 58,932 students, responded to the survey.24 During the 1994–1995 academic year, 1,187 law students claiming to have a physical or mental disability requested accommodations for course examinations.25

A majority of academic modification requests considered by a survey group of law schools were granted, denying only two percent of such requests.26 The surprisingly low number of denials may have been a reflection of the students' circumstances, or perhaps, the law schools' difficulty distinguishing the valid requests from the bogus ones.

The survey data, partitioned by geographical region, reveals some interesting findings.27 Nationally, an average of fifteen law students per law school requested academic modifications during the 1994–1995 academic year.28 In the South, an average of ten students per law school requested exam modifications, while in the West, the average rose to twenty-five students.29 Differences between the South and the West regions may be a reflection of societal norms. The West may take a more open-minded approach to dealing with differences than the South.

A significant number of law students were considered learning

24. Id. at 596 No.1(a), (c). Of the eighty law schools surveyed, there were forty public and forty private law schools. Id.
25. Id. at No.2. Approximately two percent of the student body of law schools surveyed made a request for an academic modification in the 1994–1995 academic year. Id.
26. Id. at 597 No.4. Out of 1,145 student requests for reasonable accommodations in course examinations during the 1994–1995 academic year, the law schools denied only twenty-five such requests. Id.
27. Id. at 569–78 figs. 1, 4, 5, 7, 9–11. 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). Id.
28. Id. at 596 No.2.
29. Id. at 569 fig.1.
disabled, as compared to others with varying disabilities. A possible explanation for this high percentage of requests may be that these students were offered academic accommodations in high school and college, as well as in the law school admissions test ("LSAT"). There may be less of a stigma for a learning disabled student who has been offered similar accommodations in the past to make such requests in law school. In contrast, a student diagnosed with a mental disorder may believe the price is too high to self-identify and, therefore, not request a modification for course examinations. Acknowledging a mental disorder may prove too significant a risk for the student because of fears that such information may affect his or her future ability to sit for the Bar exam or satisfy the character and fitness committee of a state's bar examiners.

When a disabled student sought a reasonable accommodation because of a disability, the primary request was for additional time to complete the course examination. Students also requested 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 of the exam format, i.e., from essay exam to either multiple choice or short answer questions.

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

Law schools in the West have granted more requests for

30. Id. at 570 fig.2.
31. Id. at 596 No.3(a).
32. See generally Stone, supra note 22.
33. Stone, supra note 21, at 571 fig.3.
34. Id. Other requests, to a lesser degree, included extensions of time on written course assignments and enlarged print size for visually impaired students. Id.
35. Id. In addition, only four students sought a waiver or substitution of course work assignments. Id. at 571 n.13.
36. Id. app. A at 596–600. Of the 1,145 students seeking course modifications, law schools denied only twenty-five such requests. Id. at 597 No.4.
additional time to complete a final exam than other regions in the
country.\footnote{Id. at 572 fig.4. Figure 4 shows that twenty disabled law students per law school in the West were provided additional time on their final exams during the 1994–1995 academic year, a number 150% greater than in the Midwest. \textit{Id.}} It is puzzling why more disabled students do not request an exam modification since virtually all requests for additional time have been granted.\footnote{Id. at 596 No.6(a).} Allowing additional time levels the playing field, rather than giving an unfair advantage to particular students. Experts in 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, therefore, disabled students need additional time to complete written work.\footnote{See generally Robert Bryson, \textit{Counselors: Special Requests on Rise in Testing for Admissions to College Counselors}, SALT LAKE TRIB., Feb. 5, 1996, at D1.} The provision of additional time on the law school exam is a reasonable accommodation, mandated by the ADA, to prevent the exclusion of disabled individuals from participation in educational programs.\footnote{See 42 U.S.C. § 12132 (1995).}

Another striking comparison among geographic regions involves providing separate examination rooms for disabled students. Frequently, disabled students are easily distracted by noise and by taking exams in a large room with many students. To diminish these distractions and enable the student to focus on the task at hand, 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. Law schools in the West have provided an average of twelve students per school with a separate exam room, which is double the number of the Northeast, Midwest, or South.\footnote{Stone, supra note 21, at 573 fig.5. A nationwide average of seven law students received a separate exam room during the 1994–1995 academic year. \textit{Id.} at 572 n.18.} Although providing a separate exam room for disabled students may be an administrative burden for law schools, the exam setting is crucial to ensure disabled students a fair and equitable opportunity to succeed in law school.
III. PROPER ASSESSMENT, DIAGNOSIS AND DOCUMENTATION

A. Qualified Diagnostician

In order for a law student to obtain an exam modification necessitated by one's disability, it is vital that a qualified diagnostician verify the student's diagnosed disability. An evaluation of the student should be based on comprehensive and current testing and include recommendations for specific exam modifications. Often, a review of several law schools' policies and procedures for disabled students is referenced when addressing these issues.\(^\text{42}\) Students with disabilities who require accommodations must make those needs known, often to the law school's Assistant Dean for Student Affairs\(^\text{43}\) or the Manager of the Disability Resource Program.\(^\text{44}\) Information and documentation about a student's disability is extremely sensitive and should be treated with the utmost confidentiality by school officials.

For a disabled student to begin the process of receiving exam modifications, the first step is to obtain verification of one's physical or mental impairment. The verification procedure, adopted by Hastings College of Law, includes the following steps:

- provide professional verification certified by a qualified person in the diagnosis of the specific disability;
- verification must reflect the student's present level of functioning in the major life activity affected by the disability;
- cost of obtaining the verification to be borne by the student;
- verification documentation provided to the Coordinator of the Disability Resource Program.\(^\text{45}\)

A majority of law students requesting reasonable


\(^{43}\) Houston Handbook, supra note 42, at 4 (requiring disabled students "to make their needs known in a timely fashion and to provide appropriate documentation and evaluations in appropriate cases"); see also Disability Support Services, supra note 42 (documentation may be required "to verify the existence of a disability").

\(^{44}\) Hastings Procedures, supra note 42, at 5.

