

Risk Management and Law School Admissions: A Checklist for Educators

**©June 2007, Sheila Trice Bell, Bell & Trice Enterprises and
Dean Darby Dickerson, Stetson University College of Law**

Permission is granted for educational institutions to use this checklist, with attribution.

This document is for informational purposes and is not intended as legal advice. The information below should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. You should not act, or refrain from acting, on the basis of information in this document. With respect to all legal matters you should seek the advice of professional legal counsel licensed in the appropriate jurisdiction.

- ❖ Develop and hold a comprehensive training program for faculty and staff involved in the admissions process. A sample outline is attached as Appendix A; *see also* LSAC Statement of Good Admission and Financial Aid Practices (2007), <http://www.lsacnet.org/publications/StatementofGoodAdm.pdf>.
- ❖ Develop a best practices checklist for all persons — faculty, staff, students, alumni, and other volunteers — who are involved in admissions recruiting, and meet with those individuals to review those practices. For additional guidance, consult LSAC Statement of Good Admission and Financial Aid Practices (2007), <http://www.lsacnet.org/publications/StatementofGoodAdm.pdf>.
- ❖ Evaluate whether the school should conduct background checks on applicants who are approved for admission. Evaluate legal, policy, and financial impacts of conducting, or not conducting, background checks. Determine the types of notices to applicants and possible waivers that will be required to run the type of check your school selects. For additional information on background checks, see the Selected Bibliography at Appendix G.
- ❖ Develop a statement about who is a qualified applicant for the particular academic program (e.g., J.D. program, LL.M. program, M.L.S. program, etc.) by articulating the critical functions that a student in the program must perform. A sample statement is attached as Appendix B.
- ❖ Annually review all materials related to the admissions process, including the application, the Viewbook and other admissions publications, the school's admission and financial aid websites, etc. for compliance with state, federal, and local laws and with accreditation standards (ABA, AALS, regional accreditors such as SACS). Pay particular attention to statements (or omissions) that might be considered to be fraudulent or in violation of consumer protection statutes and to issues related to disabilities laws (race, nationality, disability, etc.). For additional information about disabilities and the admissions process, see Appendix C.

- ❖ Ensure that the pertinent disciplinary code covers applicants for admission, and that the code is referred to both on the admissions web page and on the admissions application. For sample language in the disciplinary code, see Appendix D. On a related note, be sure that revocation of admission is listed as a sanction in the disciplinary code.
- ❖ Ensure that the school has a policy that requires applicants to amend and update their admissions application and/or to report arrests, charges, and convictions. For sample disciplinary code and policy language, see Appendices D and E.
- ❖ Before a semester begins, have the Admissions Office run a report of students with criminal convictions, disciplinary records, and other red flags; circulate to key administrators (Student Life, Legal, Academic Dean, Campus Security); evaluate and determine whether a meeting with any particular students are warranted; meet with those students, including students who may have subsequent issues regarding bar admissions. As a corollary, understand bar admissions rules in the primary jurisdictions in which your graduates seek admission; determine whether the jurisdictions have rehabilitation statutes for students with past issues that might otherwise preclude admission. See Kathryn L. Allen & Jerome Braun, *Admission to the Bar - Character and Fitness Consideration*, <http://www.gabaradmissions.org/pages/braun.html> (Georgia); Appendix F (Florida's rehabilitation rule).
- ❖ Appoint a collaborative risk-management team to assess other risks that might be associated with your school's admissions process and to research and recommend possible solutions and initiatives. For additional information on collaborative risk-management teams, see Darby Dickerson & Peter F. Lake, *A Blueprint for Collaborative Risk-Management Teams, Campus Activities Programming* 16 (Apr. 2006) (included on the conference CD-ROM).
- ❖ For other resources related to risk-management and the admissions process, see the selected bibliography at Appendix G.

