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Who Is an Otherwise Qualified Law Student? A Need for Law Schools to Develop Technical Standards

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WHO IS AN "OTHERWISE QUALIFIED" LAW STUDENT? A NEED FOR LAW SCHOOLS TO DEVELOP TECHNICAL STANDARDS*

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* This article was prepared as a tool to assist the faculty of the University of Florida Levin College of Law in developing technical standards for our law school.

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An increasing number of prospective and current law students are seeking disability-related accommodations under the Americans with Disabilities Act of 1990 (ADA).[1] Various accommodation requests include: extended time on exams (time-and-a-half, double-time, quadruple-time, or no time limit), modification of exams from essay to short-answer, individual testing rooms, modification of all exams from closed-book to open-book, large-print exams, the presence of service animals for the sight-impaired and for those with stress disorders, audio/visual recordings of lectures, notetakers, no deadlines for papers, no in-class exercises, not being called upon to respond in class, a stand-up desk on which to write, special cushioned seats, moving classroom locations and time offerings, the use of computers, sign language interpreters, court reporters, absences beyond the stated policy, and reduced course loads, to name a few.[2]

This increase in the number of law students with disabilities who seek accommodations should be expected. Twenty-five years ago, with the passage of the Rehabilitation Act of 1973 (Section 504),[3] school-aged children with disabilities began the slow process of receiving accommodated services in order that they might benefit from a public education.[4] Congress enacted the ADA in 1990,[5] after finding that 43 million people in the United States had a disability and that people with disabilities were being discriminated against in a variety of areas, including education.[6] The result of these two major pieces of legislation is the growing number of prospective and current law students who have received disability-related accommodations in their past education and now expect similar accommodations in their legal education.[7] The growing trend of students with disabilities entering law schools is evidenced by examining the number of applicants seeking special accommodations for the Law School Admission Test (LSAT), an increase of 1600% from 1991 to 1996.[8]

As law schools prepare for an increasing number and breadth of disability-related accommodation requests, two questions should be asked.

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1. Ronald D. Rotunda, *The Americans with Disabilities Act, Bar Examinations, and the Constitution: A Balancing Act*, BAR EXAMINER, Aug. 1997, at 6, 6; Donald Stone, *The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study*, 44 U. KAN. L. REV. 567, 567 (1996); *see* 42 U.S.C. §§ 12101-12213 (1994).

2. Current or former students at the University of Florida Levin College of Law have requested the above accommodations sometime during the past two years; not all requests were granted.

3. 29 U.S.C. §§ 701-797b.

4. *Id.* § 794.

5. 42 U.S.C. §§ 12101-12213.

6. *Id.* § 12101(a)(1); Rotunda, *supra* note 1, at 6.

7. *See* Rotunda, *supra* note 1, at 6.

8. *Id.*

First, in light of anti-discriminatory laws, how does a law school protect itself when it denies admission to an applicant with a disability because the school believes the applicant is not qualified? Second, how does a law school protect itself when it denies a request for an accommodation because the school does not believe the request is reasonable? The purpose of this article is to answer these two fundamental and timely questions. After setting out the background law, this article examines how law schools can develop academic and technical standards that will allow them to refuse to grant unreasonable accommodation requests without running afoul of disability discrimination laws.

I. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990

A. *Law Schools Cannot Discriminate Against Qualified Persons with Disabilities*

Section 504 of the Rehabilitation Act of 1973[9] was the first broad attempt by the federal government to rid discrimination against persons with disabilities by those agencies and institutions who receive federal funds.[10] Congress extended its efforts to eradicate discriminatory behavior against persons with disabilities by making the ADA[11] applicable to both public and private institutions and businesses, regardless of whether they receive federal funds.[12] The goal of the ADA and the Rehabilitation Act is "to provide a coherent framework and consistent and enforceable standards for the elimination of discrimination against individuals with disabilities."[13]

Section 504 of the Rehabilitation Act provides, in pertinent part: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the

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9. 29 U.S.C. § 794.

10. Helen L. v. DiDario, 46 F.3d 325, 330 (3d Cir. 1995); *see* 29 U.S.C. § 794. People with disabilities found some relief prior to the passage of the Rehabilitation Act of 1973 through the Social Security Act of 1935, 42 U.S.C. §§ 301-1399, 1351 which provided aid to individuals with permanent disabilities, and through the Vocational Rehabilitation Act of 1943, Pub. L. No. 78-113, 57 Stat. 374 (amending scattered sections within 29 U.S.C. §§ 31-41) (repealed 1973) (assisting in the payment of rehabilitation services). Further, the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151-4157, required certain buildings built or leased by the government to be accessible to people with disabilities. *Id.* § 4151. For a brief history of the disability laws, see RUTH COLKER, THE LAW OF DISABILITY DISCRIMINATION: CASES AND MATERIALS 3-6 (1995); LAURA F. ROTHSTEIN, DISABILITIES AND THE LAW 2-13 (1992).

11. 42 U.S.C. §§ 12101-12213.

12. Title II (Public Services), 42 U.S.C. §§ 12131-12165, Title III (Public Accommodations and Services Operated by Private Entities), 42 U.S.C. §§ 12181-12189.

13. Thomas v. Davidson Academy, 846 F. Supp. 611, 620 (M.D. Tenn. 1994) (citing 42 U.S.C. § 12101(b)(1), (2); 29 U.S.C. § 701).

benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."[14]

The ADA makes a similar guarantee: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[15] Specifically in the context of higher education, "discrimination includes . . . the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any . . . services, facilities, privileges, advantages, or accommodations."[16]

To state a cause of action under Title II or III of the ADA, a plaintiff must show: "(1) that [he or] she is a qualified individual with a disability; (2) that [he or] she was either excluded from participation in or denied the benefits of some public [or private] entity's services, programs or activities, or was otherwise discriminated against by the public [or private] entity; and, (3) that such exclusion . . . was by reason of the plaintiff's disability."[17]

Similarly, to state a cause of action under Section 504 of the Rehabilitation Act, a plaintiff must show that (1) he or she is an individual with a disability; "(2) [he or] she is 'otherwise qualified' for participation in

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14. 29 U.S.C. § 794(a).

15. 42 U.S.C. § 12132. Title I of the ADA prohibits employment discrimination by employers with 15 or more employees. *See id.* §§ 12111-12117. Title II prohibits discrimination by state or local governmental agencies, including publicly funded institutions of higher education. *See id.* §§ 12131-12165. Title III applies to private providers of 12 specified categories of public accommodations, including educational programs, and therefore applies to private institutions of higher education. *See id.* §§ 12181-12189.