\(^{45}\) Id.
accommodations in course examinations claimed to have a learning disability. At Hastings College of Law, a student claiming a learning disability may not receive academic modification absent verification of the disability. The student are required to provide professional testing and evaluation results that must:

(A) be prepared by a professional qualified to diagnose a learning disability, including but not limited to a licensed physician, learning disability specialist, psychologist, or licensed physician;

(B) include the testing procedures followed, the instruments used to assess the disability, the test results, and a written interpretation of the test scores, by the professional;

(C) reflect the individual's present level of functioning in the achievement areas of: reading comprehension, reading rate, written expression, writing mechanics and vocabulary, writing, grammar, and spelling; and

(D) reflect the individual's present level of functioning in the areas of intelligence and processing skills.

An assessment of the student’s learning disability must support the requested accommodation.

B. Current Testing and Assessment

In order for law schools to effectively evaluate expert reports, the findings should be based on the current nature and impact of the student’s disability. In an effort to ensure accuracy, the University of Baltimore School of Law requires current documentation within the past three years. The University of Houston Law Center follows similar guidelines.

For disabled students seeking testing accommodations on the LSAT, an assessment of the current nature and impact of the disability must be provided by the student within three years of the

46. Stone, supra note 21, app. A at 596 No.3(a). A survey during the 1994–1995 academic year indicated 53.6% of law students requesting academic modification claimed a learning disability. Id.
47. HASTINGS PROCEDURES, supra note 42, at 5.
48. Id. at 6.
49. Id.
50. See DISABILITY SUPPORT SERVICES, supra, note 42 (requiring complete and comprehensive data confirming a student’s disabilities).
51. Id.
52. HOUSTON HANDBOOK, supra note 42, at 10.
requested accommodation. If, however, the student was tested as an adult (i.e., after the age of twenty-one), testing conducted within five years of the requested LSAT accommodations may be acceptable. In Guckenberger v. Boston University, the court evaluated the eligibility criteria for assessing and providing academic modifications for disabled students enrolled at Boston University. The court reviewed the university's procedures for evaluating a disabled student's request for accommodations, the currency of the submitted documentation, verification of the student's disability and the qualifications and credentials of the diagnostician. The court struck down Boston University's requirement that learning disabled students could only submit evaluations prepared by physicians and licensed clinical psychologists. The court also recognized the need for evaluations to be no older than three years, but determined that re-testing may be medically unnecessary in certain circumstances.

C. Testing Must Be Comprehensive

For guidance pertaining to the testing assessment for a cognitive impairment (i.e., specific learning disabilities, processing deficiencies, attention deficit disorder), the Law School Admission Council that administers the LSAT provides the following:

- A diagnostic interview that includes relevant background information to support the diagnosis.
- A neuropsychological or psychoeducational evaluation that provides clear and specific evidence of the cognitive disability based on more than one of the following subtests: aptitude (Wechsler Adult Intelligence Scale-Revised); achievement (measuring current levels of academic functioning in reading, math and written language); information processing (addressing memory, perception/processing, executive functioning, motor ability); and other assessment measures to support a dual

54. Id.
56. Id. at 134-36.
57. Id. at 141.
58. Id. at 139.
59. ADMISSION COUNCIL GUIDELINES, supra note 53, ¶ 3(a).
In *DuBois v. Alderson*, a learning-disabled college student sought accommodations, requesting the oral administration of exams and additional time to take written examinations. There was discussion as to the policy and procedure to which a learning-disabled student must adhere for academic support. The required documentation included the results of the Wechsler Adult Intelligence Scale ("WAIS"), completed by a licensed psychologist or certified learning disability specialist, indicating the specific learning disability, based on an evaluation no older than three years. The court found a student's failure to take the WAIS and submit findings documenting his disability negated his entitlement to academic accommodations.

The importance of outside and independent evaluations must be underscored. Some law schools require documentation by a person trained in diagnosis of persons with learning disabilities, as opposed to a psychologist or physician without specific training.

The decision by universities as to the evaluation selection is intriguing. Should law schools send all students seeking accommodations to a university evaluator? Should students be free to select their handpicked evaluator or should an independent evaluator unaffiliated with either the school or the student be selected? In struggling with the selection of the evaluator, such factors to be considered should include: consistency and fairness; competency; cost and providing a comprehensive evaluation. These factors should be the overriding considerations. Schools should permit students to select an evaluator who is qualified in the diagnosis of learning disabilities that can report about the student’s educational history and provide a comprehensive and current educational assessment. Unless law schools doubt the qualifications or credibility of the evaluator, they should, in good faith, rely on the evaluation provided by the student seeking the accommodation.

Several law schools referred disabled students to university disability offices, which have experts trained in evaluating disabled

60. *Id.* ¶ 3-4. Actual test scores must be provided, the report of assessment must include specific diagnosis, and the report of assessment must recommend specific accommodations. *Id.*
62. *Id.* at 758.
63. *Id.*
64. *Id.* at 759.
65. Stone, *supra* note 21, app. A at 600 No.12(e)-(f).
students.\textsuperscript{66} These offices then made specific recommendations for educational modifications.\textsuperscript{67} Law schools in the South and West frequently administer their own psychological or medical exams.\textsuperscript{68} An 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, however, may be at a disadvantage. The school-administered evaluation may be deficient if the law school fails to fully appraise a disabled student's longstanding disability history. Prior to ruling on the proposed accommodation, the law school should consider the past accommodations, any change in the student's disability and other related 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.

Law schools, on the average, expect documentation of rather recent origin, requiring evidence of the student's disability and needs within the last three years.\textsuperscript{69} The requirement for current proof of the student's disability is an additional safeguard for all parties concerned.

The majority of law schools that provide students with additional time to complete course examinations usually allow an average of one and one-half times the amount of time normally allowed for the exam.\textsuperscript{70} A disabled student who receives additional time is typically allowed four and one-half hours to complete a three-hour final exam.

