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## THE ADA REASONABLE ACCOMMODATIONS REQUIREMENT AND THE DEVELOPMENT OF UNIVERSITY SERVICES POLICIES: HELPING OR HINDERING STUDENTS WITH LEARNING DISABILITIES?

by Holly A. Currier

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### I. INTRODUCTION

Before the early 1970's, children with disabilities were seldom educated, and if they were educated, it was almost always outside the regular classroom.<sup>1</sup> Congress then passed the Education for All Handicapped Children Act (EHA), which was later modified and renamed the Individuals with Disabilities Education Act (IDEA) in 1975.<sup>2</sup> Following IDEA, a free and appropriate public education was to be provided by the states for all children regardless of their disabilities.<sup>3</sup>

As children with disabilities passed through the primary and secondary education systems, many of these children enjoyed accommodations and mainstreaming into general education programs. Interestingly, as these students came of age to apply and attend college, Congress passed the Americans with Disabilities Act (ADA) in 1990.<sup>4</sup> With the broad applicability of the ADA, including institutes of higher education, students with disabilities were

now substantially protected as they entered college.<sup>5</sup> Furthermore, these students, who had enjoyed the benefits of accommodations throughout their earlier education, were more likely to apply for and demand accommodations at their colleges and universities.<sup>6</sup>

From the standpoint of the university, the requests of students with disabilities has posed concerns, such as determining whether a student has met the requirements for obtaining an accommodation, assessing the costs involved, implementing the policies and application procedures, and preventing an unfair advantage. Furthermore, students with learning disabilities have presented present unique issues for universities, especially considering many of these disabilities involve the very skills being tested or evaluated through the learning process at the university level. Consequently, the accommodations being requested may challenge the traditional methods of the university education process. The ADA has been a relatively uncharted area for universities, having only been in effect since 1990. Thus, recent case law is providing interpretation of the ADA and the reasonable accommodation section as applied to institutes of higher learning.

Several colleges and universities have implemented disability services programs to assist faculty and staff in

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<sup>1</sup> See LAURA F. ROTHSTEIN, *DISABILITY LAW CASES, MATERIALS, PROBLEMS* 6 (1995).

<sup>2</sup> See *id.* at 7 (citing 20 U.S.C. § 1400 et seq., (1975)); See, e.g., *id.* citing Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971); 343 F. Supp. 279 (E.D. Pa. 1972) and Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972).

<sup>3</sup> See 20 U.S.C. § 1400(c)(1975).

<sup>4</sup> See 42 U.S.C. § 12101 et seq. (1990); See, e.g., Laura F. Rothstein, *Higher Education and Disabilities: Trends and Developments*, 27 STETSON L. REV. 119 (1997) [hereinafter Rothstein, *Higher Education*].

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<sup>5</sup> Under the ADA, "place[s] of education" are covered entities, including undergraduate and graduate private educational facilities. See 28 C.F.R. § 36.104 (1990); see, e.g., 28 C.F.R. § 35.104 (1990) (defining public entit[ies], which would include public colleges and universities).

<sup>6</sup> See Rothstein, *Higher Education*, *supra* note 4, at 119.

working with students with disabilities.<sup>7</sup> The purpose of this Article is to explore the application of the ADA reasonable accommodation section to university students with learning disabilities, the university policies detailing the application for accommodations, the potential problems that may arise, and finally, proposed solutions in the model policy guidelines for university disability services policies. In reviewing the relevant case law history, recent court decisions, and current university policies, this Article seeks to present model policy guidelines for accommodating students with learning disabilities in a pro-active and effective manner that preserves the fundamental aspects of the education program.

## II. STATUTORY LAW

### A. The Rehabilitation Act of 1973<sup>8</sup>

Prior to the enactment of the ADA, Congress passed the Rehabilitation Act of 1973 to protect the rights of the

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<sup>7</sup>The University of Houston Law Center, the Hastings College of the Law, the University of Baltimore, Stanford University and James Madison University all have created policies and procedures for assisting students with disabilities. Some of these university policies explicitly state the procedures a student must follow to obtain reasonable accommodations, while others simply explain basic policies. The University of Baltimore has a brief policy detailing disabilities documentation; however, such a written policy leaves the freedom of deciding the appropriate plan of action to the administrators of the various schools within the university. See UNIVERSITY OF HOUSTON LAW CENTER, UNIVERSITY OF HOUSTON, HANDBOOK FOR APPLICANTS AND STUDENTS WITH DISABILITIES (1997); HASTINGS COLLEGE OF THE LAW, UNIVERSITY OF CALIFORNIA, POLICY AND PROCEDURES FOR THE PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES, (1992); UNIVERSITY OF BALTIMORE, UNIVERSITY OF BALTIMORE DISABILITIES DOCUMENTATION POLICY, (1993); JAMES MADISON UNIVERSITY, STATEMENT OF POLICY & DEFINITIONS (visited Jun. 4, 2000) <http://www.jmu.edu/disabilityser/>; and STANFORD UNIVERSITY, DISABILITY RESOURCE CENTER POLICY (last modified Jun. 22, 1999) <<http://www.tanford.edu/group/DRC/>>.

<sup>8</sup>This Article will address the Rehabilitation Act in a minimal capacity to provide legal background in the disability rights area before the enactment of the ADA. The focus of this Article is the ADA reasonable accommodation section and its effect on students with learning disabilities at institutes of higher learning.

disabled.<sup>9</sup> Specifically, under Section 504 of the Rehabilitation Act (Section 504) any program that receives federal funding is prohibited from discriminating against any qualified persons with disabilities.<sup>10</sup> In general, colleges and universities are addressed in Section 504 and fall within the definition of "programs."<sup>11</sup> Consequently, since nearly all colleges and universities in the United States receive federal financial assistance, Section 504 covers a majority of the colleges and universities in the United States.<sup>12</sup> Under section 104.44 of the Section 504 Regulations, these covered entities must accommodate those students with disabilities and modify their programs and services, if necessary.<sup>13</sup>

### B. The Americans with Disabilities Act

In 1990, Congress passed the landmark legislation known as the Americans with Disabilities Act.<sup>14</sup> Title II and III of this Act, respectively, provide that public accommodations and private entities are prohibited from discriminating against a person due to disability in the enjoyment and participation of the covered entity's programs and services.<sup>15</sup> Additionally, these entities must provide reasonable accommodations, if necessary, for persons with disabilities to enjoy such program services.<sup>16</sup> Nearly all public universities and colleges fall within Title II of the ADA as places of public accommodations,

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<sup>9</sup>See 29 U.S.C. §§ 706, 791-95 (1994).

<sup>10</sup>See *id.* § 794 (1994).

<sup>11</sup>See *id.* § 794(b)(2)(A) (1994).

<sup>12</sup>See *id.*

<sup>13</sup>See 34 C.F.R. § 104.44 (1994).

<sup>14</sup>See 42 U.S.C. § 12101 *et seq.* (1990).

<sup>15</sup>See 28 C.F.R. § 36.201(a) (1990); see *id.* § 35.130(a), b); see 42 U.S.C. § 12132. For clarity in discussing policies for universities, hereinafter, this Article will refer generally to Title II of the ADA, which covers places of public accommodations such as public universities.