Appendix A:
Sample Outline for Admissions Committee Training

Admissions Committee
Outline Training for Faculty Committee Members

August 18, 2006

Professor Mark D. Bauer

Stetson University College of law

Topics that need to be covered

1. **GOALS:** Orient and encourage buy-in to goals of admissions committee
 - a. Higher LSAT scores
 - b. Higher GPAs
 - c. Greater diversity (racial, ethnic, religious, geographic/college, undergraduate majors, connection to Tampa Bay (or lack thereof), desire to practice outside Tampa Bay and Florida)
 - d. Admitting law students who will add to the reputation of Stetson and lawyers generally
 - e. Other? (these are my goals – others may be appropriate too)

2. **WHO DOES WHAT:** Explain work of admissions office
 - a. Jobs of staff
 - i. Who does what
 - b. Timeline of workflow
 - i. Specific crunch times and deadlines
 - c. Orient faculty as to information on website
 - d. Explain admissions process
 - i. LSAT
 - ii. LSDAS
 - iii. Contact with admissions office and informational interviews
 - iv. Application itself and what it contains
 - v. Decision
 1. When, timeline, seat deposit
 - vi. Financial aid

3. **ROLE OF FACULTY:** Expectations of faculty on Committee
 - a. Reading, evaluating and scoring applications
 - i. Reading applications
 1. Doing so in a manner to support critical timeline and crunch times
 2. Presumptive admits, Denials, middle category
 3. Scoring applications

- ii. Reading applications outside committee meetings
- b. Attending all committee meetings
- c. Thoughtfully considering, suggesting and supporting current and new policies
- d. Attending prospective student sessions
- e. Visiting law school fairs and colleges
- f. Calling admitted students
- g. Other?

4. **HOW TO READ APPLICATION:** Orientation and Training for Admissions Materials

- a. LSDAS Summary Sheet
 - i. Index Score
 - 1. How to interpret
 - a. Is it higher because of GPA
 - i. And if so, is college rigorous in its grading?
 - ii. LSAT
 - 1. Range
 - 2. Our averages, median, 25th and 75th
 - a. Averages for aspirational schools and competitors
 - iii. GPA
 - 1. Averages for Stetson, competitors and aspirational schools
 - 2. “Average” average information on LSDAS form for that college, how to read it, and what it means
- b. How to interpret a college
 - i. Reputation
 - ii. Grade inflation
 - iii. Geographic diversity issues
- c. How to interpret a transcript
 - i. Grade inflation
 - ii. Types of courses chosen
 - 1. Difficulty/Rigorousness/Ambitiousness
 - 2. Well-roundedness
 - 3. Science major? Are grades lower as a result?
 - 4. Are Phys Ed classes counted in GPA?
 - iii. Trend of grades over four years
 - iv. Schools attended
 - 1. One school for four years?
 - a. Graduation in four years?
 - 2. Sufficient explanation for taking more than four years or transferring?
- d. LSAT writing sample
 - i. What to take from it
- e. Recommendations
 - i. Our requirements for recommendations
 - ii. How to read a recommendation

1. Academic or non-academic
 2. How recent
 3. How well does recommender know student
 4. How specific is the recommendation and what does it say about success in law school
- f. The Application Itself
- i. Age of applicant
 1. Relevant in context of age of recommendations and potentially LSAT score
 - a. If older student, why law school now?
 - b. If younger student – particularly straight out of college – why law school now?
 - ii. Race/Ethnic group
 1. Diversity considerations
 - iii. Activities in college
 1. Leadership?
 2. Do activities support other interests and pursuits noted by student in application – consistency
 3. Work in college
 - a. Ability to balance life and manage time
 - iv. Essay
 1. What the books say about writing essays
 - a. Is essay just a variation from a “how to” book
 2. Typos, grammar, spelling
 3. Does student have a compelling story?
 - a. Why attend law school and why now?
 - b. Have they expressed interests and done things to actively pursue interests
 4. Does student demonstrate the ability to thrive in law school and add to our student body?
- g. Offenses
- i. What to do about misdemeanors and felonies
 - ii. What to do about volume of offenses
 - iii. What to do about academic offenses
- h. Candidates of interest
- i. What to do about letters from faculty, alumni, trustees, etc.
5. **ADMISSIONS AND STRATEGIC PLAN**: Putting it all together
- a. Remembering the overall goals of Stetson University College of Law when reading applications

**Appendix B:
Statement Regarding Applicant and Student Qualifications**

Stetson University College of Law (2001)

B. Abilities and Skills for the Study of Law

Although the College encourages students with disabilities to apply to its *juris doctor* program, all applicants must realize that each candidate for the *juris doctor* degree must have abilities and skills in the categories described below. The College is committed to enabling its qualified students by any reasonable means or accommodations to complete the course of study leading to the law degree.