Law schools of different geographical regions display remarkable distinctions when approaching the provision of reasonable accommodations. According to survey data, law schools offering additional time to complete a traditional three-hour law school final exam ranged from an additional one-hour to an unlimited amount of time.\textsuperscript{71} In the West, forty-seven percent of law schools surveyed provided twice the time to complete the exam.\textsuperscript{72} In contrast, only nine

\textsuperscript{66} Id. at No.12(g) (discussing nineteen schools responding to the survey administer examinations).
\textsuperscript{67} Id.
\textsuperscript{68} Id. at 578 fig.10 (indicating forty-four percent of law schools in the West and forty-three percent in the South administered psychological or medical exams).
\textsuperscript{69} Id. at 600 No.13. The schools in the West required the most current documentation—within the past 2.4 years. Id. The schools in the Northeast were willing to permit documentation within the last 4.3 years. Id. at 578 n.43.
\textsuperscript{70} Id. at 578 fig.11.
\textsuperscript{71} Id. at 598 No.9.
\textsuperscript{72} Id. at 578 fig.11.
percent of the law schools in the Midwest furnished double the time to complete the exam.  

D. Impact of Past Academic Accommodations

As disabled students at the high school and college levels request and receive educational accommodations, they are beginning the process of demonstrating their needs at the law school level and beyond. Although not bound by the accommodations provided to disabled students in their early years of education, the relevance of prior diagnosis and accommodations that are provided serve as significant evidence as to the specific type and form of educational accommodation offered in law school.

One must recognize that as law schools receive requests for exam modification and determine the specific type of accommodation to be provided to each student, the amount, form and extent of exam modifications on high school and college levels serve as a base line for initial discussions. The success of past accommodations, the changes in the student’s ability and disability and the format of previous exams are relevant when considering a request for exam modification.

In an effort to determine the reasonableness of accommodation requests, students at Hastings College of Law are requested to submit a history of academic adjustments and accommodations received in secondary institutions or in places of employment. In addition, Hastings conducts a personal interview with the student to explore the needs of the student in the law school setting. Law schools should review three prongs of evidence for determining a student’s disability (current testing documentation, the student interview and prior academic accommodations at the high school, college and employment level) in order to determine the extent of necessary exam modifications.

73. Id. Fifty-four percent of the law schools surveyed provided one and one-half times the amount of time normally allowed for the exam. Id. at 598 No.9(b). Twenty-eight percent of the law schools surveyed provided twice the time normally allowed for the exam and eighteen percent of law schools surveyed provided one additional hour. Id. at No.9(a), (c). Additional academic modifications that present different regional approaches include extension of time for degree completion (two students in the South and fourteen in the Northeast), priority in registration (forty-four students in the West and three in the Midwest), and readers for blind students (twelve students in the Northeast and only five students in the South). Id. at 599 No.10.

74. HASTINGS PROCEDURES, supra note 42, at 7.

75. Id.
E. Decisionmaking

After a student submits proper documentation establishing a disability and the need for exam accommodation to the Dean of Student Affairs or a separate Disability Resource Program, the next step is to determine who decides the extent of the exam modification. Is the decision in the hands of the student's expert, the school's administrator, or an impartial evaluator? Hastings College of Law assigns the responsibility to schedule academic adjustments and accommodations in the hands of the university Manager of the Disability Resource Program.\(^{76}\) The decision is made after consultation with appropriate faculty, administrative staff at the college and professional consultants to the college.\(^{77}\) The Coordinator of the Disability Resource Program presents the proposed schedule of academic accommodations to the Committee on Students with Disabilities for consideration and approval.\(^{78}\)

Students seeking exam modifications should pay particular attention to the importance of outside evaluations by qualified diagnosticians. Specific recommendations for exam modifications lead to a greater likelihood that such requests will be honored. It is imperative that students provide the evaluator specific details addressing the format of the final exam (\textit{i.e.}, essay, short answer or multiple choice). Students' needs differ and individual determinations pertaining to additional time or exam format should be made. Students should also determine, in advance, whether the exam is open or closed book, the exam length in pages and the allotted time for completion. Further, they should consider the time of day the exam is administered. All of these elements are important factors when determining specific exam modifications.

The role of the faculty member teaching the course from which the student is seeking an accommodation is of utmost significance. Although professors rarely make the final decision regarding an exam accommodation for a disabled student,\(^{79}\) they may provide consultation.\(^{80}\) In a significant majority of cases, professors have no input in the decision to provide an exam accommodation.\(^{81}\)

\begin{footnotes}
\item[76] Hastings Procedures, supra note 42, at 7.
\item[77] Id.
\item[78] Id. at 8. The committee is composed of one representative each from the Student Services Office, the Academic Dean's Office, and the General Counsel's Office. Id.
\item[79] Stone, supra note 21, app. A at 598 No.7(a).
\item[80] Id. at No.7(b).
\item[81] Id. at No.7(c). In sixty-nine percent of exam modification requests, the professor teaching and grading the exam had no input in providing the accommodation. Id.
\end{footnotes}
Several plausible explanations suggest why law schools deny professors input into the accommodation selection process. The law school most likely precludes the professor from making decisions about the examination modification in an effort to protect the confidentiality of the disabled student. The primary accommodations sought by disabled students are additional time in completing the exam and a separate room in which to take the exam. Accordingly, the law school administrator, often the Dean of Students or Dean of Academic Affairs, is the person with the authority to provide the academic modification. A disabled student who seeks an accommodation apparently is more inclined to make the request if the law professor grading the exam is unaware of the student’s disability. Society, unfortunately, has prejudices about the abilities of persons with disabilities. Law faculties presumably carry the same misunderstandings about persons with disabilities. According to one law school official, “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 furnish 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.

Comparing law schools by geographical region reveals a striking contrast in the role of the law professor in the decision to provide an academic modification in the course examination. For example, on a national level, law faculty had no input whatsoever in making the decision to provide or deny a student’s request for exam accommodation at sixty-nine percent of the schools surveyed. However, the percentage was eighty-nine percent in the Northeast.

82. Id. at 597 No.6(a)–(b).
83. Id. at 574.
84. Id.
85. Id. at 597 No.5(b). Sixty-five percent of the law schools surveyed placed the decision of authorizing the accommodation in the hands of a law school official; thirty-five percent made the decision on a university-wide level. Id.
86. Id. at 598 No.7.
87. Id. at 574.
and eighty-eight percent in the West. This figure dropped to sixty-two percent of the schools in the Midwest and to forty-eight percent of law schools in the South. Once again, student confidentiality was the major reason that most law professors were not consulted. When law faculty are consulted, there is a 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.

Faculty members rarely make 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.

A majority of the law schools do not consult their law faculty when determining a reasonable accommodation in the law school exam. The likelihood that a student’s identity will not be divulged to the law faculty increases the probability that a student will request an educational modification.

