EXPECTATIONS AND ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT

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21st ANNUAL LAW & HIGHER EDUCATION CONFERENCE
Clearwater Beach, Florida
February 10 - 12, 2000
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Introduction

In 1975, Congress enacted the Education for All Handicapped Act to aid state governments in providing education to children with disabilities. This statute, which later became known as the Individual with Disabilities Education Act (“IDEA”), 20 U.S.C. 1400 et seq. (Supp. 1998), was enacted in response to the Congressional perception that a majority of children with disabilities were “either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out.” H.R. Rep. No. 94-332 at 2 (1975). In 1997, the IDEA was amended so as to strengthen the statute’s basic requirement that all eligible children with disabilities be provided with a “free appropriate public education.”

Since its inception, the IDEA has had a significant impact on the education of children in elementary and secondary schools. The impact of the statute, however, has evolved over time. As a result of developing judicial interpretation, Congressional pronouncements, and community acceptance and understanding, the dictates of the IDEA have had – and will continue to have – an even more profound impact on the education of children with disabilities.

One of the more significant consequences of the IDEA is that it has educated children with disabilities who have then been able to continue their education after high school. As a result, the population of students with disabilities in colleges and universities has grown substantially. These students, who have succeeded in elementary school and high school arrive at colleges and universities with a variety of needs to be addressed in order for them to be able to pursue a college education. These students, many of whom have been through the IDEA system
with their parents, have clear expectations as to what accommodations are reasonable for the institutions to adopt under the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., the statute which governs their rights while attending college.\(^1\)

This paper will examine the current status of “reasonable accommodation” law for students in colleges and universities – both undergraduate and graduate programs. In order to understand where we are today, however, it is helpful to begin at the beginning – that is – to begin with the development of community understanding, standards, and expectations at the pre-secondary school level under the IDEA. It is these understandings, standards, and expectations, which have emerged under the IDEA, that now frame the issues with respect to reasonable accommodation rules in the college and university setting.

I. The Judicial Interpretation the IDEA

The IDEA provides a complex framework through which the federal government provides grants to assist states in providing special education and services to children with disabilities. 20 U.S.C. 1411, amended by 20 U.S.C.A. 1411(a). Eligible children, that is children with disabilities, include children with mental retardation, hearing impairments, serious emotional disturbances, orthopedic impairments, autism, traumatic brain injury, other health impairments, or other specific learning disabilities. See id. at 1401(3), amended by 20 U.S.C.A. 1401(3)(a). Thus, the definition of disability under the IDEA differs from the definition under the ADA. The ADA provides that the statute protects individuals who have “a physical or mental impairment which substantially limits one or more of such person’s major life activities,” as well as individuals “regarding as having such an impairment.” 42 U.S.C. 12102 (1999).

Nevertheless, the statutes are largely congruent in protecting the rights of physically, mentally or emotionally disabled students in the classroom setting.

\(^1\) The Rehabilitation Act is, of course, also applicable. Since the requirements of the ADA and § 504 of the Rehabilitation Act largely overlap, this paper will generally refer only to ADA.
The IDEA requires that children with disabilities must be provided with a “free appropriate education.” The statute, however, does not define the critical term “appropriate.” Rather, Congress essentially left it to the courts to interpret the meaning of this mandate. Early case law read the statute as a fairly radical piece of legislation, granting to eligible children the right to equal educational opportunity. Thus, under this initial view of the statute, children with disabilities were entitled to receive whatever services were necessary to achieve education success.

This reading of the statute, however, was short-lived. In 1982, the United States Supreme Court decided *Board of Education v. Rowley*, 458 U.S. 176 (1982). In this case, the plaintiff was a deaf student receiving special education in a public school. The plaintiff wore a hearing aid and was able to lip read – which together permitted her to complete kindergarten. The school district prepared and Individual Education Plan (IEP) for the plaintiff for first grade, prescribing speech therapy and a tutor. The plaintiff’s parents believed, however, that a sign language interpreter was necessary to her academic success and requested additional services. This request was denied. The district court agreed with the plaintiff, holding that an appropriate education is one that allows a child to achieve her full academic potential, and that decision was affirmed by the U.S. Court of Appeals for the Second Circuit. 632 F.2d 945 (2d Cir. 1980), *affirming*, 483 F.Supp. 528 (S.D.N.Y. 1980).

The Supreme Court reversed. The Court ruled that by passing the IDEA, Congress sought primarily to make public education available to children with disabilities. In providing that access, however, Congress did not, the Court held, “impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful . . . .

Thus, the intent of the Act was more to open the door of public education to [children with disabilities] on appropriate terms than to guarantee any particular level of education once inside.”
458 U.S. at 192. In short, the IDEA guaranteed only a “basic floor of opportunity. Id. at 201. It
guaranteed no more than that the child get some “educational benefit.”

Many courts strictly followed the *de minimis* benefit standard. Over time, however,
others departed from the restrictions of *Rowley*, limiting the case to its facts. Thus, for example,
in *Hall v. Vance County Board of Education*, 774 F.2d 629 (4th Cir. 1985), the Fourth Circuit
addressed the case of James Hall, a sixteen year old boy who was dyslexic. James had been
provided special education since the third grade, and was now in the fifth grade, but he was
functionally illiterate. Nevertheless, the school district refused to change his IEP under which
James spent 5% of his time in a special education resource room. James’s parents challenged
this decision, and the courts agreed with them. The Fourth Circuit held that “Congress did not
intend that a school system could discharge its duty . . . by providing a program that produces
some minimal academic advancement, no matter how trivial.” 774 F.2d at 636.

Similarly, in *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir.
1988), *cert. denied*, 488 U.S. 1030 (1989), the Third Circuit considered the case of a fourteen
year old boy with severe developmental and mental disabilities. The school district refused to
provide the plaintiff with a qualified physical therapist and his parents brought suit. The Court
of Appeals held that the *Rowley* standard required more than a *de minimis* educational benefit.
Rather, focusing on the language in the Supreme Court case speaking in terms of a “meaningful
benefit,” the Third Circuit concluded that Congress intended that the IDEA provide quality
education — and that the Supreme Court did not hold to the contrary. *See id.* at 182-83. Other
courts have adopted a comparable approach.²

² *See Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997) (holding that educational
benefit cannot be mere modicum or de minimis); *Mrs. B. v. Milford Bd. Of Educ.*, 103 F.3d 1114, 1120 (2d Cir.
1997) (holding that the Rowley standard requires more than trivial advancement); *Urban v. Jefferson Co. Sch. Dist.*, 89 F.3d 720, 726 (10th Cir. 1996) (holding that the Rowley standard requires more than de minimis benefit in the
case of a severely disabled child); *Christopher M. v. Corpus Christi Ind. Sch. Dist.*, 933 F.2d 1285, 1288 (5th Cir.
1991) (citing Polk for the requirement that educational benefit be meaningful), *Thomas V. Cincinnati Bd. Of Educ.*, 918 F.2d 618, 620 n.5 (6th Cir. 1990) (benefit must be more than *de minimis*).
II. The 1997 Amendments of the IDEA

By 1997, the landscape with respect to the education of children with disabilities had changed in a number of respects. First, children with disabilities were no longer excluded from the school system. As of 1997, 5.5 million children were receiving special education and additional services provided with state and federal funds. See H.R. Rep. No. 105-95 at 89. In fact, over-identification of children with disabilities was becoming a significant issue, where it had not been an issue before. Second, there had been a sea-change in societal expectations with respect to the needs of children with disabilities. These rising expectations reflect the growing acceptance of the Congressional mandate and the increased sophistication of parents and schools. In addition, by 1997, there was growing frustration with some of the procedural requirements of the IDEA and a recognition that there was a need for increased effectiveness in the special education process.³

In response to these considerations, Congress amended the IDEA in 1997. The legislative history of these amendments makes clear that it was the intent of Congress to “review, strengthen, and improve [the] IDEA to better educate children with disabilities and enable them to achieve a quality education. . . .” See H.R. Rep. No. 105-95 at 85. In other words, Congress endorsed the emerging view that IDEA was meant to do more than to provide access to education for the disabled. Rather, the statute was designed to provide quality education which would result in children growing into independent and productive adults. The amendments adopt a series of new requirements to achieve Congress’s stated purpose of achieving greater expectations and improved, measurable, educational outcomes for eligible children.

Since the adoption of the 1997 Amendment, a number of courts have concluded that the statute requires the students be provided with Individual Educational Plans (IEP) that promise

"significant learning" and confer a "meaningful benefit." See e.g. *Ridgewood Bd. Of Educ. v. N.E.*, 172 F.3d 238 (3d Cir. 1999) (providing that a student has the right to have his education in a private school reimbursed by the school district where such private education is determined to be appropriate after a careful analysis that considers each student’s individual intellectual potential); *Mohawk Trail Reg’l Sch. Dist. v. Shaun D.*, 35 F. Supp. 2d 34 (D. Mass. 1999) (requiring school district to provide a residential placement for a student which could provide for the student’s emotional, social, and behavioral deficiencies).