1. *Intellectual—Conceptual and Integrative Skills:* The candidate must be able to recall and analyze complex factual information, integrate this information with complex legal theories, and 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 the 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 and logical 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. The candidate must be able to perform legal research.
2. *Effective Communication Skills:* The candidate must be able to organize ideas, and express them with a high degree of organization, clarity, precision, and persuasive force. A candidate must be able to demonstrate ability with the English language and commitment to writing well, including appropriate vocabulary, grammar, syntax, spelling, and punctuation. A candidate must be able to memorialize and organize information in an accessible form. A candidate must be able to communicate candidly and civilly with others. A candidate must be honest in advocating a particular result, and should not misrepresent either facts or the content of any legal principle upon which the candidate relies.
3. *Behavioral and Social Attributes:* A candidate must possess the emotional health required for the full utilization of his or her abilities and possess the interpersonal skills to work with others. The candidate must possess the ability to:
 - a. comply with requirements of applicable federal, state, and local laws, regulations, statutes, and applicable orders of a court or tribunal;
 - b. comply with the ethical norms of the profession as expressed in the Code of Professional Responsibility and the ABA Model Rules of Professional

Conduct, including the avoidance of acts that are illegal, dishonest, fraudulent, or deceitful;

- c. avoid acts that exhibit disregard for the rights or welfare of others;
 - d. use honest and good judgment in financial dealings on behalf of oneself and others; and
 - e. act diligently and reliably in fulfilling one's obligations to others.
4. *Attendance and Participation:* A candidate must be able to have regular and punctual class attendance and to fully participate in class discussions.
 5. *Time Management:* A candidate must possess the ability to comply with deadlines and time constraints, and to prioritize and manage multiple tasks.

These standards are based in part on the ABA Task Force on Law Schools and the Profession, *Legal Education and Professional Development—An Education Continuum* (1992) (often referred to as the “*MacCrate Report*” in honor of the chair of the task force) and the considered judgment of the faculty of the Stetson University College of Law. Item #4 is based on Standard 304(c) of the AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS. We thank Capital University School of Law for sharing its policy with us.

Other sources to consider:

- American Bar Association, Section on Legal Education and Admissions to the Bar, *Preparing for Law School*, <http://www.abanet.org/legaled/prelaw/prep.html>
- J. Patrick Shannon, *Who Is an “Otherwise Qualified” Law Student? A Need for Law Schools to Develop Technical Standards*, 10 U. Fla. J.L. & Pub. Policy 57 (1998).
- Rule 3-10.1 of the Supreme Court Relating to Admissions to the Bar, “Essential Eligibility Requirements,” <http://www.floridabarexam.org/public/main.nsf/rules.html#1-13>

Appendix C

Excerpt from Darby Dickerson, “Legal Issues for Campus Administrators, Faculty, and Staff,” in *College Student Mental Health: Effective Services and Strategies Across Campus* ch. 3 (Sherry A. Benton & Stephen L. Benton eds., NASPA 2006).

3.2 Admissions

Campus officials and faculty who serve on admissions committees must be sensitive to legal issues relating to applicants with mental-health disabilities. Section 504 of the Rehabilitation Act of 1973 (Section 504)¹ and the Americans with Disabilities Act of 1990 (ADA)² both prohibit discrimination against individuals with disabilities, including mental disabilities. Many states and municipalities also have nondiscrimination laws, and universities should consult those laws when reviewing their admissions processes and practices.

a. Section 504 of the Rehabilitation Act

Section 504 prohibits universities that receive federal funding from discriminating against individuals with disabilities.³ As a practical matter, virtually all institutions of higher education receive some sort of federal funding, and are thus subject to Section 504.

The federal regulations that implement Section 504 provide that institutions of higher education may not discriminate against qualified, but handicapped, applicants in the recruitment or admissions processes. A handicapped individual is one who has a mental or physical impairment that substantially limits a major life activity, “has a record of such . . . impairment,” “or is regarded as having such an impairment.”⁴ “Mental impairment” means “any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”⁵ An applicant with a mental impairment is “qualified” if he or she “meets the academic and technical standards essential for admission to, or participation in, the . . . educational program.”⁶

During the admissions process, institutions of higher education are prohibited from limiting the number or proportion of handicapped students who may be admitted, and are generally prohibited from using admissions tests and criteria that have “a disproportionate,

¹ 29 U.S.C. § 794 (2000).