The risk is too great for a disabled student to seek an academic modification if a perception, grounded in fact or not, indicates the student’s confidentiality will be compromised. Until society becomes more accepting of persons with disabilities, law students with disabilities will continue to fear discrimination in legal education. Perhaps a policy preventing law professors from participating in the accommodation decision process is the safest and fairest way to provide disabled students with equal access to legal education.

Another explanation for not consulting faculty members may be based on the reliance law schools place on documentation from experts in the field of disabilities. Law faculties 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 provided to an individual ensuring the fair and equitable treatment of that person. A majority of surveyed law schools rely on documentation from the student’s psychologist or

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88. Id. at 575 fig.7.
89. Id.
90. Id. at 574.
91. Id. app. A at 598 No.7.
92. Id. app. A at 575 fig.7.
93. Id. Forty-eight percent of the law schools in the South consulted with their law faculty, while only eleven percent of the law schools in the Northeast consulted with their law faculty. Id.
94. Id. at 600 No.12(e).
psychiatrist prior to considering the student’s accommodation request.\textsuperscript{95} This essential documentation includes letters from the student’s family doctor.\textsuperscript{96} Law schools may also require an independent psychological or medical examination, opting in a minority of cases to administer its own exam in order to prove a student’s disability.\textsuperscript{97} Interestingly, a significant proportion of law schools mandate independent testing and thus prohibit documentation from a student’s own psychologist or physician.\textsuperscript{98} As costly as such an exam can be, these law schools found it a proper 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, law schools are unwilling to rely on the student’s own handpicked evaluator.

In \textit{Guckenberger v. Boston University}, students with learning disabilities claimed that Boston University, by refusing to allow learning disabled students to satisfy their foreign language requirement by completing selected non-language courses, violated the ADA.\textsuperscript{99} The process, according to the court, for evaluating the decision to provide reasonable accommodations for learning disabled students includes examining such factors as who took part in the decision, the unique qualities of a foreign language requirement, and the consideration of possible alternatives to the requirement.\textsuperscript{100} The court demonstrated judicial deference to the school’s decision, believing that reasoned and deliberate professional academic judgment was exercised in not permitting course substitutions for the foreign language academic requirement in its liberal arts curriculum.\textsuperscript{101} The question as to whether Boston University created a hostile learning environment for learning disabled students is open for debate.

\begin{footnotes}
\footnote{95. } \textit{Id.} app. A at 600 No.12(a).
\footnote{96. } \textit{Id.} at No.12(c). Sixty percent of the law schools surveyed by Stone requested a letter from the student’s family doctor. \textit{Id.}
\footnote{97. } \textit{Id.} at No.12(e)–(f). Forty-three percent of the law schools surveyed required an independent psychological or medical exam, while only twenty-four percent administered their own form of psychological or medical exam. \textit{Id.}
\footnote{98. } \textit{Id.} at No.12(e).
\footnote{100. } \textit{Id.} at 87 (citing Wynne v. Tufts Univ. Sch. of Med., 932 F.2d 19, 27 (1st Cir. 1991)).
\footnote{101. } \textit{Id.} at 90–91.
\end{footnotes}
IV. REVIEW OF COURT DECISIONS

A. The Law School Exam

The primary testing and evaluation instrument for law school students is the final exam. Traditionally, a three-hour essay exam covering the full semester of materials is presented. In particular, required courses in the first year of law school utilize an anonymous graded essay exam as the primary method of evaluating students. The results of these first year exams serve as a basis for ranking students, in turn, the ranks have implications in the employment arena and in the student’s ability to compete for law review editorial board positions at their law schools. As a result, the success on a law school exam has far reaching implications.

Law school exams evaluate a student’s legal understanding and mastery of principles of law. Legal reasoning and analysis are tested, whereby law professors determine a student’s ability to comprehend, recognize and discuss legal concepts. A student’s proficiency to organize thoughts, analyze and memorize a variety of legal material covered within a semester’s course, and speedily, in a legible and clear fashion, write a comprehensive answer to a complicated fact pattern requires considerable skill. Exam questions are intertwined with facts and legal concepts covered during the course. Additionally, poor handwriting, grammar and spelling have an adverse impact on the student’s grade.

In the 1992 case of McGregor v. Louisiana State University Board of Supervisors, the Louisiana State University Paul M. Herbert Law Center withstood a challenge when Robert T. McGregor, a permanently disabled law student with orthopedic and neurological problems, was dismissed from law school. 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.

103. Id. at *3. In addition, Mr. McGregor requested architectural changes to the men’s restroom door and the entryway to the first level of the law school building. Id.
104. Id.
pointed out that "[s]ection 504 does not mandate preferential treatment for handicapped individuals; rather, it prohibits disadvantageous treatment."¹⁰⁵

The Louisiana State University Law Center furnished 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 examination;¹⁰⁶
2. assigning a professor to assist the plaintiff with some of his studies;¹⁰⁷
3. giving the plaintiff assistance from members of faculty by keeping his housing at the Faculty Club;¹⁰⁸
4. providing a wheelchair-accessible table for the plaintiff's use;¹⁰⁹
5. providing accessibility to a bathroom in the Law Center;¹¹⁰
6. scheduling the plaintiff's classes in an accessible building;¹¹¹
7. granting the plaintiff a handicapped parking permit;¹¹²
8. permitting the plaintiff to take exams at a choice of several locations in the Law Center;¹¹³
9. providing a modified exam schedule to allow plaintiff time to rest between exams;¹¹⁴
10. assigning a student to assist the plaintiff during his exams;¹¹⁵
11. providing a bench to permit the plaintiff to rest more comfortably during his exams;¹¹⁶
12. permitting the plaintiff to dictate exam answers with

¹⁰⁵. *Id. at* *3* (citing Brennan v. Stewart, 834 F.2d 1248, 1259–60 (5th Cir. 1988)).
¹⁰⁶. *Id. at* *2*. The Law Center granted Mr. McGregor's request for additional time on his criminal law exam. *Id.*
¹⁰⁷. *Id.*
¹⁰⁸. *Id.*
¹⁰⁹. *Id.*
¹¹⁰. *Id.*
¹¹¹. *Id.*
¹¹². *Id.*
¹¹³. *Id. at* *3*. The Law Center, however, prohibited the plaintiff from taking his exams at home. *Id.*
¹¹⁴. *Id.*
¹¹⁵. *Id.*
¹¹⁶. *Id.*
dictating equipment,\textsuperscript{117} and