<sup>16</sup>See *id.* § 36.302.

therefore, the ADA applies fully to these programs.<sup>17</sup> However, for a student with a disability to benefit from the ADA, the student must be a qualified individual, as defined in the ADA.<sup>18</sup>

### C. Who is a “qualified” individual with disability?

While Congress incorporated many of the similar underlying concepts included in the Rehabilitation Act into the ADA, Congress further expanded the rights of those persons with disabilities, especially in regards to whom may “qualify” for a covered program, when it enacted the ADA.<sup>19</sup> Under either the ADA or the Rehabilitation Act, a person must be “qualified” in order to receive the protection granted by law.<sup>20</sup> Under the Rehabilitation Act, “otherwise qualified” persons are defined as “those who would be able to meet the requirements of a ... program in every respect except as to limitations imposed by their handicap.”<sup>21</sup> In essence, despite a handicap or disability,

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<sup>17</sup> See 42 U.S.C. § 12181(7); see, e.g., *id.* § 12132.

<sup>18</sup> See *id.* § 12131. In addition, for many university disability services programs, the student must identify his or her disability, provide documentation of the disability, and list the requested accommodations. See, e.g., HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 5.

<sup>19</sup> See 29 U.S.C. § 794 (1994); see, e.g., 42 U.S.C. § 12131(2).

<sup>20</sup> See *id.*

<sup>21</sup> See *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). This leading case interpreted required and non-required modifications under Section 504 of the Rehabilitation Act in the realm of education programs accommodating students with disabilities. See *id.* Furthermore, it is one of the first cases defining an “otherwise qualified individual” under the Rehabilitation Act. See *id.* In *Southeastern*, the Supreme Court held that a school did not violate Section 504 when it decided a hearing impaired student was not qualified to be admitted to the nursing program. See *id.* at 413-14. Under Section 504, the Court ruled educational programs are not required to substantially alter or change their programs to accommodate those students with disabilities. See *id.* at 413. Although the Supreme Court decided this case nearly twenty years ago, educational facilities have been given great deference in protecting the fundamental aspects of their programs in both recent and past cases. *Accord*, *Guckenberger v. Boston Univ.*, 974 F. Supp. 106, 148 (1997) (citing *Carlin v. Trustees of Boston*

the “otherwise qualified” person must be proficient in meeting the requirements of the program, which may be difficult depending on the specific disability.<sup>22</sup> Extensive accommodations were not necessarily required under the Rehabilitation Act,<sup>23</sup> however, a further interpretation of this Act in *Alexander v. Choate*<sup>24</sup> dictated that programs must provide reasonable accommodations to enable participation in the program by “otherwise qualified” individuals.

On the other hand, the ADA defines a person with a disability as one who has:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.<sup>25</sup>

In addition, under the ADA, a qualified person with a disability is defined as a person who “with or without reasonable accommodations ... meets the essential eligibility requirements for the receipt of services or the

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*Univ.*, 907 F. Supp. 509, 511 (D.Mass. 1995); *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957)).

<sup>22</sup> See *Southeastern*, 442 U.S. at 398.

<sup>23</sup> See *id.* at 410.

<sup>24</sup> See *Alexander v. Choate*, 469 U.S. 287 (1985). In *Alexander*, the Supreme Court held that the state of Tennessee could reduce the number of inpatient hospital care days that its Medicaid program would cover and not be found in violation of Section 504 of the Rehabilitation Act. *Id.* at 309. The respondent complained that a reduction in the days covered would discriminate against those with disabilities, as these persons often require more specialized care. See *id.* at 290. The Court reiterated its position stated in *Southeastern* that covered persons under the Act must have “meaningful access to the benefit the grantee offers.” See *id.* at 301. Further, in order to provide such access, programs may have to make reasonable accommodations. See *id.* However, the Court reasoned that the reduction in days does not prevent access to the services, rather both the disabled and non-disabled will be affected and, thus, the state was not found to be in violation of Section 504. See *id.* at 302, 309.

<sup>25</sup> 42 U.S.C. § 12102.

participation in programs . . . provided by a public entity."<sup>26</sup> Therefore, if the university does not wish to grant reasonable accommodations to enable the student with disabilities to enjoy the benefits of the education, this is considered discrimination.<sup>27</sup> Clearly, reasonable accommodations in the programs or services offered by a place of public accommodation, such as a university, are required under the ADA.<sup>28</sup> Therefore, unlike the Rehabilitation Act, a person under the ADA is considered "qualified" for the program even with the aid of reasonable accommodations.<sup>29</sup>

### III. ADA REASONABLE ACCOMMODATIONS: THE EDUCATIONAL SETTING

The ADA mandates that public accommodations programs provide reasonable accommodations, however, educational programs have struggled tremendously with several key issues in accommodating students with learning disabilities.<sup>30</sup> Such issues include the determination of whether a student has a learning disability and the policies surrounding the accommodations of such disabilities. Universities generally require a student requesting accommodations to identify his or her disability to the institution, supply adequate documentation of the learning disability, and lastly, indicate the type of academic accommodations which are being sought.<sup>31</sup> However, the policies involving learning disability documentation and

evaluation of the requested accommodations have come under significant attention in recent years.<sup>32</sup>

#### A. Relevant Case Law

In recent years, the amount of litigation has increased in the area of the ADA and higher education.<sup>33</sup> According to statistics, 9.2% of entering freshmen college students had disabilities in 1994.<sup>34</sup> These students identified themselves with a variety of disabilities including "23% with health impairments, 20% with hearing impairments, 18% with learning disabilities, 11% with sight impairments and 7% with speech impairments."<sup>35</sup> With growing numbers of students with disabilities, more students are requesting accommodations and exercising their rights under the ADA. An example of students clearly challenging their university's policies was found in *Guckenberger v. Boston Univ.*, a recent landmark decision involving a group of students with learning disabilities who sued Boston University (BU) regarding the policies of retesting for learning disabilities; test administrator credentials; course

<sup>26</sup> *Id.* § 12131.

<sup>27</sup> *See id.* § 12132.

<sup>28</sup> *See* 28 C.F.R. § 36.302 (1990).

<sup>29</sup> *See id.*

<sup>30</sup> *See* Rothstein, *Higher Education*, *supra* note 4, at 120.

<sup>31</sup> *See* HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 5; *Accord*, Rothstein, *Higher Education*, *supra* note 4, at 123 (citing Temple Univ., 8 Nat'l Disability L. Rep., at 125 (Off. Civ. Rts. 1995) (holding that late semester request for accommodations was not a violation of Section 504 or ADA)).

<sup>32</sup> *See* *Guckenberger v. Boston Univ.*, 974 F. Supp. 106 (1997); *see, e.g.*, *Wynne v. Tufts Univ. School of Medicine*, 976 F. 2d 791 (1992).

<sup>33</sup> *See* Rothstein, *Higher Education*, *supra* note 4, at 119. Many experts in disability law, including Professor Laura Rothstein at the University of Houston Law Center, attributed the increased movement in the disability law area to the earlier laws passed by Congress, such as the IDEA passed in 1975. Moreover, Professor Rothstein cited 1992 statistics from the American Council on Education that show increased numbers of students with disabilities entering college.

<sup>34</sup> *See* Rothstein, *Higher Education*, *supra* note 4, at 120 (citing AMERICAN COUNCIL ON EDUCATION, POSTSECONDARY STUDENTS WITH DISABILITIES: WHERE ARE THEY ENROLLED? (Dec. 1996)).