² 42 U.S.C. §§ 12101–12117 (2000).

³ 29 U.S.C. § 794(a); 34 C.F.R. § 104.41 (2006).

⁴ 34 C.F.R. § 104.3(j)(1).

⁵ 34 C.F.R. § 104.3(j)(2)(ii).

⁶ 34 C.F.R. § 104.3(l)(3).

adverse effect on handicapped persons or any class of handicapped persons.” Institutions of higher education must also ensure that admissions tests are selected and administered in ways that reflect the aptitude and achievement of individuals with disabilities.⁷ Rulings by the Office of Civil Rights (OCR), however, indicate that most widely accepted tests and measures may be used in the admissions process, even when the applicant has a disability. As just a few examples, a law school may use the LSAT (law school admissions test) as an admissions requirement,⁸ universities may deny admission to a candidate with a mental impairment whose GRE (graduate record examinations) score fell below that of all other accepted applicants,⁹ and a university may reject an applicant with a psychiatric disability if he or she was not in academic good standing at a previous school,¹⁰ or if accommodating the student would require the institution to waive its minimum admissions standards.¹¹

On an admissions application, a university generally may not ask whether the candidate has a disability.¹² It may include those questions, however, if it is taking remedial action to correct the effects of past discrimination against disabled individuals, or to overcome past conditions that resulted in limited participation by individuals with disabilities.¹³ If a school makes such a pre-admissions inquiry, the application must clearly state that the information is sought for a remedial purpose, the applicant has the option to provide the information, the information will be kept confidential, and refusal to provide the information will not subject the applicant to adverse treatment.¹⁴

⁷ 34 C.F.R. § 104.42(b)(2)–(3).

⁸ St. Thomas Univ. (Fla.), 18 Nat’l Disab. L. Rep. (LRP) ¶ 245 (Office of Civil Rights Region IV Oct. 14, 1999).

⁹ Univ. of Memphis (Tenn.), 14 Nat’l Disab. L. Rep. (LRP) ¶ 34 (Office of Civil Rights Region IV May 12, 1998).

¹⁰ Letter to Northwestern State Univ., No. 06-02-2004 (Office of Civil Rights Chicago Apr. 12, 2002).

¹¹ Univ. of Cincinnati, Complaint No. 15-00-2042, 2000 NDLR (LRP) LEXIS 315; 20 NDLR (LRP) 160 (Office of Civil Rights Oct. 27, 2000) (music conservatory applicant with a learning disability did not meet minimum eligibility requirements because his high school had waived his foreign-language requirement); Letter to Univ. of Mass. Dartmouth, No. 01-00-2074 (Office of Civil Rights Boston Oct. 16, 2000) (applicant with depression and learning disabilities did not have the required number of college preparatory courses and his GPA was below the required minimum).

¹² 34 C.F.R. §§ 104.6(b), 104.42(b)(4), 104.42(c).

¹³ *E.g.* Letter to Oral Roberts Univ., No. 06-01-2037 (Office of Civil Rights Apr. 22, 2002). *But see* Glendale Cmty. College (Ariz.), 1993 NDLR (LRP) LEXIS 1330, 5 NDLR (LRP) 36 (Office of Civil Rights Dec. 16, 1993) (finding that the school’s pre-admission disability inquiry violated the regulations, even though the form contained all of the required promises and disclaimers; the form included a list of disabilities with code numbers, and applicants were requested to enter the appropriate codes).

¹⁴ 34 C.F.R. § 104.42(c).