(13) establishing a committee to work with the plaintiff on making reasonable accommodations for his reentry to the Law Center.\textsuperscript{118}

Although the Law Center provided extensive modifications and reasonable accommodations, the court upheld the school's refusal to allow the plaintiff to take his exams at home because the court determined that such a restructuring of the law school program was beyond the scope of section 504 of the \textit{Rehabilitation Act}.\textsuperscript{119} Such a request, the court noted, would constitute preferential treatment for Mr. McGregor, not an elimination of disadvantageous treatment.\textsuperscript{120}

The courts have been clear in drawing a line that permits disabled students to have a fair and equitable solution, allowing them to compete with non-disabled students, while at the same time making sure they do not receive an unfair advantage. Perhaps the McGregor 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.\textsuperscript{121}

The question of how far a university is required to go in providing a modification in exam format was addressed in \textit{Wynne v. Tufts University School of Medicine}.\textsuperscript{122} Steven Wynne, a learning disabled student, enrolled in medical school and failed eight of fifteen courses by the conclusion of his first year.\textsuperscript{123} A psychologist performed extensive neuropsychological tests on Mr. Wynne in an effort to ascertain his educational needs.\textsuperscript{124} The United States Court of Appeals for the First Circuit formulated a test for determining whether an academic institution adequately explored the availability

\begin{itemize}
  \item \textsuperscript{117} \textit{Id.} The Law Center supplied the dictating equipment. \textit{Id.}
  \item \textsuperscript{118} \textit{Id.}
  \item \textsuperscript{119} \textit{Id.} at *4. \textit{Cf.} Schuler v. Univ. 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).
  \item \textsuperscript{120} \textit{McGregor}, 1992 WL 189489, at *4. The court found that the law school often went beyond its obligation in making reasonable accommodations for the plaintiff. \textit{Id.} 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 a student to take an exam at home may provide that student with an unfair advantage. \textit{Id.} at *3.
  \item \textsuperscript{121} \textit{Id.} at *4.
  \item \textsuperscript{122} 932 F.2d 19, 20 (1st Cir. 1991); \textit{see also} Nathanson v. Med. Coll. of Pa., 926 F.2d 1368, 1381–87 (3d Cir. 1991) (discussing a disabled student's responsibility to put the school on notice about the disability and to make a sufficient request for special accommodations).
  \item \textsuperscript{123} \textit{Wynne}, 932 F.2d at 21.
  \item \textsuperscript{124} \textit{Id.}
\end{itemize}
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 accommodation.\(^{125}\)

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 students' mastery of the subject matter.\(^{126}\) On remand, the court found that to alter this exam format to accommodate the needs of a disabled student would require substantial program alterations, resulting in lowering academic standards as well as a devaluation of Tufts University's end product—highly trained physicians.\(^{127}\) The court considered such modifications too drastic because they resulted in a watering down of the educational program.\(^{128}\) The court, however, in examining 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.\(^{129}\) 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 of the medical degree, then the school should provide such an accommodation. Courts, however, seem inclined to defer to the faculty's professional judgment in making such changes.\(^{130}\)

In Pandazides v. Virginia Board of Education, the United States

\(^{125}\) Id. at 26 (emphasis added); see also Sch. Bd. v. Arlene, 480 U.S. 273, 287 n.17 (1987) (stating that 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 S.E. Cmty. Coll. v. Davis, 442 U.S. 397, 412 (1979)).

\(^{126}\) Wynne, 932 F.2d at 27.

\(^{127}\) Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 795 (1st Cir. 1992). To alter the exam format from multiple choice to some other means would pose an undue hardship on Tufts' academic program. Id. According to the facts, Tufts waived 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.

\(^{128}\) Id. For an in-depth review of this case see Kay Rottinghaus & Whitney Wilds, Comment, Wynne v. Tufts University School of Medicine, 19 J.C. & U.L. 185 (1992).

\(^{129}\) Wynne, 976 F.2d at 796.

District Court for the Eastern District of Virginia addressed whether the National Teacher Examination ("NTE") could be required as a prerequisite for a professional teacher's certification. The NTE provides a comprehensive assessment of the basic knowledge and skills necessary for a beginning teacher. Sophia Pandazides claimed that she had a learning disability that prevented her from passing the communication skills portion of the test. 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."

The 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. The court concluded that the Virginia Board of Education's requirement that prospective teachers pass the communication skills portion of the NTE was "a reasonable and legitimate professional licensing requirement."

An analogy can be drawn from the Pandazides decision regarding legal education. A student's knowledge and understanding of substantive law is tested primarily through essay exams, but a student is also evaluated in the areas of legal writing, research and advocacy skills. For example, if a student claimed an inability to pass the research aspect of his legal education, should law schools permit the student to waive this requirement? If each aspect is fundamental to determine if the student possesses the basic understanding necessary to be a lawyer, then to waive such a requirement would significantly lower academic standards and create a potential harm to future clients. This type of modification would obviously be unreasonable. However, if modifications in the exam format could take place and

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132. Id. at 796. The NTE consists of three components testing communication skills, general knowledge, and professional knowledge. Id.
133. Id. at 797–98. Plaintiff failed this portion of the test eight times, claiming an inability to organize her thoughts and time. Id.
134. Id. at 802; see also S.E. Cmty. Coll. 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. S. Coll. of Optometry, 862 F.2d 570, 575 (6th Cir. 1988) (holding an educational institution is not required to accommodate a disabled person by eliminating courses required for the conferred degree of study).
135. Id. at 802; see also S.E. Cmty. Coll. 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. S. Coll. of Optometry, 862 F.2d 570, 575 (6th Cir. 1988) (holding an educational institution is not required to accommodate a disabled person by eliminating courses required for the conferred degree of study).
137. Id.
still ensure basic uniformity in the skills each graduate possesses, then perhaps the request would be considered reasonable.