It should be further noted that American Bar Association (ABA) Standard 212 states:

> A law school may not discriminate against individuals with disabilities in its program of legal education. A law school shall provide full opportunities for the study of law and entry into the profession by *qualified* disabled individuals. A law school may not discriminate on the basis of disability in the hiring, promotion, and retention of otherwise qualified faculty and staff.

AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 212 (1997) (emphasis added) [hereinafter ABA STANDARDS].

16. 42 U.S.C. § 12182(b)(2)(A)(i). The Department of Justice, ADA regulations also provide that under Titles II and III, postsecondary educational institutions may not impose eligibility requirements for admission that "screen out or tend to screen out" qualified people with disabilities. 28 C.F.R. §§ 35.130(b)(8), 36.201(a) (1998). It should be noted that under the Department of Education regulations under Section 504, schools can use admissions tests, like the LSAT, even if the test has a disproportionate adverse effect on applicants with disabilities, as long as the institution can demonstrate that the test has been "validated as a predictor of success" in the program and alternative tests having a "less disproportionate, adverse effect" are not available. 34 C.F.R. § 104.42(b)(2).

17. Darian v. University of Mass. Boston, 980 F. Supp. 77, 84 (D. Mass. 1997) (citing McDonald v. Massachusetts, 901 F. Supp. 471, 478 (D. Mass. 1995)).

the program; (3) the program receives 'federal financial assistance;'[18] and, (4) [he or] she was 'denied the benefits of' or 'subject to discrimination' under the program."[19] Because of their substantive similarities, courts have discussed the ADA and the Rehabilitation Act together and have interpreted them consistently.[20]

Disability antidiscrimination laws impact law schools' academic programs in two ways. One area affected is a law school's academic standards. Relevant academic standards for admission to a law program include undergraduate grade point average and the Law School Admission Test (LSAT) score.[21] Schools also impose academic standards, such as a minimum cumulative grade point average, for continuation in and graduation from their programs.[22] Often falling under the umbrella of academic standards is a law school's regulation of a student's professional conduct prior to and while in law school.[23] Thus, a law school's academic standards are ongoing. As such, disability discrimination laws are implicated from the formulation of these requirements, first affecting the student at the admissions phase and continuing throughout the student's education until graduation from law school.[24]

The second area affected by disability discrimination laws is a law school's technical standards. Technical standards are nonacademic physical and mental qualifications and skills that are "essential" for students in order to complete their law program.[25] Technical standards may include major life activities such as writing, thinking, or speaking.[26] Although most law

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18. In *Grove City College v. Bell*, the Supreme Court held that receipt of federal financial assistance by one program in a college does not subject the entire college to certain civil rights acts, including the Rehabilitation Act of 1973. 465 U.S. 555, 573-74 (1984). However, the Civil Rights Restoration Act of 1987, 20 U.S.C. §§ 1687, 1688, 2000d-4a, effectively brought all colleges and universities who receive any type of federal financial assistance in any program under Section 504 of the Rehabilitation Act. *Id.* § 1687(2)(A).

19. *Darian*, 980 F. Supp. at 84-85 (quoting 29 U.S.C. § 794(a)) (footnote added).

20. Betts v. Rector & Visitors of the Univ. of Va., 967 F. Supp. 882, 885 (W.D.Va. 1997).

21. *See* ABA STANDARDS, *supra* note 15, Standard 503.

22. *Id.* Standard 303.

23. *Id.* Standard 504.

24. Although not discussed in this article, the impact of disability laws on academic and professional conduct affects a student's ability to qualify for state bar examinations. Ware v. Wyoming Bd. of Law Examr's, 973 F. Supp. 1339, 1342 (D. Wyo. 1997) (applicant sued when examiners would not provide the same accommodation that was received in law school); Bartlett v. New York State Bd. of Law Exam'rs, 970 F. Supp. 1094, 1098 (S.D.N.Y. 1997) (applicant with a learning disability sued when examiners denied test accommodations); Michael K. McKinney, Comment, *The Impact of the Americans with Disabilities Act on the Bar Examination Process: The Applicability of Title II and Title III to the Learning Disabled*, 26 CUMBERLAND L. REV. 669, 669-89 (1995-96).

25. *See* 34 C.F.R. § 104.3(k)(3), pt. 104 app. A (1998).

26. *See id.*

schools have implicit technical standards, few, if any, have explicit written technical standards. It is in the area of technical standards, however, that the issue of "who is an otherwise qualified law student" and "what is a reasonable accommodation" is often resolved.[27]

Since disability discrimination law affects both halves of the whole body of requirements, a law school applicant should be required to meet both sets of standards before being admitted into a legal program.[28] Further, these requirements should continue throughout the student's tenure at the school until successful completion of the degree.[29]

B. *Students Must Have a "Disability"*

In order for law school applicants or students to be protected under either the Rehabilitation Act or the ADA, they must have a recognizable disability as defined by the statutes.[30] The ADA defines a "disability" as: "a physical or mental impairment that substantially limits . . . [a] major life activit[y] . . .; a record of such an impairment; or being regarded as having such an impairment."[31] The Department of Justice has defined "major life activities" as "functions such as caring for oneself, performing manual tasks, walking, seeing, . . . and working."[32] Even taking these definitions into consideration, determining whether a person has a "disability" is not always a simple objective task.

In *Darian v. University of Massachusetts Boston*, the court discussed the meaning of "disability."[33] Darian, a nursing student, developed serious difficulties with her pregnancy during her studies at the University.[34] Darian suffered from "severe pelvic bone pains, premature uterine contractions, irritation of the uterus, back pain, poly hydrominus, increased heart rate, edema, and a large fetus."[35]

The court defined "disability" under the ADA.[36] Although a normal

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27. *See generally* Southeastern Community College v. Davis, 442 U.S. 397 (1979) (The Supreme Court articulated the technical standards of the nursing program and evaluated Davis' disability to see if reasonable accommodations could be made, and whether she was otherwise qualified for the program.).

28. McGregor v. Louisiana State Univ. Bd. of Supervisors, 3 F.3d 850, 855 (5th Cir. 1993).

29. *Id.* at 854. Just because applicants are "otherwise qualified for admission" to law school does not mean that they are "otherwise qualified for retention." *Id.*

30. 29 U.S.C. § 795; 42 U.S.C. §§ 12101-12213, respectively.