The OCR also has carved out other limited exceptions to the prohibition on pre-admissions inquiries about disabilities. First, the OCR has determined that if an institution has reasonable concerns about the safety of a potential student and others on campus, it may deny admission or require the applicant to provide additional information about the disability and its impact. For example, the OCR held that the Community College of Southern Nevada could deny admission to an applicant who, during an interview, stated that he often thought about killing people.¹⁵ In a similar situation, however, the OCR held that the school must consider the applicant's actual history, as opposed to solely considering the nature of the disability. In that case, which involved Penn State University, an applicant diagnosed as a paranoid schizophrenic behaved in a disruptive manner during his pre-admissions meetings with campus officials. As a result, the university asked the applicant to release information from psychiatrists and other references. This request was made in connection with a university policy designed to protect the campus from dangerous persons. The OCR determined that the policy, as administered, violated Section 504 because it did not distinguish between disabled applicants who posed a substantial risk of harm and those who merely had a history of a certain disability.¹⁶

Second, a university can ask an applicant to provide information about criminal activity, even if the activity relates to a disability.¹⁷ Finally, in certain special programs where the well-being of others is at stake, such as the priesthood or a post-graduate counseling program, a school may request the results of psychological examinations as part of the admissions process.¹⁸ The last exception, however, will not apply in most academic programs.¹⁹

b. Americans with Disabilities Act

The ADA was based in large measure on Section 504, and the two statutes impose virtually the same requirements on institutions of higher education.²⁰ Title II of the ADA

¹⁵ Letter to Cmty. College of S. Nev., Cheyenne Campus, Complaint No. 10-02-2045, 2002 NDLR (LRP) LEXIS 938; 103 LRP 81; 26 NDLR 290 (Office of Civil Rights Western Div. Oct. 18, 2002) (discussed in WHAT DISABILITY SERVICE PROVIDERS SHOULD KNOW ABOUT PSYCHIATRIC DISABILITIES 1–2 (Ed Filo ed., 2003) [hereinafter PSYCHIATRIC DISABILITIES]).

¹⁶ Penn. State Univ., Complaint No. 03-91-2020, 1991 NDLR (LRP) LEXIS 1037; 2 NDLR (LRP) 35 (Office of Civil Rights Region III May 3, 1991) (discussed in Adam A. Milani, *Disabled Students in Higher Education*, 22 J.C. & U.L. 989, 999 (1996)).

¹⁷ Letter to Univ. of N.C. at Greensboro, No. 04-94-2143 (Office of Civil Rights Region IV 1995).

¹⁸ Conception Seminary College (Mo.), 18 Nat'l Disab. L. Rep. (LRP) ¶ 216 (Office of Civil Rights Region VII (2000) (seminary college); N.D. State Univ., Complaint No. 08-91-2001, 1991 NDLR (LRP) LEXIS 1176, 2 NDLR (LRP) 174 (Office of Civil Rights Region VIII Sept. 6, 1991) (counseling program).

¹⁹ *E.g.*, Letter to W. Ga. College, No. 04-94-2192 (Office of Civil Rights Region IV 1995) (finding that a nursing program unlawfully required completion of a pre-admission health form).

²⁰ Baird ex rel. Baird v. Rose, 192 F.3d 462, 468–469 (4th Cir. 1999).

prohibits discrimination in access to services and programs provided by public entities, such as public colleges and universities, and Title III prohibits discrimination in access to places of public accommodation, such as private colleges and universities.²¹ The ADA and its related regulations²² do not affect an institution's obligations under Section 504.²³

As with Section 504, the ADA prohibits discrimination against otherwise qualified individuals with disabilities. A qualified applicant is one "who with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements" to participate in the program."²⁴ "Disability" includes a mental impairment that substantially limits a major life activity.²⁵ The corresponding regulations clarify that "mental impairment" includes mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.²⁶ A mental impairment also does not include personality traits such as irritability, stress, poor judgment or impulse control, personality conflicts, panic disorder, bizarre behavior, or irresponsible behavior.²⁷ Drug addiction is listed in the statute and regulations as a disability, but impairments from or conditions caused by current drug use are excepted.²⁸

As under Section 504, schools may not impose or apply eligibility criteria that actually, or tend to, screen out individuals with disabilities, except in limited circumstances.²⁹ This means that universities in their admissions-related tests and activities must reasonably accommodate the needs of disabled applicants.³⁰

²¹ 42 U.S.C. §§ 12161, 12181(7)(J) (2000).

²² 28 C.F.R. pts. 35, 36 (2006).

²³ 28 C.F.R. §§ 35.103(b), 36.103(b).

²⁴ 42 U.S.C. § 12131(2); *Gent v. Radford Univ.*, 976 F. Supp. 391, 392 (W.D. Va. 1997), *aff'd*, 122 F.3d 1061 (4th Cir. 1997) (table case).