B. Testing Accommodations

1. Test Format

Students with various disabilities will present different exam accommodation needs. A blind student will need the exam in braille; a student with vision difficulties may need an exam with larger print. Some disabled students will require an audiocassette version of the exam; others will request the exam be administered and answered orally. Dictation machines, note takers, using a computer and faculty administered oral exams are additional accommodations utilized by learning disabled students.

2. Modifications

The traditional first year law exam is administered in essay form. However, a modification may necessitate a multiple choice or short answer format. Difficulties arise when a faculty member is asked to evaluate a student’s exam and the test format is dramatically changed, and only a few students receive an exam modification. The challenge of comparing a student’s legal reasoning and analysis when offered in a multiple choice or short answer format, compared to an essay format, has raised significant fairness questions. Can a faculty member evaluate a student’s understanding of legal concepts when the exclusive testing mechanism is a response to a multiple-choice question? One suggestion may be for faculty members to consider oral testing or short answer responses instead of multiple choice exams in order to evaluate each student properly.

3. Examples of Test Accommodations

Additional time in which to complete an exam is a common request. The decision to grant additional time, and in what quantity, should be an individual decision based on the unique needs of the student. The recommendations of the student’s diagnostician should be given significant weight when considering additional time requests. For a typical three-hour exam, requests vary from an additional hour to an unlimited amount of time necessary to complete the exam. On occasion, a reasonable request may allow additional time for several
days. Issues of security are often raised when such a request is granted. However, final exams are often provided as separate parts, and the exam could be distributed in part each day to accommodate the disabled student.

The time of the day an exam is offered may be an issue for a disabled student who is on medication, particularly if his or her alertness is compromised at certain times of the day. In addition, transportation problems for certain disabled students relying on accessible modes of transportation may be a factor in the scheduling of the exam. Additional rest time, bathroom breaks, access to food or medication and the need to reduce test anxiety may be additional factors to consider.

Adaptive equipment such as computers, typewriters, calculators, dictaphones, as well as readers and scribe services, may be necessary in appropriate cases. The University of Baltimore School of Law provides such accommodations, implementing note-takers in class, tutoring, special seating, use of spell-checker, as well as taped materials and library assistance. Access to the faculty member responsible for the exam may be necessary for the purpose of obtaining clarification of a question. This is outside the norm, because secretarial staff proctor most law school exams and the faculty member is usually unavailable during the exam.

4. Environmental Control

As is often the case, disabled students who are easily distracted by their environment require a quiet test site. The University of Baltimore, like many other universities, recognizes this accommodation and provides such students a quiet room with minimal extraneous noises. The University of Baltimore recognizes that for students with a disability that is aggravated by stress, a private testing environment aids in successful test taking. A separate room from the main testing room may be necessary to reduce stress and outside distractions. The school acknowledges that students with particular health-related disabilities may be sensitive to the time a test is administered because of medication, interference or fatigue. In

138. University of Baltimore School of Law Agreement on Accommodations (on file with author).
140. Id.
addition, the school accommodates some disabled students that require consistency when taking their exams by permitting them the option of taking exams in the same room and the same seat. The need for students to stretch, exercise, or use the bathroom during the exam should be considered and taken into account when providing time extensions.

Final exams are often spread over a two-week period. Consideration should be given to extending the exam period from two to four weeks, depending on the student’s individual needs. An extension for an exam period should be based on the student’s ability to be on equal footing with non-disabled classmates.

C. Alternative Testing Strategies

Law schools may be required to permit alternative methods of demonstrating mastery of course materials. As an alternative to the traditional three-hour essay exam, other testing methods such as paper submissions, take-home exams, or open-book exams should be allowed. A substitution of course work may also be a reasonable accommodation. In Doherty v. Southern College of Optometry, a significant case involving a student with a visual disability, 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, despite the student’s inability to pass because of a disability, were a necessary part of the curriculum. According to evidence presented, the student’s disability prevented him from being able to use four instruments required for the exam. Evidence was elicited that optometrists in practice often did not use those instruments. 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.” The court specifically stated that the “

141. 862 F.2d 570 (6th Cir. 1988). The student suffered from retinitis pigmentosa, which significantly affected his motor skills and restricts the visual field. Id. at 572.
142. Id. at 574; see also S.E. Cnty. Coll. v. Davis, 442 U.S. 397, 407 (1979) (finding the ability to understand speech without reliance on lip reading was necessary during clinical phase of the program).
143. Doherty, 862 F.2d at 572.
144. Id. at 574. Such instruments are prohibited from optometry use in six states. Id.
145. Id. at 575 (citing Hall v. United States Postal Serv., 857 F.2d 1073, 1079 (6th Cir.}
of a necessary requirement would have been a substantial, rather than merely a reasonable accommodation," suggesting that such a waiver poses a potential danger to the public.\footnote{146}

This concern for the public, demonstrated by the need to provide a specific course of study for law students to ensure competent representation, is admirable, but also dangerous when used as a 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 faces challenges as a lawyer in the judicial system, do we prevent such a person from entering the legal profession, or do we have 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?

\section*{D. Scoring Accommodations}

As law schools provide exam modifications in appropriate cases, the matter would appear resolved. However, there may continue to be unresolved issues. For example, should a faculty member give more extensive review to a disabled student's exam? Should a faculty member be notified that the particular exam being read was written with certain accommodations? If the faculty member were notified of this occurrence, would there be a potential for unfair grading? In general, the provision of an exam modification should not be disclosed to the faculty or other students.

Another issue remains for disabled students who receive exam modifications: should the student's official law school transcript reflect that the student was provided an exam modification? The notation, known as flagging, places a remark or comment advising the reader that the student was afforded special accommodations within the academic program. The LSAT does provide this information to law school admissions offices as they evaluate applicants for admission

\footnote{146. \textit{Id.}}

\footnote{147. \textit{Id.} at 575; 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").}
to law school. However, the purpose of providing an exam modification is to place the disabled student on equal footing with one's non-disabled classmates. Therefore, any notation of exam modification on the law school transcript would be misleading, highly prejudicial, and inappropriate.