### III. The Impact of Rising Expectations under the IDEA on the Higher Education Community

In enacting the 1997 amendments to the IDEA, Congress stated as one of its findings that the IDEA has been successful in ensuring access to free appropriate public education and improving educational results. 20 U.S.C.A. 1400(c)(3) (West. Supp. 1997). In support of this proposition, Congress pointed out that since the enactment of the IDEA, the number of developmentally disabled students in institutions declined by 90%. At the same time, the number of students with disabilities enrolled in post-secondary education tripled. H.R. Rep. No. 105-95 at 84 (1997).

In influx of students with disabilities in colleges and universities is palpable. Moreover, students come to their post-secondary educational institutions with high expectations, having traveled through the rigors of the development of the IDEA standards. This development has two implications for the higher education community. First, the identification and recognition of learning disabled students has become more sophisticated, which means that more students with identifiable learning disabilities are seeking accommodation in higher education programs. Secondly, these students are seeking more and different means of accommodation. Both of these factors are creating complex issues for colleges and universities to address. In particular, institutions and the courts are continuing to grapple with the "reasonable accommodation"
requirement when faced with requests for such accommodation by students with diagnosed learning disabilities.

IV. Reasonable Accommodation Under the ADA – Where We Are Now

A. The Law and Regulations

Title III of the ADA provides that:

“No individual shall be discriminated against on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations in any place of public accommodation by any person who owns, leases, or operates a place of public accommodation.” 42 U.S.C. 12182.

The statute further provides that educational institutions are considered public accommodations. 42 U.S.C. 12181(7)(J). Moreover, the statute requires that public accommodations:

“ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the services being offered or would result in an undue burden.” 42 U.S.C. 12182(b)(2)(A)(iii).

It is these three provisions, taken together, that provide the statutory framework for the application of the ADA to programs provided by colleges and universities.

The regulations further explicate the obligation. Specifically, the regulations set forth the standards for “Academic adjustments” and “Auxiliary aids.” See 34 C.F.R. 104.44. 4

§ 104.44 Academic adjustments.

4 See also identical regulations issued by the Department of Health and Human Services. 45 C.F.R. 84.44.
(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids.

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually
prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

In sum, in order to satisfy their obligations not to discriminate against individuals with a disability, colleges and universities are required to:

- Provide auxiliary aids and services -- unless to do so would either (1) fundamentally alter the program or (2) cause an undue burden.
- Make academic adjustments in course requirements – unless the institution can show that the course requirements are essential to the program or instruction or to any directly related licensing requirement.

The university or college’s obligation does not, however, include:

- The provision of attendants, readers for personal use, or other devises or services of a personal nature.

**B. Specific Requests for Accommodation—Application of the Legal Requirements**

The legal requirements outlined above have now been applied in many different contexts. Three major areas that have been addressed are: (1) tutors; (2) modification of course requirements; and (3) testing modifications. A discussion of these issues follows.

1. **Tutors**

Students – especially those who have progressed through the IDEA system where individual tutors may be required – have been requesting tutors as auxiliary aids. Tutors are being provided by many institutions under a number of circumstances. The case law, however, provides that tutors are not required to be provided under the ADA because tutors are considered to be “personal services,” and the regulations are clear that services of a personal nature are no contemplated. Nevertheless, if a school has a policy of offering individual tutorial services, these services must be provided in a non-discriminatory manner. The following cases are illustrative.
(a) *Wynne v. Tufts Univ. School of Medicine*, 1990 WL 52715 at *6 (1st Cir. April 30, 1990), judgment vacated on other grounds, 932 F.2d 19 (1991). In this case, a dyslexic student had requested additional tutoring services, beyond what the medical school had already provided.⁵ The court held that "the law is clear that Tufts is not required to give Wynne extensive individual assistance in order to him help through medical school," because tutors are auxiliary aids of a "personal nature." The court concluded that Tufts was not obligated to provide the student with private tutors knowledgeable with respect to the student's disability (dyslexia) and in the individual subject matters.