31. 42 U.S.C. § 121029(2); *see also* 29 U.S.C. § 794(d) (adopting the standards applied under Title I of the ADA for violations of the Rehabilitation Act of 1973).

32. 29 C.F.R. § 1630.2(i).

33. 980 F. Supp. at 77, 85-87.

34. *Id.* at 80.

35. *Id.*

36. *Id.* at 85 (citing 42 U.S.C. § 12102; 29 U.S.C. § 794(d)).

pregnancy is usually not considered a disability, the court noted that Darian's conditions "were not a function of a normal pregnancy, but rather a physiological disorder with disabling consequences," which "limited several major life activities . . . [like] education, manual tasks, walking, sitting, sleeping, and learning."[37] The court concluded that Darian's abnormal pregnancy constituted a disability.[38]

On the other hand, in *Price v. National Board of Medical Examiners*, the court found that the plaintiffs' disabilities did not bring them within the coverage of the ADA.[39] The court found that although both plaintiffs had Attention Deficit Hyperactivity Disorder,[40] it did not rise to the level of a "substantial impairment" when their abilities were compared to the abilities of most unimpaired persons.[41] The court noted that, in fact, each of the plaintiffs had a "history of significant scholastic achievement reflecting a complete absence of any substantial limitation on learning ability."[42] Accordingly, the court concluded that the plaintiffs were not disabled for purposes of the ADA.[43]

As *Darian* and *Price* illustrate, a plaintiff's impairment both needs to be a recognized disorder or disability and must rise to the level of a substantial impairment in order for the plaintiff to be covered under Section 504 and the ADA. In most cases, however, the predominant dispute between the parties is not whether plaintiffs are "disabled," but whether, given their disability, they are "otherwise qualified" for the program.

C. *Students Must Be "Otherwise Qualified"*

The U.S. Supreme Court first addressed the definition of "otherwise qualified" in *Southeastern Community College v. Davis*.[44] In *Davis*, the plaintiff was an applicant to Southeastern's registered nurse program.[45] Davis suffered from "bilateral, sensori-neural hearing loss" and relied on lip-reading to fully comprehend speech.[46] Southeastern denied her admission to the program, stating that Davis' disability and reliance on lip-reading made it unsafe for her to practice as a nurse and impossible for her to safely participate in the clinical training program.[47] The Court held that

37. *Id.*
38. *Id.*
39. 966 F. Supp. 419, 428 (S.D. W. Va. 1997).
40. *Id.* at 422.
41. *Id.* at 427.
42. *Id.*
43. *Id.* at 428.
44. 442 U.S. 397 (1979).
45. *Id.* at 400.
46. *Id.* at 401.
47. *Id.*

Southeastern would not be forced to accept Davis,[48] holding that an "otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap."[49] Because Davis' disability prevented her from safely participating in the clinical program, she would not be able to meet all the program's requirements and therefore, was not "otherwise qualified."[50] The Court also held that the college did not have to accommodate Davis by waiving its clinical requirement because this would amount to a "fundamental alteration" of its program.[51]

Later in *Alexander v. Choate*,[52] the Supreme Court modified the "otherwise qualified" definition to include persons capable of meeting a program's requirements with a "reasonable accommodation."[53] Two years later, the Court succinctly summarized the definition of an "otherwise qualified" person in *School Board of Nassau County v. Arline*:[54]

> In the employment context, an otherwise qualified person is one who can perform "the essential functions" of the job in question. When a handicapped person is not able to perform the essential functions of the job, the court must also consider whether any "reasonable accommodation" by the employer would enable the handicapped person to perform those functions. Accommodation is not reasonable if it either imposes "undue financial and administrative burdens" on a grantee, or requires "a fundamental alteration in the nature of [the] program."[55]

In an employment scenario, "essential functions" are "fundamental job duties," examples of which include the job's primary purpose and expert or highly specialized functions for which the individual was specifically hired.[56] In the context of education, students must be able to perform the essential functions of a program, which include the academic and technical standards of the program.[57]

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48. *Id.* at 414.
49. *Id.* at 406.
50. *Id.* at 414.
51. *Id.* at 410, 413.
52. 469 U.S. 287 (1985).
53. *Id.* at 300.
54. 480 U.S. 273 (1987).
55. *Id.* at 287 n.17 (citations omitted).
56. 29 C.F.R. § 1630.2(n).
57. *McGregor*, 3 F.3d at 855.

II. LAW SCHOOLS SHOULD DEVELOP ACADEMIC AND TECHNICAL STANDARDS

A. *Academic Standards*

Most schools have explicit written academic standards. All ABA-accredited law schools are required to have academic standards for admitting students into a legal program and for allowing students to continue in a legal program.[58] Academic standards for admission are commonly advertised in school application packages. The academic standards required to continue in a program are often found in school handbooks and catalogues. As mentioned previously, academic standards include entering grade point averages, standardized test scores, and past behavior that could affect a student's performance in law school. Explicit written academic standards have served to protect schools in lawsuits when they have been sued by someone who has fallen below those standards.[59]

B. *Technical Standards*

Although most law schools have been diligent in establishing academic standards, few have developed technical standards. Technical standards refer to "all nonacademic admissions criteria that are essential to participation in the program in question."[60] In programs imposing technical standards, an

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58. ABA STANDARDS, *supra* note 15, Standards 101, 303.

59. *See* Scott v. Western State Univ. College of Law, No. 96-56088, 1997 WL 207599, at *1 (9th Cir. Apr. 25, 1997) (unpublished opinion) (holding that the law student who claimed that his dismissal from law school violated the ADA and the Rehabilitation Act and who did not maintain a minimum GPA was not otherwise qualified, and any modification would fundamentally alter the program); Gent v. Radford Univ., 976 F. Supp. 391, 393 (W.D. Va. 1997) (holding that the student did not allege that the GPA requirement had a disparate impact on students with disabilities); Betts v. Rector & Visitors of the Univ. of Va., 967 F. Supp. 882, 889 (W.D. Va. 1997) (holding that the student's offer of admission to medical school was not arbitrarily rescinded when the student did not maintain a required undergraduate GPA of 2.75); Vanderbilt University, 4 NDLR ¶ 382 (1993) (deciding that a law school applicant with learning disabilities was not qualified because his LSAT score was below that of all other accepted students); Duke University, 4 NDLR ¶ 448 (1993) (deciding that a law school applicant with Attention Deficit Disorder was not qualified when compared to other applicants because the combination of his LSAT and GPA was lower than that of all accepted students including other applicants with disabilities who were accepted into the program).