E. Student Appeal of Adverse Decision

On the rare occasion that a law school denied a disabled student's request for an accommodation in a course examination, eighty-eight percent of such law schools provided the student with a right to appeal the decision. 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. 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 denials. The appeal should go directly to the Dean of Academic Affairs or Student Affairs, who should have the responsibility and authority to resolve the issue. Such an appeal should afford the student an opportunity to testify and to offer expert testimony and documentation from individuals trained in disability and education issues.

Because law schools will witness an increase in requests for academic modifications, it will be essential to have written policies and procedures to serve disabled students fairly. Nationally, sixty-three percent of law schools had written policies and procedures for addressing academic modifications. Regional differences still exist, with only forty-three percent of law schools in the Midwest maintaining written policies and procedures. At the time of the survey, nearly half the law schools nationwide were reviewing their procedures pertaining to academic modifications for disabled students. In addition to drafting these policies, law students with

148. Stone, supra note 21, app. A at 597 No.4 (indicating that denial occurred in two percent of the requests).
149. Id. at 598 No.8.
150. See generally id.
151. Id. at 600 No.15.
152. Id. at 580. Eighty-nine percent of law schools in the West had written policies and procedures. Id. at n.52.
153. Id. at No.14. Forty-eight percent of law schools were presently reviewing their procedures. Id. Sixty-one percent of law schools in the West were reviewing their
disabilities should be provided with written notification explaining their rights and responsibilities with respect to academic modifications.

Hastings College of Law allows any student claiming discriminatory practices, based on a handicap, to file a written grievance with the Director of Student Services.\(^{154}\) Informal resolution is encouraged; however, a hearing is provided if the issue is unresolved. The student is afforded an opportunity to present evidence, confront and cross-examine witnesses, and a record of the hearing is made, along with a written decision.\(^{155}\) An aggrieved student may appeal the decision of the hearing committee to the Dean, who has the final say on the matter.\(^{156}\) The availability of both informal and formal hearing procedures are important in an effort to resolve student grievances in a fair and timely manner.

F. Implications of Test Accommodations

As disabled students enroll in college and face educational challenges, the decision to seek academic modification is of utmost significance. Some disabled students who could benefit from exam modification at the college level fail to request modifications, partly as a result of not understanding the process. Others are concerned with the stigma, while some lack the information necessary to begin the process of obtaining education modifications. For those disabled students that seek the appropriate evaluations and diagnosis of their disability and receive academic modifications for their educational needs, they are at an advantage as they enroll in law school. They are more aware of the process for obtaining educational accommodations, understand the need for documentation and see the benefits of the options available to accommodate their disability. The law school administrator is more likely to provide the requested accommodations if the same or similar accommodations were provided at the college level.

However, there are students with learning disabilities who have never received educational accommodations in college, but who appropriately need these accommodations for the first time in law school. Law school creates additional pressure and stress, causing some disabled students to seek exam accommodations. Furthermore,

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\(^{154}\) Hastings Procedures, supra note 42, at 9.

\(^{155}\) Id. at 11.

\(^{156}\) Id.
the college exam may focus more on memorization rather than the legal analysis typical on law school exams.

For disabled law students that were provided exam modification during college, that record becomes relevant as they begin the process of applying to law school. The Law School Admission Council has established procedures for accommodating disabled students who take the LSAT.157 An assessment of the student's academic history should include prior exam modifications offered.158

The decision to grant or deny an exam modification in law school has implications for the disabled student encountering the bar exam and bar admissions process. Bar examiners are requested to provide an exam modification for the two-day bar exam, composed of one full day of essays and one full day of multiple choice questions. Bar examiners will inevitably take into account the type and extent of exam modification provided in law school as they weigh a request for exam modification for the bar exam. Issues of additional time, separate exam room, adaptive equipment, readers and scribe services will arise in the context of the bar exam. Bar examiners will give great weight to relevant and recent exam modification provided to the student requesting the modifications in the bar exam.

G. Bar Exam and Bar Admission

Several disabled applicants have challenged the licensing and admission of lawyers. In In re Rubenstein, the plaintiff suffered from a learning disability and sought extra time to complete the bar examination.159 Prior to the diagnosis of her learning disability, the plaintiff had passed the Multistate Bar Exam but failed the essay portion of the bar.160 Accordingly, when the learning disability became known, the bar examiners gave the plaintiff additional time only on the essay portion.161 The court noted that the purpose of the ADA is to place individuals with disabilities on an equal footing with non-disabled persons and not to give them an unfair advantage.162 The court found that the ADA undoubtedly recognizes that a person with

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157. ADMISSION COUNCIL GUIDELINES, supra note 53.
158. Id.
159. 637 A.2d 1131, 1134 n.2 (Del. 1994).
160. Id. at 1132.
161. Id. at 1134.
162. Id. at 1137; see also Riedel v. Bd. of Regents, Civ. A. No.93-2117-GTV, 1993 WL 500892, at *4, *7 (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).
a learning disability should be accommodated. Thus, the court determined, as an equitable remedy, Kara Rubenstein should receive a certificate indicating she was qualified for admission to the Bar.

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. In addition, he requested the use of a computer, along with a test site change to minimize distractions. Although these requests may have been reasonable for a disabled applicant, the court was not persuaded that Mr. Pazer was disabled and denied the requested relief.

*Argen v. the New York State Board of Law Examiners* also involved a request for special accommodations on the bar examination. Ralph Argen claimed he was disabled 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, after reviewing expert testimony and reports, rejected Argen's claim 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 bar applicant with a severe visual impairment. D'Amico sought, as a reasonable accommodation to the bar exam, additional time to complete the exam. The court mandated that every request for accommodations and the determination of reasonableness be made on a case-by-case basis. The court explained that because "[t]he purpose of the ADA is to guarantee that those with disabilities are not disadvantaged...[t]here is a delicate balance that must be made in determining the reasonableness

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163. Rubenstein, 637 A.2d at 1137.
164. Id. at 1140.
166. Id. at 286.
167. Id.
168. Id. at 287; see also Doe v. N.Y. Univ., 666 F.2d 761, 773 (2d Cir. 1981) (requiring a showing of irreparable injury to mandate injunctive relief).
170. Id. at 85.
171. Id. at 91. The court stated that not all underachievers are learning disabled. Id. at 90.
173. Id. at 219.
174. Id. at 221.
of a given request especially when it relates to examinations and testing procedures.\textsuperscript{175} Additionally, the court recognized that the ADA was not meant to give the disabled an “unfair advantage” over other applicants, but to place those with disabilities “on an equal footing.”\textsuperscript{176} The court explained that the determination as to whether accommodations were needed is a medical one and, as such, afforded the opinion of the applicant’s treating physician great weight.\textsuperscript{177} Accordingly, the Board was ordered to permit D’Amico to take the exam over a four day period with only five hours of testing each day.\textsuperscript{178} The court held 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 contrary to “the spirit of the ADA and [could] not stand.”\textsuperscript{179}

H. Other Academic Modifications

Situations will persistently arise on law school campuses that necessitate a closer look at how law students are treated. As law schools progressively strive for a more diverse student body, consisting of older students and students from a wide variety of economic backgrounds, law schools will continue enrolling 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, not only on exams, but in other areas as well.