(b) *Northern Arizona University*, 5 Nat'l Disability Law Rep. 284 (Jan. 24, 1994). In this case, a graduate student requested that the school provide a math tutor for her statistics class, based upon her diagnosed difficulties with math. The school declined on the ground that, while they provided tutors for basic courses on general subject areas to undergraduates, discipline specific tutoring for upper level graduate courses was not available. OCR upheld the position of the institution and concluded that the request for a math tutor was properly rejected.

(c) *Hastings College of Law*, 4 Nat'l Disability Law Rep. 226 (May 27, 1993). OCR, in this case, upheld the position of the law school that it was not required to provide the assistance of a learning disability specialist to a student in "reexamination status" who had been diagnosed with a learning disability involving visual-motor coordination and perceptual skills. The school had provided the student in his first year with note takers, counseling sessions with the learning disability specialist, tutoring services in small groups, a one-on-one tutor in his Contracts and Torts classes, and participation in Saturday practice examination sessions. The student had nevertheless failed to achieve a passing grade point average.

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⁵ For a thoughtful and thorough discussion of reasonable accommodations for students with learning and psychiatric disabilities, see Thomas J. Flygare, *Students with Learning Psychiatric Disabilities: New Challenges for Colleges and Universities*, (Draft June 6, 1999).
The student was subsequently placed in “reexamination” status, during which time the student was permitted to attend classes and re-take the first year final exams.

For this period, the student again sought the use of a learning disability specialist. The school denied the request. In upholding the position of the school, OCR explained that “OCR interprets personal services to include individual assistance provided outside the classroom by tutors, counselors, and specialists such as the learning disability specialist at the [school].” Thus, even though the school had provided these “personal services” during the student’s first year of study, it was not required to do so in the “reexamination year.”

(d) *South Seattle Community College*, 4 Nat’l Disability Law Rep. 19 (Feb. 4, 1993). Here, the school had a policy of providing tutoring services to all students who obtained instructor approval and submitted a request-for-tutor-form to the tutor coordinator. A disabled student requested math tutoring services shortly before the start of the class for which tutoring was sought. A tutor was provided approximately two weeks after class began, but the student chose not to continue with the tutor because he could not understand the tutor’s instruction. OCR rejected the student’s complaint that he had been discriminated against as the result of the school’s failure to provide a tutor. In so holding, OCR made clear that (1) because tutoring is a personal service, schools need not provide tutoring services at all, but (2) if tutoring services are offered, they must be provided in a non-discriminatory manner. In this case, since he student had been offered a tutor that he chose not to use, he had not been discriminated against by the school.

(e) *McGregor v. Louisiana State Univ. Bd. Of Supervisors*, 3 F.3d 850 (5th Cir. 1993). In this case, the law school had accommodated a learning disabled student, with orthopedic and neurological disabilities, by assigning a professor the specific task of providing the student with concentrated and individualized tutorial instruction. The professor spent one hour each week working with the student outside of class, which was considerably more time than he spent with
any other individual student. The court upheld the schools determination to dismiss the student who, despite this accommodation, did not attain the requisite GPA.

2. Modification of Course Requirements

One of the more frequent requests by students with disabilities is a request to modify or waive course or degree requirements to accommodate a disability. The regulations specifically contemplate that modifications may include (1) changes in the length of time permitted for the completion of degree requirements, (2) substitution of specific courses required for the completion of degree requirements, and (3) adaptation of the manner in which specific courses are conducted. 34 C.F.R. 104.44 (a). Many other forms of accommodations have been sought and granted. The standard is whether the modification would alter the essential or fundamental nature of the program. See e.g. Alexander v. Choate, 469 U.S. 287, 300 (1985) (holding that a balance must be struck between the statutory rights of persons with disabilities and need for institutions to preserve the integrity of their programs, and in striking that balance, the statute must not be read to require institutions to make “fundamental” or “substantial” modifications, but to make “reasonable” modifications). A number of cases have addressed this issue.

(a) Guckenberger v. Boston University, 974 F. Supp. 106 (D.Mass. 1997). Here, the court recognized that learning-disabled students might request a course substitution for a foreign language requirement as a reasonable modification. The institution could properly conclude, after adequate consideration of alternatives and based on “professional, academic judgment,” that the substitution would constitute a fundamental alteration of its degree program. In such a case, course substitution would not be required.