²⁵ 42 U.S.C. § 12102(2)(A).

²⁶ 28 C.F.R. §§ 35.104, 36.104.

²⁷ *E.g.*, *Webb v. Mercy Hospital*, 102 F.3d 958, 960 (8th Cir. 1996); *Stewart v. County of Brown*, 86 F.3d 107, 111–12 (7th Cir. 1996); *Daley v. Koch*, 892 F.2d 212, 215 (2d Cir. 1989).

²⁸ 42 U.S.C. § 12114, 28 C.F.R. §§ 35.104, 36.104.

²⁹ 28 C.F.R. §§ 35.130(8), 36.301.

³⁰ WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION: A COMPREHENSIVE GUIDE TO LEGAL IMPLICATIONS OF ADMINISTRATIVE DECISION MAKING* § 4.2.4.3 (3d ed. 1995).

c. University admissions processes

Universities should consider the steps listed below to help ensure that institutional goals of diversity and access are furthered within the controlling legal environment.

First, campus officials should review the school's admissions policies and nondiscrimination policy against Section 504, the ADA, and local nondiscrimination laws that might provide applicants with even broader protection. These policies should be reviewed and updated regularly to keep pace with new legal developments.

The university should include its nondiscrimination policy on admissions materials, including the admissions application. It also should explain how the nondiscrimination policy relates to the school's mission and values.

The university must not limit the number or proportion of students with mental disabilities who may be accepted into a school, class, or particular department or major. Universities should also study whether their eligibility requirements tend to screen out applicants with disabilities. If so, the university should examine whether alternatives might be available that have a lesser impact but achieve the same result in terms of appropriately determining qualifications.

The university should avoid pre-admission inquiries — on the application or otherwise — about whether the applicant has a mental disability, unless the inquiry falls into one of the narrow, remedial exceptions. If a university invites self-identification of a disability as part of a special admissions process, it must ensure that the application and other admissions material clearly explain how the process works, advise the applicant that disclosure of a disability is voluntary, provide that the disclosure will remain confidential, and indicate that an applicant will not be penalized for refusing to provide the optional information.

With regard to the actual application form, the university should remove questions that ask whether a standardized test required for admission was taken under non-standard time limits. On a related point, the university should inform applicants, on the web and in admissions brochures, about how to request accommodations for admissions tests. In most instances, the university also should eliminate questions about an applicant's treatment for mental-health or emotional problems.

Admissions officers should segregate voluntary disclosures³¹ of disabilities from other admissions materials and place that information in a separate, secure location where it can later be forwarded to the disabilities services office if so requested by an admitted applicant. Self disclosures can arise in a variety of ways. A recent survey found that 61% of applicants with a disability disclose it during the admissions process. Self-disclosure can occur on the application

³¹ See Cara Cahalan-Laitusis, Ellen B. Mandinach & Wayne J. Camara, *The Impact of Flagging on the Admissions Process*, 181 J. COLLEGE ADMISSIONS, Fall 2003, at 18.

form, in the personal essay, in letters of recommendation, during the personal interview, and in other communications. Admissions officers also should segregate medical records from the rest of a student's admissions file.

Experienced admissions professionals, along with legal counsel, should train faculty, staff, and others involved with the admissions process — such as alumni recruiters and interviewers — about how to work with disabled applicants. In addition, universities are required to implement and publicize a process to handle disputes about disabilities that might arise during the applications process.³²

In addition to the steps noted above, a Facilitator University would focus on fulfilling the university's educational mission and promoting a safe campus environment. This might be accomplished by implementing a policy on background checks for applicants. Although it might not yet be feasible to conduct complete checks on all students, universities could draw on the expertise of their campus security department, admissions officers, judicial-conduct officials, and senior student-affairs leadership to develop a list of "red flags" — such as past violence, dishonorable military discharge, patterns of illegal drug use or DUIs, loss of a professional license, unexplained time gaps after high school, or dismissal from another university — that, should they appear in an applicant's files, would trigger a more rigorous review.