<sup>35</sup> *See id.*; *see, e.g.*, *Guckenberger*, 974 F. Supp. at 131 (citing similar statistics for students with learning disabilities at approximately 2% of all university students).

substitutions; and the evaluation of requests for accommodations.<sup>36</sup>

During the early 1990s, BU was considered one of the top universities for students with learning disabilities.<sup>37</sup> In fact, BU established a program called the Learning Disabilities Support Services (LDSS) that began to recruit students with learning disabilities.<sup>38 39</sup> The LDSS staff was responsible for authorizing student requested accommodations, including extended exam times and course substitutions.<sup>40</sup> However, the upper level administrators were not aware of such practices.<sup>41</sup>

Changes began to occur in 1995 when the then-provost, Jon Westling, realized the extent of accommodations the LDSS was approving, namely course substitutions.<sup>42</sup> Consequently, without consulting faculty or any learning disability experts, Westling ordered the

LDSS to stop permitting such actions.<sup>43</sup> In late 1995, at the time students were nearing exams, Westling issued corrective actions to occur immediately, which subsequently became the basis for the lawsuit.<sup>44</sup> Eventually, the deadline for complying with the changes was modified and the university hired a new disability expert to assist the disability services program.<sup>45</sup>

In this complex case, the court ruled in favor of the plaintiffs on numerous counts, finding that the university had violated the ADA by changing the retesting procedures with little notice or time to respond for the affected students; requiring learning disability test administrators to be “physicians, clinical psychologists or licensed psychologists;” and refusing to modify university degree requirements of foreign language courses.<sup>46</sup> Moreover, the court’s decision discussed the major barriers disability students face nearly eight years after the passage of the ADA.<sup>47</sup>

Before *Guckenberger*, the First Circuit addressed the issue of whether a university should fundamentally alter its program by changing a test format to accommodate a medical student with a learning disability in *Wynne v. Tufts Univ. School of Medicine*.<sup>48</sup> Steven Wynne brought a

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<sup>36</sup> See *Guckenberger*, 974 F. Supp. at 114-15, 149; see generally, Jane Easter Bahls, *Disability Dilemma*, THE STUDENT LAWYER, May 1998, at 19-22. This article about the *Guckenberger* case provides a well-written description of how the case transpired, in addition to, how the case will affect universities providing accommodations under the ADA to those students with learning disabilities. The author notes that universities are challenged with protecting their academic programs amidst accommodating the learning disabled students and other students with disabilities.

<sup>37</sup> See *Guckenberger*, 974 F. Supp. at 116.

<sup>38</sup> See *id.*; This program was considered renown and clearly was an example of an effective accommodations program. *Id.* Further, the court noted that enrollment increased to over 450 students with this recruitment effort. *Id.*

<sup>39</sup> *Id.* (explaining the goal of the program was to assist learning disabled students with extensive services and aids.)

<sup>40</sup> See *id.* (noting that the LDSS staff approved course substitutions, even for required courses).

<sup>41</sup> See *id.*

<sup>42</sup> See *id.* at 117-18.

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<sup>43</sup> See *id.* at 117-19 (detailing his decision was based upon his own prejudices that learning disabled students were often faking the disability and further, that such disabilities were not supported by the scientific literature).

<sup>44</sup> See *id.* at 119-20 (explaining that Westling’s staff determined that there was inadequate documentation to support the accommodations granted; shortly afterward Westling issued corrective actions including the need for current evaluations with tests performed by persons with doctorates, and that course substitutions in math or foreign language were not allowed).

<sup>45</sup> See *id.* at 121.

<sup>46</sup> See *id.* at 114-15 (finding that BU violated 42 U.S.C. § 12182(b)(2)(i) in regards to the requirement that the test administrator have a doctorate, except in cases of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder).

<sup>47</sup> See *infra* Section V of this Article for a detailed review of university policies and models for revised policies more aligned with the intent of the drafters of the ADA.

Section 504 claim against the university asserting that he was an "otherwise qualified" person with a disability.<sup>49</sup> The factual history of the case revealed that Wynne began as a medical student in 1983 at the Tufts University School of Medicine (Tufts).<sup>50</sup> Tufts granted him several accommodations, but Wynne was unsuccessful in completing the course work.<sup>51</sup> Wynne claimed he had a learning disability and that the university had discriminated against him due to his disability.<sup>52</sup> Specifically, Wynne felt he was unfairly disadvantaged because the university used a multiple-choice testing format.<sup>53</sup>

The court in *Wynne* began its discussion by developing a test to assess whether the university had sufficiently considered the reasonable alternatives available.<sup>54</sup> For the court to decide that the university had met its burden, the university had to prove it took into consideration the alternatives available, the associated costs, and most importantly, whether the alternative substantially altered the education program.<sup>55</sup> In ruling for the university, the court held that Tufts had given sufficient consideration to the alternatives and had proven that providing the alternatives would lower academic

standards.<sup>56</sup> In conclusion, the court deferred to the academic institution, a decision well supported given the significant efforts of the university.<sup>57</sup>

Another recent case involving a student with learning disabilities was *Betts v. Rector and Visitors of the Univ. of Virginia*.<sup>58</sup> In this case, Robert Betts entered into a medical postbaccalaureate program at the University of Virginia (UVA) designed to assist minorities and economically disadvantaged students.<sup>59</sup> In this program, the student had to maintain a certain grade point average (GPA) in order to qualify for admission into the UVA medical school.<sup>60</sup> Betts did not maintain the required GPA; however, UVA decided to allow him to continue in the program contingent upon his participation in learning disability testing and tutoring.<sup>61</sup> Although the tests revealed that Betts had no learning disabilities, UVA Granted Betts an extension of the time allowed for taking exams.<sup>62</sup> Betts received passing grades on the exams,<sup>63</sup> however, he failed to earn the requisite GPA to remain in the program.<sup>64</sup>

The court focused on the ADA and Rehabilitation Act violations and the provisions prohibiting discrimination due to a disability in the participation and enjoyment of the entity's programs and services.<sup>65</sup> Unquestionably, UVA, a state educational institution, fell within Title II of

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<sup>48</sup> *Wynne v. Tufts Univ. School of Medicine*, 976 F.2d 791 (1992). See, e.g., *Guckenberger*, 974 F. Supp. at 147-48. The Guckenberger court reviewed the Wynne opinion discussing the format of a test at the medical school and the court's final ruling that changing the format was a fundamental alteration of the university program, should the university change it to reasonably accommodate Wynne. See *Guckenberger*, 974 F. Supp. at 148. The Guckenberger court clearly stated that in comparison to a test format, "the degree requirements that are at issue in the instant litigation go to the heart of academic freedom." *Id.*

<sup>49</sup> See *Wynne*, 976 F.2d at 792.

<sup>50</sup> See *id.*

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.* at 793.

<sup>55</sup> See *id.*

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<sup>56</sup> See *id.* at 794-95.

<sup>57</sup> See *id.* at 796.

<sup>58</sup> *Betts v. Rector and Visitors of the Univ. of Virginia*, 967 F. Supp. 882 (1997).

<sup>59</sup> See *Betts*, 967 F. Supp. at 882.

<sup>60</sup> See *id.* at 884.