(b) Pell v. Trustees of Columbia Univ. in New York, 1998 WL 19989 (S.D.N.Y. Jan. 21 1998). In this case, a dyslexic student requested to be exempted altogether from her foreign language requirement. The student did not, however, provide adequate documentation as to her need for
the exemption, and instead attended a foreign language course elsewhere. The court never reached the question of the reasonableness of the modification request since she preempted the university’s decision by attending class elsewhere.

(c) *Zulke v. The Regents of the University of California*, 166 F.3d 1041 (9th Cir. 1999). In this case, a second year medical school student was placed on academic probation and tested for a learning disability. The test revealed that the student suffered from a reading disability. As a result, the school offered the student a number of accommodations including double time on exams, notetaking services, textbooks or audio cassettes, a decelerated academic schedule, the right to retake courses, and the right to remain in school. The student remained in the program, but her academic issues were not resolved. She then requested a change in her clerkship responsibilities and schedule, a request that the school declined. The court accorded deference to the school’s judgment that this accommodation was not available because it either would “sacrifice the integrity of its program” or because the student could not show that “she would have been able to meet the Medical School’s requirements with the requested accommodation.”

(d) *Wong v. The Regents of the University of California*, No. 98-15757, 1999 U.S. App. LEXIS 30061 (9th Cir. 1999). In this case, Wong, a student at the School of Medicine, was failing academically and sought to be tested for a learning disability. The test showed that the student had a disability that affects the way he processed verbal information and expressed himself verbally. The student was provided a number of accommodations, including being given extra reading time before undertaking his next clerkship. The student passed the clerkship, after using the extended reading period. When, however, the student again requested an extended reading period before the succeeding clerkship, the request was denied, without explanation. The student failed the clerkship, was expelled from the school, and filed suit. The district court granted summary judgment for the university, but the Court of Appeals reversed. The Court concluded that there was a dispute of fact as to whether the university’s decision to deny the requested
accommodation was a considered judgment made to protect the integrity of the program. While the Court made clear that it would defer to the university’s academic judgments where appropriate, it would not do so where the school’s ostensibly professional, academic judgment “disguises truly discriminatory requirements.”

(e) *Amir v. St. Louis University*, 184 F.3d 1017 (8th Cir. 1999). Here, a student with obsessive-compulsive disorder was dismissed from St. Louis University Medical School after failing his psychiatry clinic. The student had requested the following accommodations – which were denied: (1) he asked to be allowed to complete his clerking at a different institution; (2) he sought a passing grade in psychiatry, and (3) he requested that he not be assigned to work with a particular supervisor. The Court of Appeals ruled that none of these accommodations was reasonable. First, the student was struggling academically and it was appropriate for the school to require completion of the clerkship at the school. Second, the medical school could properly make the academic decision not to assign Amir a passing grade. Finally, it was not reasonable to request the assignment of a different supervisor.

(f) *See generally*, M. Kay Runyan & Joseph F. Smith, Jr., *Identifying and Accommodating Learning Disabled Students*, 41 J. Legal Educ. 317 (1991). These authors express the view that “[t]o accommodate a learning disabled student [under the ADA], it may also be necessary to waive a course requirement. For example, if a school requires legal accounting, it may be reasonable to waive the course for a student with dyscalculia or dyslexia. Similarly, part of the requirements for a particular course might be waived or modified. A student with dyscalculia or dyslexia might, for instance, have problems understanding a balance sheet in Corporations. Modifications must be made as long as they do not constitute a ‘fundamental alteration of the program.’” *Id.* at 331.
3. Modification of Testing Procedures

The OCR regulations specifically address modifications in course examinations. They require institutions to provide testing methods that evaluate students with sensory, manual, or speaking impairments so as to best ensure that the results of the evaluation represent the student's achievement, rather than the disability. 34 C.F.R. 104.44 (c). As a matter of practice, requests for modifications in examination procedures are among the most frequently requested accommodations, especially by students with learning disabilities. One commentator reported, for example, that for the academic year 1994-95, in the 80 law schools he surveyed, 1187 students requested accommodations on exams. Of the 1187 students, 54% did so on the basis of a learning disability. Donald Stone, The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study, 44 Kan. L. Rev. 567 (1996). Stone explains this phenomena at follows:

“A possible explanation for this high percentage of requests by learning disabled students may be that the students have been offered such accommodations in high schools and colleges as well as in law school admission tests. It may carry less of a stigma for a learning disabled student, who has in the past been offered additional time to complete exams or a separate exam room to reduce distractions, to make such a request in law school.” Id. at 570.

The case law and the literature contain numerous examples of course examination modifications.