60. 34 C.F.R. pt. 104 app. A, at 354-55. For example, technical standards for admission to the University of Florida College of Medicine state that a candidate for the M.D. degree must have abilities and skills in five categories:

> I. Observation: The candidate must be able to observe demonstrations and experiments in the basic sciences . . . . A candidate must be able to observe a patient accurately . . . . In detail, observation necessitates the functional use of the

applicant with a disability must meet both the academic requirements and the technical standards, with or without a reasonable accommodation, in order to be deemed "otherwise qualified" for the given program.[61] Without explicit technical standards, therefore, there is no fair method to determine whether students are "otherwise qualified" or whether an accommodation is reasonable.

Higher education is covered under different Titles of the ADA than business,[62] nonetheless, courts have interpreted "essential functions" to be the same for each.[63] The concept of essential functions is better defined in the business context because of the greater number of cases in that area. Thus, institutions of higher education, such as law schools developing technical standards, can benefit by analyzing the concept of "essential functions" as defined in the employment context.

1. Essential Functions in Business

In establishing the essential functions of a job, the ADA specifically provides guidance to employers by stating:

> For the purpose of this [title], consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written [job] description *before* advertising or interviewing applicants for the job, this description

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sense of vision and other sensory modalities.

II. Communication: A candidate must be able to communicate effectively and sensitively with patients. . . . Communication includes not only speech but reading [and] writing . . . . The candidate must be able to communicate effectively in oral and written form . . . .

III. Motor: Candidates must have sufficient motor function to elicit information from patients by palpation, auscultation, [and] percussion . . . . Such actions require coordination of both gross and fine muscular movements, equilibrium, and functional use of the senses of touch and vision.

IV. Intellectual-Conceptual, Integrative and Quantitative Abilities: These abilities include measurement, calculation, reasoning, analysis and synthesis of complex information.

V. Behavioral and Social Attributes: A candidate must possess the emotional health required for full utilization of his or her intellectual abilities . . . . Compassion, integrity, interpersonal skills, interest and motivation are all personal qualities that are assessed during the admissions and education processes.

1998-99 University of Florida College of Medicine Application for Admission.

61. *McGregor*, 3 F.3d at 855.

62. 42 U.S.C. §§ 12111-12117 (employment issues); 12131-12189 (public and private schools).

63. *See* Knapp v. Northwestern Univ., 101 F.3d 473, 482 (7th Cir. 1996) (using the definition of essential functions developed in the employment case *Arline*, 480 U.S. at 287 n.17).

shall be considered evidence of the essential functions of the job.[64]

Although courts are not required to follow the employer's judgment or job description, it is clearly Congress' intent that deference be given to those employers who put prospective employees on notice of the essential functions of a position prior to the application and interview process.[65]

In the business setting, essential functions refer to job tasks that are fundamental, not marginal, to the job.[66] A prospective employee cannot be denied employment on the basis of a mental or physical job requirement that is not necessary for the effective performance of the basic tasks of the particular job in question.[67] However, if employees cannot perform the essential functions of a job, they are then not "otherwise qualified" for the position.[68]

A function is essential if the position exists to perform the function, there are a limited number of other employees available to perform the function or among whom the function can be distributed, or the function is highly specialized and the person considered for the position is hired for particular expertise or ability to perform the job.[69]

The Equal Employment Opportunity Commission states that the following factors may be used as evidence that a function is essential: written job descriptions prepared prior to advertising a position, the job advertisement, the amount of time spent performing the function, the consequences of not requiring a person in the job to perform the function, the work experience of people who have performed the job in the past and of those who currently perform similar jobs, and the employer's judgment.[70] As mentioned previously, courts have given consideration to an employer's judgment when the judgment was made prior to advertising a position.[71] Furthermore, courts have given deference when there is no evidence that an employer's judgment was made in such a way as to specifically exclude a

64. 42 U.S.C. § 12111(8) (emphasis added).

65. *See id.*

66. 29 C.F.R. § 1630.2(n)(1); Davis v. Frank, 711 F. Supp. 447, 454 (N.D. Ill. 1989).

67. *Davis*, 711 F. Supp. at 454.

68. O'Keefe v. Niagara Mohawk Power Corp., 714 F. Supp. 622, 627 (N.D.N.Y. 1989) (stating that an employee whose job required him to give presentations throughout the state could not perform the essential functions of his job when he lost his drivers license due to a drunk driving conviction); Plourde v. Scott Paper Co., 552 A.2d 1257, 1262 (Me. 1989) (holding that an applicant who could not lift 50 pounds due to back problems was not otherwise qualified for a position that required him to lift 50-pound loads). *See generally* JAMES G. FRIERSON, EMPLOYER'S GUIDE TO THE AMERICANS WITH DISABILITIES ACT (2d ed. 1995).

69. 29 C.F.R. § 1630.2(n)(2).

70. *Id.* § 1630.2(n)(3).

71. 42 U.S.C. § 12111(8).

person with a disability.[72]

There are four lessons concerning the establishment of essential functions that higher education, specifically law schools, should learn from business when formulating technical standards. First, the essential functions of a program need to be determined and written down, so that when a request for an accommodation is made, the essential function cannot be construed to be a pretext for discrimination. Second, the essential elements of a legal program, in the form of technical standards, should be advertised by means of the application package prior to a law student's matriculation. Third, technical standards should not be specifically developed with the purpose of keeping a person with a disability from actively participating in a legal program. Fourth, only those elements of a program that are essential, not marginal, should be included in the technical standards.

2. Essential Functions of a Legal Education: Who Decides?

Establishment of the essential functions and elements of a legal education should come from three sources: accrediting agencies, the legal profession, and the faculty. Each group plays a major role in the defining of a legal program of education.

a. *Accrediting Agencies*

Law schools who wish to remain accredited by the American Bar Association (ABA) must follow its standards.[73] ABA Standard 101 states: "A law school approved by the Association or seeking approval by the Association shall demonstrate that its program is consistent with sound legal educational principles. It does so by establishing that it is being operated in compliance with the Standards."[74] Any disability-related accommodation that violates the ABA Standards might result in a fundamental alteration in the legal program because the law school might risk loss of its accreditation.[75]

There are several ABA Standards that may be in conflict with potential accommodations. First, students may request an accommodation for missing a large number of class meetings due to their disability. However, ABA Standard 304(c) states that "[r]egular and punctual class attendance is

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72. *Southeastern Community College*, 442 U.S. at 406; EEOC v. Amego, Inc., 110 F.3d 135, 144-45 (1st Cir. 1997). *But see Davis*, 711 F. Supp. at 455 (holding that it was discriminatory for a branch post office to add the duty of answering a telephone to a standardized job description with the intent of keeping a worker with a hearing impairment from applying for that position).