Not all students with mental disabilities are good candidates for higher education, or residential higher education. The Facilitator University understands this distinction and would not allow fear of legal action to prevent it exercising its best judgment in the admissions process. If an applicant — based on an individualized review of past conduct and the expertise of university professionals — presents a threat, that applicant should not be admitted.³³

A Facilitator University would also expressly connect the benefits and strengths of a heterogeneous student body to rules regarding consideration of disabilities in the admissions process. It would create an environment in which qualified but disabled students are not merely tolerated, but are a welcome and meaningful part of the community. This might be accomplished through disability awareness programs for faculty, staff, and students, by encouraging students with disabilities to seek leadership opportunities on campus, and by working with qualified professionals to create ways for students to showcase their special abilities. The Facilitator University recognizes that a positive campus environment will help attract talented, high-caliber students of all sorts, including ones with disabilities, or special abilities.

³² These recommendations are based in part on materials located at The Catholic University of America, The Office of General Counsel, *ADA Guidelines: Answer Guide to Self-Audit Checklist*, <http://counsel.cua.edu/ada/resources/answers/pre.cfm> (last visited Apr. 29, 2006), and University of Washington, *The Student Services Conference Room, Recruiting and Admissions*, http://www.washington.edu/doit/Conf/recruiting_admissions.html (last visited Apr. 29, 2006).

³³ See the discussion regarding negligent admissions, *infra* at Section 3.6(b).

Appendix D
Sample Disciplinary Code Language to Cover Admissions Applicants

III. Scope

- A. This Code applies to all students admitted to Stetson University College of Law. It covers conduct that occurs in connection with a student's application for admission, through the time a student graduates.
- B. The Code also applies to students enrolled in courses or programs sponsored or co-sponsored by the College of Law.
- C. Investigations may be initiated or continued after a student has graduated, or after the student has completed the course or program, if the conduct at issue occurred while the individual was enrolled in the College of Law or in a program sponsored or co-sponsored by the College of Law. If an Honor Code matter is pending when a student is scheduled to graduate, the student's degree may be withheld at least until the matter is resolved.

Stetson University College of Law, Academic Honor Code (2005) (copy on conference CD-ROM).

Appendix E: Updating the Admissions Application

Sample Disciplinary Code Language

Failing to disclose charges, arrests, and convictions. A student must disclose to the Associate Dean of Academics any charge, arrest, or conviction that arises after he or she has submitted an admissions application to the College of Law. A student also must disclose to the Associate Dean of Academics if he or she has been accused, formally or informally, of the violation of law. Disclosure must be made within 30 days of the charge, arrest, or conviction. Please see the Amendments to Admissions Application policy for the exact procedure.

Stetson University College of Law, Academic Honor Code (2005) (copy on conference CD-ROM).

Amendment Procedure

Students have an ongoing obligation to amend their application for admission to the law school. A student who needs to amend his or her application should follow the procedures below.

- A. Within 30 days of learning of a necessary amendment, the student must submit a signed statement to the Associate Dean. The statement should detail the circumstances of any incident and should describe and attach documentation that reflects how the incident was resolved (such as a charge being dismissed).
- B. If the matter is not completely resolved, then the student will have an ongoing obligation to update the Associate Dean at least once each semester.
- C. The Associate Dean will review all amendments and determine whether the College of Law will take any action.
 1. If the event or circumstances occurred before the student was admitted to the College of Law, the Associate Dean should consult with the Admissions Director or the Chair of the Admissions Committee regarding whether the new information would have affected the admissions decision. The Associate Dean may also develop, in connection with the Admissions Director, a list of events and circumstances that typically would not affect the admissions decision; the Associate Dean could then act on these matters without further consultation.

2. If the event occurred after the student was admitted to the College of Law, the Associate Dean may determine what action should be taken and/or may refer the matter to the Honor Court Investigator for further action. The Associate Dean must refer the matter to the Honor Court Investigator if he or she believes that the student should be suspended or expelled, or if a graduate's diploma should be revoked.
- D. The Associate Dean will prepare a written letter to the student indicating whether action will or will not be taken. If action is taken, the letter will specify that action. A copy of the letter will be placed in the student's permanent file in the Registrar's Office.

Stetson University College of Law (2003).