<sup>61</sup> See *id.*

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *id.* at 885 (citing 42 U.S.C. § 12132). The court also discussed the Section 504 violations; however, in keeping with the focus of this article, that portion of the discussion has been omitted.

the ADA as a public entity.<sup>66</sup> In its discussion, the court referred to *Doe v. New York University*, a similar case involving a medical student with mental disorders.<sup>67</sup> Specifically, the language in *Doe* described once again the deference given by courts to the judgment rendered by administrators at the educational institution.<sup>68</sup> The court addressed the facts of Betts's performance after accommodations and UVA's subsequent dismissal of him from the program.<sup>69</sup> According to UVA, Betts was not performing at the level necessary to progress into the medical school.<sup>70</sup> Betts argued that UVA's decision should not be given the "usual deference because it was based solely on an 'objective' criterion."<sup>71</sup> Instead, Betts argued that the court should evaluate whether he was competent for medical school and that the GPA requirement only be applied to "individual semesters" and not the whole year.<sup>72</sup> Ultimately, the court disagreed and ruled that the university's decision was to stand.<sup>73</sup>

### B. Striking a Balance in Providing Reasonable Accommodations

For university administrators, carefully drafted policies for services provided to students with disabilities certainly will mitigate many potential problems in the future.

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<sup>66</sup> See 28 C.F.R. § 35.101 (1990).

<sup>67</sup> See Betts, 967 F. Supp. at 996 (citing *Doe v. New York Univ.*, 666 F.2d 761 (2nd Cir. 1981)).

<sup>68</sup> See *id.* (citing *Doe*, 666 F.2d at 775-76, explaining that this court denied the plaintiff's requested relief to be reinstated at the medical school, instead deferring to the institution's decision of no readmission).

<sup>69</sup> See *id.* at 887.

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See *id.* at 888 (stating this was a flawed argument that assumed "a clearly defined criteria [was] entitled to less deference than a vague goal statement would be").

Moreover, in providing accommodations, the educational institution has the undeniable right to protect the fundamental aspects of its programs. An accommodating university also has the responsibility not to create a financial burden or an unfair advantage for those students with disabilities. While universities may view accommodating learning disabled students as a challenge, evaluating accommodations with respect to these criteria will assess the reasonableness of the accommodation and the effect on the university's programs.<sup>74</sup>

### 1. The Creation of an Unfair Advantage for Students with Disabilities

Congress passed the ADA to ensure that persons with disabilities enjoyed, in a sense, "a level playing field" in the participation of such covered programs and services. At times, a fine line exists between providing reasonable accommodations, such as extended exam time for students with learning disabilities, and creating an unfair advantage that permits disabled students to excel far beyond their peers. Only those accommodations that are thoroughly documented and proven necessary should be allowed. Thus, in the instance of accommodating a student with disabilities, a university strives to reasonably accommodate while not placing the student at a greater advantage than non-disabled students.

Understanding the student's learning disability is essential for the university in providing reasonable accommodations under the ADA. If a student has indicated she has dyslexia, a learning disability, then completing projects and exams in a timely manner may be difficult. A dyslexic student may need more time to read and understand the test/project material, since many of the letters she reads are transposed.<sup>75</sup> To support the student's request, records of past accommodations from

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<sup>74</sup> See JAMES MADISON UNIVERSITY POLICY, *supra* note 7 (describing how delineating the rights and responsibilities of both the student and the university will foster a greater understanding of each party's role and promote effective team work).

<sup>75</sup> Judging the extra amount of time to grant this type of student is an inexact science; simply beginning with time and a half can be a reasonable accommodation without creating an unfair advantage.



recent college exams/projects would be of great assistance to the university. In summary, the better the university understands what accommodations are necessary for the student to participate, the less likely it will create an unfair advantage. The university's granting of the accommodations will likely enable the student to participate effectively in the program. Without the accommodations, the student could not participate sufficiently to continue in the university program.

## 2. The Creation of an Undue Financial Burden

The ADA requires a covered entity, such as a university, to provide reasonable accommodations to qualified students with disabilities.<sup>76</sup> These students must follow the institution's procedures for students with disabilities in order to qualify for such accommodations as auxiliary aids, tutoring, extended time to complete degrees, and sign-language interpreters.<sup>77</sup> Many accommodations, such as extended time for exams or projects, or scheduling the class in a room with better lighting, cost little or no money to administer. Nevertheless, if the student's request for accommodations creates an undue financial burden to the institution, the institution may be justified in denying the request. The institution, though, must clearly demonstrate that providing the accommodations creates such a burden. In light of the often large annual budgets of many universities, this burden may be difficult to prove.<sup>78</sup>

<sup>76</sup> See 28 C.F.R. § 35.130 (1990).

<sup>77</sup> See UNIVERSITY OF HOUSTON LAW CENTER POLICY, *supra* note 7; *see, e.g.*, 28 C.F.R. § 35.104 (1990).

<sup>78</sup> *See, e.g.*, *United States v. Board of Trustees for the Univ. of Alabama*, 908 F.2d 740 (11th Cir. 1990). In this case, the court held that the school was not permitted to deny aids to students with disabilities based upon their financial abilities. *See id.* at 752. In addition, the court ruled that the school did not prove the transportation services necessary for the disabled students created an undue financial burden, considering the university's annual budget for transportation was "\$1.2 million." *See id.* at 751. The court ruled that the school had failed to reasonably accommodate the disabled students in its transportation services. *See id.* at 751. *See, e.g.*, Phyllis G. Coleman & Robert M. Jarvis,

## 3. Substantial Alteration of the Education Program

As previously discussed, courts have ruled that an educational facility did not have to substantially alter its program to accommodate a student requesting a different test format.<sup>79</sup> Institutes of higher learning are often granted judicial deference where the court is satisfied that the available accommodations have been evaluated as to the effect on the fundamental aspects of the educational program.<sup>80</sup> Courts are reluctant to make academic decisions, instead allowing universities "academic freedom" in educating their students.<sup>81</sup> Changing test formats or degree requirements may amount to alterations of the fundamental aspects of an educational program.<sup>82</sup> Universities have the burden to demonstrate that such alterations will occur—an often difficult burden to prove given the many methods currently available to test students or meet requirements.

## IV. LEARNING DISABILITIES: POLICIES AND PROBLEMS WITH REASONABLE ACCOMMODATIONS

### A. Learning Disabilities Defined

The court in *Guckenberger*, in describing the plaintiffs' learning disabilities, began its review of the literature with a reference to volume four of the Diagnostic Statistical Manual of the American Psychiatric Association (DSM-IV).<sup>83</sup> The court cited the DSM-IV and stated

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*Tuition Adjustment for Law School Students: A Necessary Accommodation Under the ADA?*, 24 J.C. & U.L. 45, 58 (1997) (citing Laura Rothstein, *Disability Issues in Legal Education: A Symposium*, 41 J. LEGAL EDUC. 301, 305 (1991)).

<sup>79</sup> *See Wynne*, 976 F.2d 791; *see, e.g.*, *Southeastern Community College v. Davis*, 442 U.S. 397 (1979).

<sup>80</sup> *See Wynne*, 976 F.2d at 795.

<sup>81</sup> *See Haig A. Bosmajian, Introduction to Academic Freedom*, at 6 (The 1st Amendment in the Classroom Series No.4, 1989).