(a) Murphy v. Franklin Pierce Law Ctr., No. 95-1003, 1995 WL 325791, *3 (1st Cir. May 31, 1995) (unpublished opinion). In this case, the court held that accommodations, which included an extra hour in which to complete her exams, satisfied the law schools obligation to provide a reasonable accommodation.

(b) McGregor v. Louisiana State, supra, 3 F.3d at 856, also held that the law school had accommodated a wheel-chair bound law student by granting the student permission to eat and
drink in the room to maintain his sugar level and allowing him 8 hours instead of the usual 4 hours to complete his exam.

(c) Betts v. Rector and Visitors of the University of Virginia, No. 97-1850, 1999 U.S. App. LEXIS 23105 (4th Cir. Sept. 1999). In this case, Betts was offered admission to the University’s “MAAP” program, a one year post college program designed to prepare disadvantaged and minority students for admission to the School of Medicine. The University guaranteed admission to every student in the program maintaining a 2.75 grade-point average. Betts did not maintain the required grade-point average. The school tested Betts and determined that he had a learning disability. The school then offered double-time for all future examinations. Betts achieved a GPA of 3.5 for the spring semester with this accommodation, but his overall GPA was still below 2.75. The school denied him admission and Betts sued. The Court of Appeals specifically declined to decide whether offering double-time for exams was a required “reasonable accommodation,” because the school had not raised that issue. The Appellate Court nevertheless remanded the case for a further review as to whether Betts was “disabled” within the meaning of the ADA.

(d) See generally, Runyon & Smith, supra, providing the following list of possible examination modifications.

"Additional testing modifications include (1) administering oral rather than written examinations or allowing tape recorded or dictated answers; (2) allowing a reader for a student with reading difficulties or providing recorded exam questions; (3) assigning an assistant to ensure that the student understands that directions on an examination or to clarify a particular exam question; (4) providing a private exam room for a student who has attention deficit disorder or who is distractible (a proctor can be assigned); (5) allowing the use of a typewriter or a computer for students with visual perception and visual processing problems; (6) arranging exam schedules to allow adequate time between tests." Id. at 329-30.
C. Reasonable Accommodation and Academic Freedom

As discussed above, there are many factors involved in determining what program modifications or accommodations are reasonable. One factor, however, is worthy of further note—the role of academic freedom. As explained by one commentator:

"Academic freedom is another important factor in determining whether an accommodation is reasonable. Academic freedom gives the individual professor significant latitude to make a reasoned evaluation for her course concerning educational issues such as what constitutes essential coverage, the skills which need to be developed, and the best method of developing those skills. This judgment is frequently a function of direct experience in practice; years of study, teaching, and research in the area; analysis of the pattern and content of bar exam questions; and an understanding, based on discussions with practitioners, of the knowledge and skill base required to practice in a particular area of the law or law in general. Class requirements established by the professor concerning issues of skill, coverage, and classroom methodology should be given significant deference. For example, the professor may conclude that a particular book, a particular range of coverage in the book, and a particular method of presenting the material (tax problems involving complicated arithmetic operations versus reading and analyzing cases) are essential elements of a tax course. Law school administrators and courts should be reluctant to invade the academic freedom traditionally accorded to faculty members regarding such matters."


Courts too have recognized this issue in their deliberations. Thus, as the First Circuit noted in Wynne v. Tufts University School of Medicine, supra, the Supreme Court has recognized that the First Amendment protects the rights of academic institutions to decide, without judicial interference, "what may be taught, how it shall be taught, and who may be admitted to study,"

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quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring). With this principle in mind, courts will defer to academic decision-making. They must do so, however, while taking into account the judicial obligation under the ADA to ensure that academic decisions do "not mask even unintended discrimination against the handicapped."

*Wynne, supra*, at *5.

**Conclusion**

For the last 25 years, since the inception of the Individual with Disabilities Education Act in 1975, the law governing the educational rights of disabled children has grown and developed. So have the children. As they approach undergraduate and graduate education, their expectations – and the expectations of their parents – have been influenced by the educational programs and modifications they have been provided along the way. The statutory requirements under the IDEA and the ADA are different. But the students needs do not necessarily change. Colleges and universities have responded to these expectations and needs in a variety of ways. For the future, these institutions will be called upon to be more flexible and more creative as they seek to satisfy their statutory obligation to provide reasonable accommodations to the student population with disabilities, without compromising the integrity of their academic programs.