73. ABA STANDARDS, *supra* note 15, Standard 101.

74. *Id.*

75. *See id.*

necessary to satisfy residence credit and class hour requirements."[76] Since the ABA requires regular class attendance to be demonstrated, a law school would not be able to accommodate absence from a large number of classes without fundamentally altering its program. Thus, class attendance could be considered an essential function or element of a legal education.

The issue may arise as to the interpretation of the term, "regular attendance." If law schools were to develop technical standards that included class attendance, it would be important for them to establish a rational, consistent, and enforceable attendance policy. Within that attendance policy, the school would want to define the term "regular."

A second example of a potential conflict with accommodation is Standard 304(g), which states that "[a] law school shall not grant credit for study by correspondence."[77] Clearly, it is the intention of the ABA that students be physically in the classroom instead of receiving their legal education from only books and audiovisual recordings.[78] There are various reasons why a law school may find "physical" class attendance to be an essential part of a legal education, but one obvious reason is to maintain its accreditation by the ABA.[79] Thus, it would fundamentally alter a law program, through loss of accreditation, if students wanted an accommodation by which they would not physically attend their classes.[80]

b. *The Legal Profession*

ABA Standard 501 requires that "[a] law school shall not admit applicants who do not appear capable of satisfactorily completing its educational program and being admitted to the bar."[81] Under this ABA Standard, an essential function of a legal program is the ability of an applicant or a law student to graduate from law school *and* be admitted to a bar.[82] An argument can be made that a person could choose to attend law school merely for the mental challenge and not in order to be an active member of a bar upon completion of the law degree. ABA Standard 301(a), however, states that "[a] law school *shall* maintain an educational program that is designed to qualify its graduates for admission to the bar and to prepare them to participate effectively in the legal profession."[83] Therefore,

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76. *Id.* Standard 304(c).
77. *Id.* Standard 304(g).
78. *See id.*
79. *Id.*
80. Standard 305 does allow for some courses, *e.g.*, internships, to be taken outside of a regular classroom, but the course hours are limited by Standard 305(e). *Id.* Standard 305(e).
81. *Id.* Standard 501(b).
82. *Id.*
83. *Id.* Standard 301(a) (emphasis added). Further, any student who graduates from an ABA-accredited law school is eligible to apply to sit for the bar examination in all 50 states.

if prospective or current law students cannot perform the essential skills of a practicing attorney, with or without reasonable accommodations, they are not an "otherwise qualified" law student.[84] The question then begs to be asked, "What are the essential functions and skills of an attorney?"

In 1989, the ABA Section of Legal Education and Admissions to the Bar commissioned a task force to study how the gap between legal education and the practicing bar could be narrowed.[85] Through a series of workshops, public meetings, submission of comments, and research, the ABA task force, comprised of judges, attorneys, law school deans, and law professors,[86] formulated a list of ten fundamental lawyering skills essential for competent representation.[87]

The task force recognized that institutions of legal education and the practicing bar are part of one profession, and not two separate communities.[88] The task force noted that "[t]he skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches it most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career."[89] Thus, the fundamental skills necessary to be a practicing attorney are the same fundamental and essential skills needed to be a law student.[90]

The ten essential skills identified by the task force are: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas.[91] In developing technical standards, a law school could use all or some of these skills to help define the essential skills of a legal education.

A second source for determining what the profession believes are the essential functions of practicing law is a state's Board of Bar Examiners. Three state Boards of Bar Examiners currently have technical standards for

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See generally ABA Section of Legal Education & Admissions to the Bar, and National Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 1997-98*, at 17-20 (1997).

84. *Id.*

85. ABA Task Force on Law Schools and the Profession, *Legal Education and Professional Development — An Education Continuum*, at xi (Robert MacCrate, Chair, 1992) [hereinafter *MacCrate Report*). In honor of the chair of the task force, the final project is often referred to as the "MacCrate Report." *See infra* app. A for part of the *MacCrate Report*.

86. *MacCrate Report*, *supra* note 85, at xi-xiv.

87. *Id.* at 135, *infra* app. A.

88. *MacCrate Report*, *supra* note 85, at 3.

89. *Id.*

90. *See id.*

91. *Id.* at 138-40.

the practice of law in their jurisdictions.[92]

In June 1998, the Florida Board of Bar Examiners notified law schools of the adoption of "Essential Eligibility Requirements for the Practice of Law in Florida."[93] Much like the ABA task force, the Florida Board of Bar Examiners held meetings made up of judges, lawyers, and law school personnel.[94] Also, like the ABA task force, the Florida Board of Bar Examiners conducted research and received a large number of written comments concerning the development of its "Essential Eligibility Requirements."[95] The skills numerated in these Requirements are similar to the ABA Task Force's Essential Skills.[96] The Requirements include: "[t]he ability to reason logically and accurately analyze legal problems," the ability to comply with deadlines, and the ability to communicate "candidly and civilly."[97] Like the ABA task force guidelines, the Requirements could be used as a guide for the development of a law school's technical standards.

c. *The Faculty*

Besides the accrediting agencies and the legal profession, the faculty also should determine what skills, components, and programs are essential for a legal education. What the faculty decides is essential may or may not be in agreement with what the profession believes is essential. As noted above, law school technical standards should include those skills essential to the profession, but these technical standards and essential elements also may include items that may not be used during the practice of law. The case of *Doherty v. Southern College of Optometry* demonstrates how a school's program requirements can sometimes differ from the demands students may face once they are practicing.[98]

Doherty, a student at the Southern College of Optometry (SCO), suffered from tunnel vision, night blindness, and an associated neurological condition impairing his motor skills, sense of touch, and manual coordination, which

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92. Currently, Florida, see *infra* app. B, Minnesota, see *infra* app. C, and Ohio, see *infra* app. D, are the only Boards of Bar Examiners who have explicit technical standards for the practice of law.