<sup>82</sup> *See Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *see, e.g.*, *Wynne*, 976 F.2d at 796.

<sup>83</sup> *See Guckenberger*, 974 F. Supp. at 132.

that “learning disorders are diagnosed when the individual’s achievement on individually administered standardized tests in reading, mathematics, or written expression is substantially below that expected for age, schooling, and level of intelligence.”<sup>84</sup> The IDEA also provides a definition of learning disabilities that may be helpful in understanding students with such disabilities.<sup>85</sup> Learning disabilities are often considered “hidden disabilities.” One cannot ascertain a student has a learning disability from seeing the student; therefore, universities are reluctant to grant accommodations for unapparent disabilities. In short, learning disabilities definitely affect the learning process that occurs at the university level.<sup>86</sup>

### B. Policies and Procedures Regarding Reasonable Accommodations

As more students with disabilities enter colleges and universities, the need exists for these facilities to develop and administer policies for services provided to these students. While some policies address students with disabilities in the admissions process, this Article focuses on accommodating currently enrolled students.<sup>87</sup> Generally, the policies will begin by stating the applicable law under which the institution will provide reasonable accommodations to those qualified students with disabilities.<sup>88</sup> Further, the policies usually will state that all

qualified students may participate in the university’s programs, if the students meet the requirements for such programs.<sup>89</sup>

In focusing on students with learning disabilities, university procedures generally address the steps the students must follow to apply for accommodations. The policy format below demonstrates how universities can determine student eligibility for special services:

1. The student identifies him/herself as having a disability.
2. The student must provide documentation of the learning disability prepared by “a professional qualified to diagnose a learning disability, including but not limited to a licensed psychiatrist, learning disability specialist, or psychologist;<sup>90</sup> [and shall] include the testing procedures followed, the instruments used to assess the disability, the test [score] results, [and] a written interpretation of the test results by the professional.<sup>91</sup>
3. The student must provide the accommodation request to the university.<sup>92</sup>

Although the steps appear to be clear-cut, points of contention for students may include the question of who is a “qualified professional” and how current the verification of the disability must be in order to qualify a student for

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<sup>84</sup> See *id.* (citing the DSM-IV section on learning disabilities).

<sup>85</sup> See 20 U.S.C. § 1401(26)(1994). This IDEA section describes specific learning disabilities as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written which disorder may manifest itself in imperfect ability to listen think, speak, read, write, spell, or do mathematical calculations.” *Id.*

<sup>86</sup> Adding to the difficulty in obtaining accommodations is the fact that some students may not realize they have a learning disability until they enter college.

<sup>87</sup> See HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 1 (explaining that the policy was developed mainly for enrolled students).

<sup>88</sup> See *id.*

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<sup>89</sup> See *id.*; see, e.g., UNIVERSITY OF HOUSTON LAW CENTER POLICY, *supra* note 7, at 4.

<sup>90</sup> UNIVERSITY OF HOUSTON LAW CENTER POLICY, *supra* note 7, at 9; UNIVERSITY OF BALTIMORE POLICY, *supra* note 7, at 1; HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 6.

<sup>91</sup> UNIVERSITY OF HOUSTON LAW CENTER POLICY, *supra* note 7, at 9; see, e.g., HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 6.

<sup>92</sup> The policies from the University of Houston Law Center and Hastings College of the Law both detail in which areas the accommodations may be made, including “the academic program,... examinations,... [and] auxiliary aids.” HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 7; see, e.g., UNIVERSITY OF HOUSTON LAW CENTER POLICY, *supra* note 7, at 3-4.

accommodations.<sup>93</sup> Only in the cases of such disorders as Attention Deficit Hyperactivity Disorder<sup>94</sup> or Attention Deficit Disorder,<sup>95</sup> will the courts likely require a professional with a doctorate degree as these disorders may have physical manifestations requiring treatment by medication.<sup>96</sup>

### C. Significant Problems in Developing and Administering Policies for Learning Disabled Students: A Discussion

Often universities are presented, with requests for accommodations by students with learning disabilities that require significant consideration before a decision is rendered. An example is a request for oral exams by a law student with a learning disability that hinders his ability to answer exams in a written fashion. Is it fair to the other students in the class to allow such an accommodation? The school must apply certain criteria to determine the reasonableness of accommodations. More specifically in this case, is an unfair advantage being created for the student with the learning disability? If the affected student has essentially met the criteria and it is apparent to the school that the accommodation is necessary, then the student should be permitted to respond orally. By following established procedures, the university can protect against creating an unfair advantage and greatly mitigate the chance of inequities between students.

Furthermore, the burden is on the student to prove adequately that the disability affects his ability to learn or participate in a particular class, service, or program. For instance, if a student requests an accommodation, such as extended time for completing a project, the university has the right to require appropriate disability documentation and information regarding past accommodations. Providing an accommodation, if not proven necessary, creates an unfair disadvantage to those non-disabled students who must perform in the mode and time required by the professor. Universities, while desiring to accommodate those qualified students under the ADA, nonetheless must maintain their high academic standards. Without appropriate documentation, the university does not have the information necessary to assess reasonableness under the ADA.

Accommodation requests for course substitutions and degree requirement modifications are perhaps the most troubling requests for a university. Not only is the risk of creating an unfair advantage present, but these requests encroach upon the university's responsibilities in educating its students. The university is concerned with substantially altering its programs by granting these types of requests. In essence, the university will argue that granting many of these requests will result in a student obtaining an insufficient knowledge base to warrant awarding a college degree. Solutions for universities navigating through such difficult issues lie in well-defined disability policies, which hopefully provide guidance as to how a university can protect its academic programs and still provide reasonable accommodations.

Cost is yet another defense that universities raise to providing reasonable accommodations to students with learning disabilities. Several accommodations, such as note-takers and books on tape, when provided for a number of learning disabled students, may present a substantial financial burden for a university. Further, budget cuts at the state level may significantly effect the university's budget, making providing accommodations more difficult. Conversely, the burden is quite high for universities under the ADA, specifically if the university claims the accommodation creates an *undue* financial burden. However, given the relatively large budgets of state universities, it will be difficult for a university to successfully argue this defense. In addition, having a court scrutinize

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<sup>93</sup>See Guckenberger, 974 F. Supp. at 114-15. The university required that evaluations must be performed by "physicians, clinical psychologists or licensed psychologists [or] they were unacceptable." *Id.* The court ruled such criteria "screen[ed] out or tended to screen out" the learning disabled students and furthermore, were not considered pertinent to the rendering of reasonable accommodations. *Id.*

<sup>94</sup>This disorder is referred to as ADHD.

<sup>95</sup>This disorder is referred to as ADD.