Appendix F:
Rules of the Florida Supreme Court Relating to Admissions to the Bar

3-11 Disqualifying Conduct. A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be treated as cause for further inquiry before the Board recommends whether the applicant or registrant possesses the character and fitness to practice law:

- (a) unlawful conduct;
- (b) academic misconduct;
- (c) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the Board;
- (d) misconduct in employment;
- (e) acts involving dishonesty, fraud, deceit or misrepresentation;
- (f) abuse of legal process;
- (g) financial irresponsibility;
- (h) neglect of professional obligations;
- (i) violation of an order of a court;
- (j) evidence of mental or emotional instability;
- (k) evidence of drug or alcohol dependency;
- (l) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (n) any other conduct which reflects adversely upon the character or fitness of the applicant.

3-12 Determination of Present Character. The Board shall determine whether the applicant or registrant has provided satisfactory evidence of good moral character. In addition to other factors in making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

- (a) age at the time of the conduct;
- (b) recency of the conduct;
- (c) reliability of the information concerning the conduct;
- (d) seriousness of the conduct;
- (e) factors underlying the conduct;
- (f) cumulative effect of the conduct or information;
- (g) evidence of rehabilitation;
- (h) positive social contributions since the conduct;
- (i) candor in the admissions process;
- (j) materiality of any omissions or misrepresentations.

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct which bears adversely upon such person's character and fitness for admission to the Bar shall be required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:

- (a) strict compliance with the specific conditions of any disciplinary, judicial, administrative or other order, where applicable;
- (b) unimpeachable character and moral standing in the community;
- (c) good reputation for professional ability, where applicable;
- (d) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative or other proceeding;
- (e) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- (f) restitution of funds or property, where applicable;
- (g) positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the Bar because service to one's community is an implied obligation of members of the Bar.

Appendix G: Selected Bibliography on Risk and the Admissions Process

American Association of Medical Schools, *Report of the AAMC Criminal Background Check Advisory Committee*, http://www.aamc.org/members/gsa/cbc_final_report.pdf (May 2006).

Arthur L. Coleman & Scott R. Palmer, *Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues*, http://www.collegeboard.com/prod_downloads/diversitycollaborative/acc-div_next-generation.pdf (2006).

Campus Security Breaches: Compliance with State Notification Statutes, NACUA Notes, <http://counsel.cua.edu/Security/campusecuritybreach.cfm> (Mar. 10, 2006).

Catholic University of America, *Campus Legal Information Clearinghouse, Pre-admissions Inquiries*, <http://counsel.cua.edu/ADA/clicks/preadmis.cfm#Permissible> (last updated July 28, 2004).

Derek Langhauer, *Use of Criminal Convictions in College Admissions* (June 28, 2000) (available on the NACUA website; your school's general counsel should have access to this password-protected site) (Langhauer is General Counsel of the Maine Technical College System, South Portland, Maine).

Barbara A. Lee, *Who Are You? Fraudulent Credentials and Background Checks in Academe*, 32 J.C. & U.L. 655 (2006).

North Carolina Regulation 700.5.1.[R] (adopted 10/26/06 and effective for all students matriculated after 8/1/07 in a constituent institution for the University of North Carolina).

Northeastern Illinois University, *College of Education Background Checks*, <http://www.neiu.edu/~edudept/files/bcinfo.pdf> (Fall 2006).

Ohio State University-School of Allied Medical Professions, *2007 Admissions Application*, <http://www-afa.adm.ohio-state.edu/apps/prof/profpdf/AMPInstr.pdf>, and *Teacher Preparation Unit*, <http://ehe.osu.edu/outreach/schools-network/docs/background-check-procedures.pdf> (Jan. 5, 2007) (examples of background check requirements).

Patrick Shannon, *Who Is an "Otherwise Qualified" Law Student? A Need for Law Schools to Develop Technical Standards*, 10 U. Fla. J.L. & Pub. Policy 57 (1998).

Southern Utah University, *Criminal Background Check Requirement*, <http://www.suu.edu/ed/fso/fingerprints.html> (updated May 24, 2007).

Jerome W.D. Stokes & Allen W. Groves, *Rescinding Offers of Admissions When Prior Criminality Is Revealed*, 105 Ed. Law Rep. 855 (1996).

University of Wisconsin System, *Safety & Loss Prevention—Risk Management Policy and Procedure Manual, Part 10, Student Risk Management Issues*, http://www.uwsa.edu/oslp/rm/manual/part_10/stdtorgs.htm (last revised Jan. 10, 1996).