93. Letter from Kathryn E. Ressel, Executive Director, Florida Board of Bar Examiners, to Richard Matasar, Dean of the University of Florida College of Law (June 18, 1998) (on file with the author); see *infra* app. B.

94. Letter from Kathryn E. Ressel to Richard Matasar, *supra* note 93.

95. Telephone Interview with Kathryn Ressel, Executive Director, Florida Board of Bar Examiners (Aug. 27, 1998).

96. Howard B. Eisenberg, Dean of Marquette University Law School, suggested at the *Joint Conference on Disability Issues*, held in November 15, 1997, the use of the *MacCrate Report* as a paradigm to developing technical standards for state boards of bar examiners.

97. Letter from Kathryn E. Ressel to Richard Matasar, *supra* note 93.

98. 659 F. Supp. 662, 668 (W.D. Tenn. 1987).

prevented him from feeling pain, pressure, or vibration in his fingertips.[99] SCO had a clinical requirement in which students must demonstrate proficiency on several eye instruments used to detect eye pathologies.[100] If used incorrectly, these instruments pose great danger to the patient, potentially causing damage to the cornea.[101] Because of his impaired motor skills and lack of sensation in his fingertips, which made it impossible for him to detect the amount of pressure he was putting on the eye, Doherty twice failed this clinical requirement.[102] Doherty requested a waiver of this requirement, stating that he intended to limit his practice to work not involving the use of these instruments.[103] He put on evidence stating that these instruments often played only a "minimal role" in the practice and that an optometrist could structure a practice without the use of any of the instruments.[104]

SCO insisted that demonstrated proficiency in the use of eye instruments was a reasonable and necessary requirement of the program.[105] The school stated that "use of [the] instruments was the 'standard of care' for present-day practicing optometrists and a necessary part of a general optometry exam."[106]

The court agreed with SCO's justifications for the clinical requirement.[107] Furthermore, they added that:

> SCO may set standards for its program that insure a particular level of competence in particular areas.
>
> . . . Plaintiff's intention or ability to structure a practice that does not require use of the instruments is thus of little probative value with respect to the necessity of the requirement. Training in any professional field requires mastery of a variety of subject matter areas the professional may not use later. The focus must be on the basis for the requirement, not whether it is conceivable to work as an optometrist without meeting it.[108]

The court concluded that Doherty could not meet the program's essential requirements and was, therefore, not otherwise qualified for the program.[109]

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99. *Id.* at 663.
100. *Id.* at 665.
101. *Id.* at 668.
102. *Id.* at 667.
103. *Id.* at 669.
104. *Id.*
105. *Id.* at 668.
106. *Id.*
107. *Id.* at 671.
108. *Id.* at 671-72.
109. *Id.* at 673-74.

Doherty illustrates the legal ability of an educational institution to formulate and impose technical requirements that are reasonable and desirable even if students never again employ those skills once they are in practice or in a nonlegal career.[110] What students ultimately intend to do with their degree, how they intend to structure their practice, or if they intend to practice at all, is of little probative value when deciding the reasonableness or desirability of a program's requirements.

Most program requirements will withstand court scrutiny as long as they are rational.[111] When a court reviews the decisions of an academic institution, especially in the context of program requirements, it usually gives great deference to the institution, unless the institution's decision is clearly arbitrary or unreasonable.[112] The U.S. Supreme Court stated:

> When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.[113]

Accordingly, courts will almost universally uphold a school's program requirements.[114] As one court noted, a school will need to document the importance of the requirement, elaborate upon the unique qualities of the requirement, and show why an accommodation will fundamentally alter the program or lower academic standards, thereby devaluing the university's degree.[115]

In *McGregor v. Louisiana State University Board of Supervisors*,[116] a law student, who suffered from permanently disabling head and spinal injuries, sued Louisiana State University Law Center (LSU) when it would not allow him to continue his studies after falling below the minimum

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110. *Id.*

111. Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214, 225 (1985).

112. *Id.* at 225-26.

113. *Id.* at 225 (footnote omitted).

114. *See id.*

115. Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 793 (1st Cir. 1992). A school must be able to submit "undisputed facts [showing] that the relevant officials . . . considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the . . . alternatives would result either in lowering academic standards or requiring substantial program alteration" to demonstrate it has fulfilled the duty of attempting to provide reasonable accommodation. *Id.* (quoting Wynne v. Tufts Univ. Sch. of Med., 932 F.2d 19, 26 (1991)).

116. 3 F.3d 850 (5th Cir. 1993).

standards for continuing his legal education.[117] McGregor claimed that he did not achieve the minimum academic success because LSU did not grant him his requested accommodations; whereas, LSU believed McGregor's requested accommodations were unreasonable.[118] Due to his disabilities, McGregor requested that he be allowed to be a part-time law student, take his exams at home, and not be required to meet the minimum GPA to advance to his second year of law studies.[119] The school rejected his requests, but did allow the student double-time on his exams; a choice of floors on which to take his exams; a room set up with a handicapped table; a student proctor to address his personal needs; and permission to eat and drink in the exam room to maintain his sugar level.[120]

In reaching a decision in favor of LSU, the court noted that "[t]he Supreme Court in *Davis* made clear that § 504 does not mandate that an educational institution 'lower or [] effect substantial modifications of standards to accommodate a handicapped person,' assuming such standards are reasonable."[121] The court stated that McGregor would only be entitled to requested accommodations if he could "demonstrate that the accommodations constitute reasonable deviations from the Law Center's usual requirements 'which meet[] his special needs without sacrificing the integrity of the [Law Center's] program.' "[122]

The court further noted that "absent evidence of discriminatory intent or disparate impact, [the court] must accord reasonable deference to the Law Center's academic decisions."[123] In this case, the court found that LSU's standards were reasonable; thus, the student's requested accommodations were unreasonable.[124] Further, since the student could not meet the standards, he was not an "otherwise qualified" student.[125]

III. IMPLEMENTING TECHNICAL STANDARDS

Once a law school has developed technical standards, it must properly implement these standards. First, the school should advertise the technical standards to prospective and current students by means of its application

117. *Id.* at 854.
118. *Id.* at 857.
119. *Id.* at 856-57.
120. *Id.* at 856.
121. *Id.* at 858 (quoting Southern Community College v. Davis, 442 U.S. 397, 413 (1979)) (alteration in the original).
122. *Id.* at 858-59 (quoting Brennan v. Stewart, 834 F.2d 1248, 1262 (5th Cir. 1988)) (citations omitted) (alteration in the original).
123. *Id.* at 859.
124. *Id.*
125. *Id.* at 860.