<sup>96</sup>See Guckenberger, 974 F. Supp. at 115.

each budgetary item will further deter universities from raising this defense.<sup>97</sup>

In summary, a university is likely to encounter many of the previously mentioned issues in administering a disability services policy. How a university administers its disability services program unquestionably will affect whether the university will be seen as having reasonably accommodated students with learning disabilities. As seen in *Guckenberger*, when the university made substantially burdensome changes in the program requirements for learning disability documentation, the university violated the ADA.<sup>98</sup> It is understandable that universities may want to ensure that only those students with “qualified” disabilities are accommodated and, consequently, will require high standards in proving eligibility. However, such practices border on violating the ADA. Moreover, when a university undertakes rapid changes in the program requirements without adequate notice to students, the net effect is a violation of the ADA by denying or delaying accommodations.<sup>99</sup>

## V. SOLUTIONS: DISCUSSION OF MODEL DISABILITY SERVICES POLICY GUIDELINES

### A. Main Factors of Well Developed Policies

In developing a model disability services policy, special attention must be given to the landmark decisions

in the area of the ADA and universities.<sup>100</sup> The mistakes of BU in *Guckenberger* should serve as a learning tool to prevent the repeat of such problems.<sup>101</sup> In addition to a well-developed policy, providing disability services training to the university staff will assist all parties involved to serve better the students with disabilities. Lastly, key factors that should be considered in the development of a disability services policy include the authority granting the right to request reasonable accommodations (a brief statement of the applicable ADA sections); the application process; the university procedures for review of accommodation requests; the policy regarding confidentiality of student’s disability records; the dispute resolution process; and disability services program network information.<sup>102</sup>

### B. Why Develop a Comprehensive Disability Services Policy?

A comprehensive disability policy including the previously mentioned factors serves a number of purposes for universities in working with students with learning disabilities. Further, while the policy may not cover every situation, a majority of situations will be covered and explained to assist in the effective implementation of a disability services program. Though not the obvious reason for developing a comprehensive policy, universities should not overlook the fact that well written policies indicate the organization desires to operate within the law concerning the ADA and reasonable accommodations. Lastly, the public relations effect will clearly be beneficial to the university in demonstrating its desire to have a diverse

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<sup>97</sup> See Phyllis G. Coleman & Robert M. Jarvis, *Tuition Adjustment for Law School Students: A Necessary Accommodation Under the ADA?*, 24 J.C. & U.L. 45, 58 (1997) (citing Laura Rothstein, *Disability Issues in Legal Education: A Symposium*, 41 J. LEGAL EDUC. 301, 305 (1991)).

<sup>98</sup> See *Guckenberger*, 974 F. Supp. at 114-15 (stating that the new criteria for eligibility in the disability services program, such as having to be evaluated every three years by persons with doctorates, was found to have screened out or tended to screen out the learning disabled students).

<sup>99</sup> See *id.* at 116.

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<sup>100</sup> See John W. Parry, *Executive Summary and Analysis, Section I. ADA and Other Federal Disability Civil Rights*, 21 MENTAL AND PHYSICAL DISABILITY L. REP. 557 (1997) (explaining that the ruling in *Guckenberger* will have a significant impact on the disabled population at the nation’s college and universities, in addition to, revealing the “tension between students with learning disabilities and university and college officials over academic accommodations”).

<sup>101</sup> See *Guckenberger*, 974 F. Supp. 106.

<sup>102</sup> For a comprehensive description of these key factors in the development of a model disability services policy, see Appendix A.

student body inclusive of students with all types of disabilities.

### C. Discussion of the Model Policy Guidelines

These model policy guidelines were developed from the standpoint that students with learning disabilities often face tremendous barriers in obtaining reasonable accommodations, their right granted under the ADA. When the focus is the learning disabled student requesting accommodations in the educational setting, the process can perhaps be more difficult for several reasons. Problems arise because students have disabilities that affect how the student performs at the university, namely the student's ability to learn, comprehend, and retain the material. In reviewing the different disability policies for this article, the author highlighted a few current topics that have been or continue to be areas of much debate in the education arena. Topics concerning modifications of degree requirements, course substitutions, and course modifications are key issues for university programs. Simply put, these issues target the very heart of the American higher education system.

The solution to preventing problems with these current topics of debate lies in well-developed disability services policies. Providing a quality education, in light of reasonable accommodations, requires a team effort on behalf of the student and the university. Aside from the initial identification and documentation of a disability, effective communication between the student and the university regarding the accommodation request is imperative for a successful educational experience. Moreover, once the student and the university understand the rights and responsibilities that each possess, the process of accommodating students with learning disabilities will occur more readily.<sup>103</sup> Discussed below are

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<sup>103</sup> See JAMES MADISON UNIVERSITY POLICY, *supra* note 7. This disability services policy was one of the few policies that approached the process from two perspectives—the student and the university. See *id.* The student plainly has responsibilities to uphold as a participant in the education system, such “an obligation as any other student to meet and maintain the institution’s academic and technical standards.” *Id.* Whereas the university has the right to “identify and establish the abilities, skills, and knowledge necessary for success in its programs and

recommendations for addressing potential problem areas in disability policies designed for learning disabled students.

### 1. Modification of Degree Requirements and Substitution of Course Work<sup>104</sup>

Areas of disability policies that have ignited a tremendous debate in the university setting include the request for modifications of the degree requirements and substitution of course work. Setting the degree requirements necessary to earn an undergraduate or graduate degree is an undeniable right of a university. A challenge to this right naturally threatens, from the university's standpoint, the quality and basis of a student's education. However, the debate from those students with learning disabilities is that in some instances, the student is unable to complete all degree requirements due to a learning disability.<sup>105</sup> Conversely, the university can argue that if it modifies the degree programs challenged by students with learning disabilities, than it will lose its “right” to decide how its students will be educated and how degrees will be earned. Students requesting an accommodation will perhaps argue discrimination under the ADA if the university claims it cannot change its policies.<sup>106</sup>

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to evaluate students on this basis.” *Id.* Developing a policy such as the one at James Madison University, is a step towards enacting a positive and pro-active program for students with learning disabilities.

<sup>104</sup> Due to the similarities in these issues, the author addresses the topics together noting the differences when applicable. Mainly, these issues overlap in the effect on the university's program requiring similar policies and procedures to accommodate students while maintaining program integrity.

<sup>105</sup> For example, a chemistry major may require a four-hour calculus course; however, a four hour advanced mathematics class may suffice to provide the mathematical background necessary in this field. By permitting such a modification, the student is reasonably accommodated and the university's learning objectives may be satisfied for the earning of a chemistry degree.

<sup>106</sup> For the author's suggestions in how best to address a student's request for degree requirement modification, see *infra* section V, C, 1(a) of this article describing model policy guidelines for such an accommodation.

Another related issue faced by universities is the request for course substitution. Students with learning disabilities may request to substitute another course in place of a required course in the curriculum. In this instance, the student has entered onto what perhaps educators would call “sacred ground.” For the very basis of university degree programs is the required course work selected by the curriculum committees of universities that, if successfully completed, earns the student the college degree. Given the fact that universities possess substantial academic freedom to educate their students as they deem appropriate, course substitutions will undoubtedly be highly scrutinized to preclude fundamental alterations of their programs — a non-acceptable accommodation for a university to provide.<sup>107</sup> Concerning specific courses, faculty should not have to “sacrifice course expectations or quality of student work.”<sup>108</sup> Therefore, it is necessary that a policy clearly detail the process for requesting a modification in degree requirements, the review of the alternatives including course substitution,<sup>109</sup> and the final procedure for rendering a decision.

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<sup>107</sup> See *Southeastern*, 442 U.S. 397 (holding that educational facilities are not required under Section 504 to substantially alter their education programs to accommodate students with disabilities); see, e.g., *Guckenberger*, 974 F. Supp. at 146 (citing *Alexander v. Choate*, 469 U.S. 287 (1985) and *Southeastern*, 442 U.S. 397 to support the concept that schools are required to make reasonable accommodations under the ADA and Section 504, but again not accommodations that fundamentally alter the education programs).