In \textit{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 for readmission to law school.\textsuperscript{180} The student suffered from alcoholism and claimed protection within the scope of the \textit{Rehabilitation Act}.\textsuperscript{181} The law school permitted the student to re-enter the law school program twice, aware that he was an alcoholic.\textsuperscript{182} According to the court, the student did not refrain from alcohol during any substantial portion of the

\begin{itemize}
  \item \textsuperscript{175} \textit{Id.}
  \item \textsuperscript{176} \textit{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. \textit{Id.} at 221–22.
  \item \textsuperscript{177} \textit{Id.} at 222.
  \item \textsuperscript{178} \textit{Id.} at 222–23.
  \item \textsuperscript{179} \textit{Id.} at 223.
  \item \textsuperscript{180} 841 F.2d 737, 739 (7th Cir. 1988).
  \item \textsuperscript{181} \textit{Id.} at 739–40.
  \item \textsuperscript{182} \textit{Id.} at 741.
\end{itemize}
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 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 which 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 students requesting, under the ADA, waivers of certain course prerequisites for graduation. For example, many law schools mandate 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 prerequisite. 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?

I. 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

183. Id.
184. Id. at 741.
185. Id. at 739. The student's grade point average was 76.92, and a grade point average of 77.00 was necessary to continue in school. Id. at 739-40.
186. Id. at 739-40.
187. Id. at 742.
United States v. Board of Trustees. 188 In that case, the university’s auxiliary aids policy provided some aids to deaf students, such as notetakers and transcriptions of tape recordings of classes. 189 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. 190 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. 191 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. 192

Courts continue to scrutinize carefully a university’s blanket policy as it effects the disabled. In Coleman v. Zatechka, a student claimed that a university student housing policy violated both the Rehabilitation Act and the ADA. 193 The university prohibited the assignment of a non-disabled roommate to the plaintiff, a twenty-one year old student with cerebral palsy, pursuant to a university policy prohibiting students without disabilities from being matched with roommates with disabilities if such students required attendant care. 194 The United States District Court for the District of Nebraska found that the policy violated both statutes as a result of the university’s failure to review each case on an individual basis and instead to promulgate a blanket policy effecting all disabled students. 195

Law schools need to promulgate policies and procedures for the academic modification of disabled students. Some students may need priority in course registration; others will require an extension of time for degree completion or a reduced course load. Access to parking and architectural accessibility within the law school are significant

188. 908 F.2d 740, 742 (11th Cir. 1990).
189. Id.
190. Id.
191. Id. at 748; see also Alexander v. Choate, 469 U.S. 287, 289 (1985) (modifications to a state Medicaid program where not required by section 504); see also S.E. Cmty. Coll. v. Davis, 442 U.S. 397, 405 (1979) (explaining that extensive modification to a nursing program, beyond those necessary to eliminate discrimination, extended beyond the meaning of section 504).
192. Board of Trustees, 908 F.2d at 749 n.5; see also generally Univ. of Tex. v. Camenisch, 451 U.S. 390 (1981) (involving a deaf graduate student seeking an interpreter from a university).
194. Id. at 1362–63.
195. Id. at 1373.
issues to physically disabled students. Disabled students seeking accommodations for extracurricular activities, such as participation in law review and moot court competitions, are likely to address the law school's compliance with the ADA. Auxiliary services such as tutoring, counseling, and librarian assistance will be relevant for certain disabled students. As disabled law students seek full participation in the law school experience, academic modifications in all aspects of legal education will be necessary.

V. CONCLUSION

A. On the Horizon

Several issues remain for law schools as they provide exam modifications for disabled students. Academic support services, including tutoring and counseling, need to be expanded. The anonymous grading system and student confidentiality may be compromised as law school faculties become involved in offering input as to exam modification. The importance of maintaining test security is challenged as some disabled students are offered exams earlier or later in time than the other students taking a particular exam. The integrity of law students' ethics and the significance of the law school honor code prohibiting lying and cheating are brought to the forefront in certain cases.

The costs incurred in providing academic modifications is an issue for certain law schools. The importance of a law school administrator trained in disability rights is important as disabled students continue to seek academic modifications. Establishing written law school policies and procedures for accommodating disabled law students is of the utmost importance.

The academic exam modifications have implications for disabled law students in the bar exam and bar admission process as well as in the practice of law. The reverberations of law school academic modifications will carry forward throughout law school, throughout the bar exam process and into one's career of practicing law.

B. Recommendations to Law Schools for Providing Academic Modifications

Law schools will continue to respond to requests from disabled law students for 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 exams is just beginning to become visible throughout 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 non-disabled law students are curiously watching to see what, if any, impact such modifications will have on their legal education. On the other hand, law school faculties 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, a number of suggestions are offered:

(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 exam modification necessary to accommodate the student’s disability should be included in the report.

(2) The student should submit in writing requests for exam modification to either the law school Dean or another designee, such as 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 faculty teaching the specific student. At this time, the faculty member should offer suggestions as to appropriate academic modifications. The final decisions, however, should be made by the Dean or a designee. The student’s name should not be disclosed to the faculty member, in order to protect 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:

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

C. Final Thoughts

Law schools are under the microscope to see how they respond to requests from disabled law students for exam 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 the 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, with providing additional time to complete exams. As requests become more significant, however, such as waiver of degree requirements, tutoring, counseling services, discharge from law school or modification of exam format, only time will tell if law schools will keep their doors open to students with disabilities.