package, the school bulletin, and the school handbook.[126] Second, when a request for an exception or accommodation to the academic or technical standards is made, the law school must make an individualized determination of the request.[127]

Pushkin v. The Regents of the University of Colorado illustrates the need for law schools to make individualized determinations about the fitness of applicants with a disability for the school's program.[128] Pushkin, an applicant to the University of Colorado's Psychiatric Residency Program, suffered from multiple sclerosis and was confined to a wheelchair.[129] Prior to the denial of admission, the University's admissions committee had made several incorrect assumptions about Pushkin's multiple sclerosis in their decision to deny his application.[130]

The admissions committee made their assumptions about Pushkin's fitness based on 45-minute interviews and conversations among themselves.[131] Dr. Pushkin's evidence, on the other hand, came from people with personalized knowledge of his abilities, personality, and endurance, and of the impact of his multiple sclerosis on his overall fitness for the Psychiatric Residency Program.[132] The court found for Pushkin and required the University to take him into their program.[133] It concluded that the admissions committee had not made an effort to individually investigate the applicant, but instead merely relied on generic symptoms and stereotypes.[134]

IV. MODEL TECHNICAL STANDARDS FOR A LAW SCHOOL

The following is an example of a technical standard policy for a law school. Individual law schools should develop their own technical standards after consulting their general counsel office, their law faculty, and their state board of bar examiners. After developing a technical standards policy, schools should advertise the policy in their admissions package and student handbooks.

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126. *See supra* text accompanying notes 70-72, 73-75.

127. Pushkin v. The Regents of the Univ. of Colo., 658 F.2d 1372, 1387-91 (10th Cir. 1981).

128. *Id.*

129. *Id.* at 1376.

130. *Id.* at 1389. These assumptions included that, due to his MS, Pushkin "was angry and so emotionally upset . . . [that he could not do] an effective job as a psychiatrist; . . . [had] difficulties with mentation, delirium and disturbed sensorium; . . . would be unable to handle the work involved in the residency; and . . . would miss too much time . . . whereby [his patients] would suffer." *Id.*

131. *Id.*

132. *Id.* at 1388-89.

133. *Id.* at 1391.

134. *Id.* at 1389-91.

Y COLLEGE OF LAW: TECHNICAL STANDARDS FOR LAW SCHOOL ADMISSION

A candidate for the J.D. degree must have abilities and skills in five categories: intellectual, communication, behavioral and social, physical, and time management. The *X* College of Law is committed to enabling its qualified students by any reasonable means or accommodations to complete the course of study leading to the law degree.

> I. Intellectual-Conceptual and Integrative Skills: The candidate must be able to solve complex problems,[135] perform legal analysis and reasoning,[136] and perform legal research.[137]
> II. Communication Skills: A candidate must be able to effectively communicate.[138] A candidate must be able to communicate candidly and civilly with others.[139] A candidate must be able to memorialize and organize information in an accessible form.[140]
> III. Behavioral and Social Attributes: A candidate must possess the emotional health required for full utilization of his or her abilities[141] and possess the interpersonal skills to work with others.[142]
> IV. Physical Abilities: A candidate must be able to have regular and punctual class attendance.[143]
> V. Time Management: A candidate must be able to meet time deadlines.[144]

Questions concerning the *X* College of Law Technical Standards should be discussed with the Coordinator of Disability Services prior to matriculation into the college of law.

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135. *MacCrate Report*, *supra* note 85, at 148-51, *infra* app. A; Florida Board of Bar Examiners Essential Eligibility Requirements, *infra* app. B.

136. *MacCrate Report*, *supra* note 85, at 156-57, *infra* app. A; Florida Board of Bar Examiners Essential Eligibility Requirements, *infra* app. B.

137. *MacCrate Report*, *supra* note 85, at 163, *infra* app. A; Florida Board of Bar Examiners Essential Eligibility Requirements, *infra* app. B.

138. *MacCrate Report*, *supra* note 85, at 175-76, *infra* app. A.

139. Florida Board of Bar Examiners Essential Eligibility Requirements, *infra* app. B.

140. *MacCrate Report*, *supra* note 85, at 169, *infra* app. A.

141. The Florida Board of Bar Examiners "Guidelines for Mental Health Assessment," are being finalized. The guidelines are not currently in the public domain. Any person desiring a copy of the guidelines may contact: The Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, FL 32399-1750.

142. *MacCrate Report*, *supra* note 85, at 201-03, *infra* app. A.; Florida Board of Bar Examiners Essential Eligibility Requirements, *infra* app. B.

143. ABA STANDARD, *supra* note 15, Standard 304(c).

144. *MacCrate Report*, *supra* note 85, at 200, *infra* app. A; Florida Board of Bar Examiners Essential Eligibility Requirements, *infra* app. B.

V. CONCLUSION

Technical standards should not be used to keep qualified students with disabilities from attending law school. In fact, the standards should do just the opposite. The exercise of developing a set of explicit technical standards should highlight for a law school community what skills are essential or marginal. Further, technical standards will allow law schools to feel comfortable in granting reasonable accommodations, while protecting the integrity of their programs. The standards should provide a method for both law school applicants and law schools to properly and fairly evaluate a student's capacity to meet minimum requirements prior to the investment of time and resources.

APPENDIX A. THE MACCRATE REPORT[145]

Fundamental Lawyering Skills

Skill § 1: *Problem Solving*

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

1.1 Identifying and Diagnosing the Problem;
1.2 Generating Alternative Solutions and Strategies;
1.3 Developing a Plan of Action;
1.4 Implementing the Plan;
1.5 Keeping the Planning Process Open to New Information and New Ideas.

Skill § 2: *Legal Analysis and Reasoning*

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

2.1 Identifying and Formulating Legal Issues;
2.2 Formulating Relevant Legal Theories;
2.3 Elaborating Legal Theory;
2.4 Evaluating Legal Theory;
2.5 Criticizing and Synthesizing Legal Argumentation.

Skill § 3: *Legal Research*

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

3.1 Knowledge of the Nature of Legal Rules and Institutions;
3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design.