<sup>108</sup> See JAMES MADISON UNIVERSITY POLICY, *supra* note 7. It should be noted that students with learning disabilities may argue that degree requirements are unreasonable and discriminate, such as with a four credit lab course for a student who cannot learn in a visual manner, but instead learns best by hearing the material. It may be difficult to modify certain lab activities, when an essential part of the class work is performing experiments; however, an alternative may be for the student to use computer-aided learning activities that could suffice for the covered material.

<sup>109</sup> The author is assuming that when a student makes a request for a modification of degree requirements, that the committee or department team will select an appropriate substitution. Simply excusing the student from the required course, and dictating no substitute, neither promotes equal treatment of all students nor does it ensure the university is adequately educating its students. Furthermore, students without disabilities will view such actions

### a. Proposed Model Policy Guidelines

A well defined policy detailing the procedures to follow with the request for course substitution or degree requirement modification unquestionably will assist the university in effectively administering a disability services program. The policy should establish the steps students should follow to request accommodations such as:

1. The Disability Services Coordinator will review the request certifying that the student’s disability documentation is appropriate to enable the assessment of the request.<sup>110</sup>

2. The Coordinator will then forward the request to the student’s department head who will contact the department’s disability services representative (a faculty member sitting on a special designated committee established to develop and implement the university’s policy). If necessary, this team will send the request to the University Disability Services Committee for a final decision.<sup>111</sup>

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as unfair and indicative that the university has two standards by which degrees are awarded.

<sup>110</sup> See STANFORD UNIVERSITY POLICY, *supra* note 7. The author strongly believes that fielding student requests through the disability services coordinator is absolutely necessary. This procedure ensures an adequately trained individual reviews the request initially for sufficient documentation and information—a safeguard to preventing untrained administrators from making decisions without complete records.

<sup>111</sup> Faculty are present on the committee to give their input as to “what equally effective courses can be substituted,” since as educators they are better equipped to assess the course work necessary to educate students appropriately. See JAMES MADISON UNIVERSITY POLICY, *supra* note 7. Further, with the varied representation on the committee, a decision will have been developed in a fair and reasonable manner as to whether a request by a student with a learning disability fundamentally alters the education program.

3. Whether the department team or special committee makes the decision, several factors shall be considered:

- The nature of the student's disability and its nexus to the requested modifications.<sup>112</sup>

- Whether an equal course may be substituted without compromising the student's education.<sup>113</sup> (All available alternatives MUST be considered; including courses outside of the student's designated department to provide significant latitude for accommodation.)

- Lastly, whether the accommodation will result in a fundamental alteration of the education program.<sup>114</sup>

These policies include several levels of review to prevent one person from having the sole responsibility for deciding whether to grant a student's request for accommodations.<sup>115</sup>

An important factor that warrants further discussion is whether an adequate replacement course is available. The university may indicate this factor cannot be met, however, an open-minded and pro-disability approach is imperative to providing accommodations under the ADA. In the beginning of implementing this new policy, the committee will be challenged in numerous ways; however, by working with the different colleges throughout the university system, alternatives will often be available. As students with disabilities continue to push for changes in the traditional education system, universities will have to become more flexible in their requirements while maintaining educational standards.

Finding innovative teaching methods will assist universities in maintaining academic standards, while providing alternative learning opportunities. Professors who are active in their professional organizations could learn such alternative techniques to teach students in new ways. New techniques include integrating computer assisted learning programs into the classroom, in addition to implementing interactive learning between the students to provide a different learning environment from the traditional lecture model.<sup>116</sup> Most importantly, should students feel this factor was not adequately considered, a dispute resolution process would be available as a component of a well-developed program. It is likely that universities will thoroughly investigate the requests at the committee or dual team member level to prevent students from having to use stronger means to obtain reasonable accommodations.<sup>117</sup>

If this approach is developed and followed by the student and the university, both parties will benefit. The university will provide a more progressive and congenial environment for students who often have faced substantial impediments to receiving their education. This result is not only desirable, but is required in light of the ADA as applied to institutions of higher learning. Such a systematic approach will benefit the university in that each request will go through a review process to ensure: (1) that all possibilities are explored, (2) that only those changes considered necessary are made, and (3) that should modifications be required, a comparable alternative is selected, thus protecting the fundamental aspects of the educational program.

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<sup>112</sup> See STANFORD UNIVERSITY POLICY, *supra* note 7.

<sup>113</sup> *Id.*; see, e.g., JAMES MADISON UNIVERSITY POLICY, *supra* note 7.

<sup>114</sup> See James Madison University Policy, *supra* note 7.

<sup>115</sup> Further, persons educated in working with learning disabled students will be present in each department. Even if the faculty representative does not hold a special education degree, with proper training, this person can understand the basic requirements under the ADA and what common modifications are given to learning disabled students. In addition, it should be noted, that a coordinator in the disability services program likely will hold a special education degree, as would the program supervisor. These safeguards ensure fair and proficient handling of student requests.

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<sup>116</sup> The author acknowledges that while some professors use multiple teaching methods, many professors still use the traditional lecture method.

<sup>117</sup> Other recommendations include *written* guidelines detailing the process a student must follow to request an accommodation, the process of review by the committee, and lastly the process of appeal. As mentioned previously, well written guidelines not only assist the committee in their duties, but also provide documentation to follow when any request is made, thereby ensuring fair handling of all students' request. Stronger means may result in students approaching high level administrators or in the worst case, filing suit against the university.

## 2. "Modifications in Specific Courses"<sup>118</sup>

Similar to the debate initiated when a student makes a request to modify degree requirements or substitute courses, is the potential for debate when a student approaches a faculty member regarding a modification to a specific course. Faculty members are given significant latitude in teaching, therefore having a student request to change the manner in which a course is taught may create a contentious situation. A model approach to this portion of the policy includes a system in which the student acts as an advocate while requesting accommodations from the teacher. This approach has many advantages including developing advocacy skills for students with disabilities,<sup>119</sup> allowing the student and faculty member to develop a workable solution together; and promoting free discussion of such an important issue between those parties most affected. In this case, a committee may simply take too long to consider the request, thus, serving neither the university nor the student's best interest.<sup>120</sup>

A teacher is required under the ADA to make reasonable accommodations; however, a teacher does not have to grant requests that substantially alter the fundamental aspects of the course work.<sup>121</sup> On the contrary, a student may request an accommodation that does not fundamentally alter the course such as completing a paper in a larger font or submitting the assignment electronically.<sup>122</sup> If this process does not result in an

agreeable solution, the student may contact the disability services coordinator to resolve the issue.<sup>123</sup>

This article has only addressed a few of the essential issues regarding disability policies and the recommendations necessary to develop pro-disability policies. With the developments in the disability rights area, universities would be advised to review its policies on at least an annual basis to ensure continued compliance with the ADA and the surrounding case law. Additionally, universities should establish an independent university committee comprised of students with disabilities, faculty members, a disability services coordinator, and outside members tasked with regularly following the issues affecting the university's students with disabilities. Ideally, with an independent committee following the different issues, the university can identify problem areas and act preventively, maintaining a productive and effective relationship between the students and the administration.

## VI. CONCLUSION

While many issues exist regarding the application of the ADA to universities, a few present unique problems that require universities to be pro-active and implement policies for students with disabilities. The goal in working with learning disabled students is to strike a balance between providing reasonable accommodations while not creating an unfair advantage, an undue financial burden, or fundamental alterations of the educational program. Applying the ADA reasonable accommodation section to students with learning disabilities presents challenging situations for the universities for several reasons, including the fact that the disability may have a tremendous effect on the student's ability to learn and succeed at the university.

Further, the accommodations requested by students with learning disabilities may substantially alter the educational program. In this case, universities are given significant deference by the courts in deciding what is a fundamental alteration. Courts are reluctant to decide

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<sup>118</sup> See JAMES MADISON UNIVERSITY POLICY, *supra* note 7.

<sup>119</sup> Such a skill will be instrumental for any student with a disability in discussing an accommodation request with the both university and in future endeavors.

<sup>120</sup> See Appendix B for a detailed description of the steps for a student to follow in requesting a modification of a course.

<sup>121</sup> See generally, Southeastern Community College, 442 U.S. 397.

<sup>122</sup> See STANFORD UNIVERSITY POLICY, *supra* note 7 (detailing "alternate media" using "an optical character recognition scanner" which translates books into other media for the visually impaired).

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<sup>123</sup> A further step would be a review under the university dispute resolution policy for students who have made requests for reasonable accommodations and are not satisfied with the results.



academic issues, instead traditionally leaving such decisions to the university staff and administrators, unless there is evidence of unfair handling of requests or discrimination.<sup>124</sup>

Administering a successful disability services program should be a goal of every university. The previously mentioned recommendations for a comprehensive policy are solutions to reasonably accommodating students with learning disabilities, which allows enjoyment of the programs without a fundamental alteration of the educational criteria. Clearly, as more disabled students challenge university policies, courts will continue to eliminate discriminatory actions by universities—the very actions Congress sought to prevent with the passage of the ADA. It is unlikely that Congress will significantly modify the ADA as it applies to public universities in the near future. On the contrary, faculty senates will address these issues in a greater capacity as more students with learning disabilities enter the classrooms. Until such policies are in effect at all United States public colleges and universities, students with learning disabilities will continue to face barriers in receiving a college degree.

## **APPENDIX A**

### Factors to be included in Model Disability Policy Guidelines

Listed below are relevant factors and categories to be included in a model comprehensive policy.<sup>125</sup> The author has expanded the topics typically covered by such a policy to provide more guidance in implementing an

<sup>124</sup> See *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, (1985). In this case, the Supreme Court explained the standard of review for courts deciding cases involving academic decisions. The Court reiterated its position originally stated in an earlier academic case, stating that “university faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.” *Id.* at 225 n. 11 (quoting *Board of Curators, Univ. of Mo. v. Horowitz*, 435 U.S. 78, 96, n. 6 (1978) (Powell, J., concurring)).

<sup>125</sup> See the Discussion section of this Article for particular policies concerning accommodations for learning disabled students.

effective disability services policy at a public university.<sup>126</sup>

### **Authority/General Introduction**

1. An introduction citing to the applicable sections of federal law, including the IDEA and ADA.
2. Different brochures or sections for enrolled students versus those students applying for admission.<sup>127</sup>
3. Definition of a person with a disability under the ADA and Rehabilitation Act.
4. Statements providing students will not be discriminated against by the university in any program due to their disability.<sup>128</sup>

### **How to Apply for Reasonable Accommodations**

5. Verification of a Temporary Impairment.
6. Verification of a Sensory, Physical, Mental or other Health Impairment.<sup>129</sup>
7. Verification of a Learning Disability with specific criteria dictating how, when, and by whom the documentation should be performed.
8. Statements regarding whom shall bear the cost of the required testing.

<sup>126</sup> Cf. JAMES MADISON UNIVERSITY POLICY, *supra* note 7, STANFORD UNIVERSITY POLICY, *supra* note 7, and HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7.

<sup>127</sup> See HASTINGS COLLEGE OF THE LAW POLICY, *supra* note 7, at 1. This pamphlet stated that it is the policy of the college to reasonably accommodate enrolled students. See *id.* The school assumed that upon being accepted, the student was “deemed qualified to undertake the academic program.” *Id.*

<sup>128</sup> This factor requires complete understanding by the policy developers of all programs currently part of the university programs. Reviewing the programs before developing the policy will surely mitigate future problems, as guidelines can be carefully drafted to provide accommodations to “qualified” individuals while not opening the university up to litigation. Examples of accommodations would also be invaluable to assisting students and faculty. Challenging areas include study abroad programs, exchange programs with other United States public universities, university sponsored trips, and activities part of college life such as social and service organizations (including university approved fraternities and sororities).

<sup>129</sup> See UNIVERSITY OF BALTIMORE POLICY, *supra* note 7, at 1.

## Articles

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### University Procedures for Reasonable Accommodations

9. A list of procedures explaining how the university determines reasonable accommodations.

10. Material describing common accommodations in the areas of academic modifications, exams, auxiliary aids and services, and building facilities.

11. Specific statements addressing students with learning disabilities and the special documentation and process detailing accommodations for students with such disabilities.

### Confidentiality

12. Statements regarding the confidentiality of disability services records and use of confidential information.

### Dispute Resolution/Grievance Process

13. Statements regarding the appeal process when the university denies a student's accommodation request(s).

14. Statements describing "academic dismissals and readmission" into the university.<sup>130</sup>

### Disabilities Services Program Network

15. Information regarding a mentor program which matches new students with disabilities with currently enrolled students with disabilities.

16. Information on working with a counselor in the disability services center.

### Special Topics

17. Financial Aid and requests for an accommodation in taking a part-time course load.

18. Graduate schools, including the Law School, the Medical School and the Business School all have policies in addition to this general policy.<sup>131</sup> Students are encouraged to meet first with the Disability Services

Program for the university and then meet with the appropriate representative from their school.

### Appendices

19. Forms necessary to apply for accommodations.

20. List of important persons to contact in the administration who are available to assist students throughout the application process.

## APPENDIX B

The steps to an effective application system for a course modification include:

1. The student communicating directly with the teacher;

2. The student providing a disability services request form for course modification, complete with the reasons for the request, as well as, the specific modification requested;<sup>132</sup>

3. The teacher and student setting a meeting to discuss the request;<sup>133</sup> and

4. The teacher providing a written response indicating whether the request is granted. The student should approach the teacher within the first week of the semester to begin the process.<sup>134</sup> Additionally, the disability coordinator can provide suggestions for modifications that have been previously successful.

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<sup>130</sup> See UNIVERSITY OF HOUSTON LAW CENTER POLICY, *supra* note 7, at 6.

<sup>131</sup> Although not all universities have graduate programs, this paragraph serves as a reminder for universities with such programs to mention special guidelines each graduate program may have for accommodating students with disabilities.

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<sup>132</sup> Students shall bring with them appropriate documentation of their learning disabilities, in addition to a written correspondence from the disability services coordinator on behalf of the student to the teacher.

<sup>133</sup> See JAMES MADISON UNIVERSITY POLICY, *supra* note 7.

<sup>134</sup> See *id.*

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