Skill § 4: *Factual Investigation*

In order to plan, direct, and (where applicable) participate in factual

145. *MacCrate Report*, *supra* note 85, at 135-41. This section of the *MacCrate Report* was *Reprinted by Permission* of the American Bar Association.

investigation, a lawyer should be familiar with the skills and concepts involved in:

4.1 Determining the Need for Factual Investigation;
4.2 Planning a Factual Investigation;
4.3 Implementing the Investigative Strategy;
4.4 Memorializing and Organizing Information in an Accessible Form;
4.5 Deciding Whether to Conclude the Process of Fact-Gathering;
4.6 Evaluating the Information that Has Been Gathered.

Skill § 5: *Communication*

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

5.1 Assessing the Perspective of the Recipient of the Communication;
5.2 Using Effective Methods of Communication.

Skill § 6: *Counseling*

In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skills and concepts involved in:

6.1 Establishing a Counseling Relationship that Respects the Nature and Bounds of a Lawyer's Role;
6.2 Gathering Information Relevant to the Decision to Be Made;
6.3 Analyzing the Decision to Be Made;
6.4 Counseling the Client About the Decision to Be Made;
6.5 Ascertaining and Implementing the Client's Decision.

Skills § 7: *Negotiation*

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

7.1 Preparing for Negotiation;
7.2 Conducting a Negotiation Session;
7.3 Counseling the Client About the Terms Obtained from the Other Side in the Negotiation and Implementing the Client's Decision.

Skill § 8: *Litigation and Alternative Dispute-Resolution Procedures*

In order to employ — or to advise a client about — the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of theses processes and should have a working knowledge of the fundamentals of:

8.1 Litigation at the Trial-Court Level;
8.2 Litigation at the Appellate Level;
8.3 Advocacy in Administrative and Executive Forums;
8.4 Proceedings in Other Dispute-Resolution Forums.

Skill § 9: *Organization and Management of Legal Work*

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

9.1 Formulating Goals and Principles for Effective Practice Management;
9.2 Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently;
9.3 Developing Systems and Procedures to Ensure that Work Is Performed and Completed at the Appropriate Time;
9.4 Developing Systems and Procedures for Effectively Working with Other People;
9.5 Developing Systems and Procedures for Efficiently Administering a Law Office.

Skill § 10: *Recognizing and Resolving Ethical Dilemmas*

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

10.1 The Nature and Sources of Ethical Standards;
10.2 The Means by Which Ethical Standards Are Enforced;
10.3 The Processes for Recognizing and Resolving Ethical Dilemmas.

APPENDIX B. THE FLORIDA BOARD OF BAR EXAMINERS[146]

Essential Eligibility Requirements for the Practice of Law in Florida

1. Knowledge of the fundamental principles of the law and their application.
2. The ability to reason logically and accurately analyze legal problems.
3. The ability to and the likelihood that in the practice of law one will:

   A. Comply with deadlines.
   B. Communicate candidly and civilly with clients, attorneys, courts and others.
   C. Conduct financial dealings in a responsible, honest and trustworthy manner.
   D. Avoid acts that are illegal, dishonest, fraudulent or deceitful.
   E. Conduct oneself in accordance with the requirements of applicable state, local and federal laws, regulations and statutes; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

146. The "Essential Eligibility Requirements for the Practice of Law in Florida" are being finalized. The requirements are not currently in the public domain. Any person desiring a copy of the requirements may contact: The Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, FL 32399-1750.

APPENDIX C. THE MINNESOTA BOARD OF LAW EXAMINERS[147]
(Effective August 26, 1998)

Rule 5. Standards for Admission

A. ESSENTIAL ELIGIBILITY REQUIREMENTS. Applicants must meet the following essential eligibility requirements for the practice of law:

(1) The ability to reason, recall complex factual information and integrate that information with complex legal theories;

(2) The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;

(3) The ability to use good judgment on behalf of clients and in conducting one's professional business;

(4) The ability to conduct oneself with respect for and in accordance with the law;

(5) The ability to avoid acts which exhibit disregard for the rights or welfare of others;

(6) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a Court or tribunal;

(7) The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;

(8) The ability to use honest and good judgment in financial dealings on behalf of oneself, clients, and others; and

(9) The ability to comply with deadlines and time constraints.

147. MINNESOTA RULES FOR ADMISSION TO THE BAR Rule 5(A) (1998).

APPENDIX D. THE OHIO BOARD OF BAR EXAMINERS[148]

The Ohio Bar Examination is designed to test for the essential skills and aptitudes that the Supreme Court of Ohio and the Board of Bar Examiners have determined are appropriate to require for admission to the practice of law in Ohio. The examination provides applicants with the opportunity to demonstrate over a range of substantive legal areas that they possess these skills and aptitudes. The skills and aptitudes that the bar examination seeks to test fall into the following categories, which are necessarily inter-related. In answering a particular question in a particular substantive area of law, an applicant should be mindful that the evaluation of the answer will involve an assessment of the degree to which the applicant demonstrates that the applicant possesses all of these skills and aptitudes.

1. Substantive Legal Knowledge: An applicant should be knowledgeable of the fundamental principles of law in each of the substantive areas designated for examination. An applicant should be able to identify the substantive area(s) of law involved in a question, and the principles of law within the substantive area(s) that apply to the facts set forth in a question.

2. Analytical Ability: An applicant should be able to demonstrate the ability to analyze facts and to apply to those facts the substantive legal principles that will control the result in a particular case. This form of analytical ability involves the ability to recognize and identify legal issues that are implicated by specific facts, the ability to sort material facts from immaterial facts, the ability to recognize and evaluate competing legal theories that might apply to the facts, and the use of sound legal reasoning in applying legal principles to material facts to reach a proper result. It also involves the ability to recognize when different legal analysis might lead to a different but nonetheless logically supportable result.

3. Effective Communication: An applicant should be able to organize ideas, and express them with clarity, precision and persuasive force. An applicant should be able to demonstrate facility with the English language and commitment to writing well, including appropriate vocabulary, grammar, syntax, spelling, and punctuation.

4. Principled Advocacy: An applicant should demonstrate a commitment to the ideals of the legal system, including adherence to the ethical norms of the profession as expressed in the Code of Professional Responsibility. An applicant should be honest in advocating a particular result, and should not

148. The Ohio Bar Technical Standards are not available in the public domain. Any person desiring a copy may contact: The Supreme Court Administrator, 30 E. Broad St., 2nd Floor, Columbus, OH 43215.

misrepresent either facts that have been provided or the content of any legal principle on which the applicant relies.

5. Management of Legal Work: An applicant should demonstrate the ability to assimilate and analyze complex factual material, and to respond effectively to questions under time constraints.