Project PACE

Faculty Resources for Teaching Students with Disabilities

Overview of Federal Laws Protecting Students with Disabilities in Colleges and Universities

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I. INTRODUCTION

Since the passage of the Americans with Disabilities Act of 1990,[1] society has experienced an increased awareness of the presence of individuals with disabilities in many settings, such as the workplace, places of entertainment, hotels, stores, and professional offices. Colleges, universities, and other institutions of higher education (hereinafter collectively referred to as "colleges") have seen an increased number of students with disabilities enrolled in their programs since the mid1980s.[2] This is in part because § 504 of the Rehabilitation Act of 1973[3] (hereinafter "S 504") has for a generation required colleges to admit students with disabilities who can meet the essential requirements of the academic program. At the University of Arkansas at Little Rock (UALR), for example, the number of students with disabilities served by the university's Disability Support Services office in 1987 was 113; in 1998, the number was 506.[4]

The presence of these students in colleges has also been made possible by the 1975 special education law (Education of All Handicapped Children Act, reauthorized in 1990 as the Individuals with Disabilities Education Act ("IDEA")[5]), which was the first federal law providing for free appropriate public education for children with disabilities. Many of the children who have benefited from IDEA are now old enough to attend college, and may be able to do so because of the early intervention services they received through IDEA.[6]

Predictably, the presence of these students in college campuses has presented difficult issues for faculty and administrators. These issues generally arise in the context of admissions procedures (determining whether the applicant is a "qualified individual with a disability") and academic programming (determining whether the accommodations or modifications required by the student are "reasonable"), although they may also arise in other contexts, such as removal of architectural barriers. This article gives an overview of the federal laws that protect students with disabilities in colleges and universities, and discusses some of the difficult issues that arise from the application of these laws.

It should be noted that the law also protects faculty and other employees with disabilities who work in colleges, but issues that arise in that context are beyond the scope of this article.[7]

II. STATUTORY FRAMEWORK

A. Section 504 of the Rehabilitation Act of 1973[8]

1. *Who must comply?*

Entities, programs and activities that receive federal funding must comply with 504. This includes essentially all institutions of higher education.

2. *Basic mandate*

Section 504 provides that "[n]o otherwise qualified individual with a disability… shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance."[9] This mandate has been interpreted by courts to require the college or university to also provide "reasonable accommodations" to students in order to facilitate their participation in the educational program. In addition, colleges and universities are required to incorporate the concept of "least restrictive environment" in their operations. This means that, to the degree that is reasonably feasible, students with disabilities must not be segregated from nondisabled students.

3. *Who is protected?*

An "*individual with a disability*" is defined as a person who

(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) has a record of such an impairment; or

(iii) is regarded as having such an impairment.[10]

"Substantially limits" refers to the limitations brought about when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.[11] "Major life activities" include "functions such as caring for one's self; performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."[12]

The term "individual with a disability" does *not* include:

1. An individual who is *currently* engaging in illegal use of drugs. However, if the individual has successfully completed a supervised drug rehabilitation program; is participating in a supervised rehabilitation program; or is erroneously regarded as engaging in such use, that individual is protected;[13]
2. an individual who is an alcoholic, whose current use of alcohol prevents him from meeting the academic and technical requirements of the educational program, or whose presence would constitute a direct threat to property or safety of others;[14] and
3. an individual on the basis of homosexuality or bisexuality;[15] transvestism; transsexualism; pedophilia; exhibitionism; voyeurism; gender identity disorders;[16] compulsive gambling; kleptomania; or pyromania;[17] psychoactive substance use disorders resulting from current use of drugs.[18]

To be protected under § 504, an individual must not only meet the definition of "individual with a disability," but he must also be "otherwise qualified."

4. *"Otherwise Qualified"*

As stated above, § 504 provides that no "otherwise qualified individual with a disability" shall be excluded From participation in programs of an entity that receives federal financial assistance "solely by reason of his handicap."[19] In the context of higher education, the regulations for § 504 define a "*qualified disabled person*" as one who "meets the academic and technical standards requisite to admission or participation in the recipient's educational program or activity."[20] "Technical standards" refers to all nonacademic admissions criteria that are essential for participation in the educational program, including physical attributes.

The United States Supreme Court first addressed § 504 in *Southeastern Community College v. Davis*.[21] In that case, a deaf nursing school applicant was found by the college to be unable to satisfy the essential requirements of the program and was, therefore, denied admission. The Court held that "[a]n otherwise qualified person is one who is able to meet all of a program's requirements *in spite of* his handicap."[22] The Court concluded that the clinical phase of the nursing program to which Ms. Davis had applied would have to be eliminated, because it would require close, individualized supervision by a nursing instructor in order to ensure the safety of the patients. The Court concluded that this elimination would result in a fundamental alteration in the nature of the program that was Far more than the modification the regulations required.[23] Therefore, the Court held that a college may deny a student with a disability admission or

participation into its program when substantial modifications or fundamental alterations in the nature of the program would be required in order to permit the student to participate.[24] At the same time, the Court rejected the proposition that an individual can be presumed to be unqualified simply because he has a disability.[25] The Court also stated that an institution of higher education may not deny admission to a student with a disability on the basis that some modifications or accommodations may be necessary to permit that student to participate in the program.[26]

The Court's decision in *Davis* has been interpreted by subsequent case law to mean that in determining whether the individual is "otherwise qualified," the entity receiving federal funding must consider what accommodations can be made to help this individual meet the requirements of the program or activity. The entity must make the accommodations only if they are "reasonable," however.[27]

5. *"Reasonable Accommodations"*

The "reasonable accommodation" requirement[28] was developed because simply opening the doors to individuals with disabilities would not ensure equal opportunity for participation. The reasonable accommodations that the college or university is to provide to students with disabilities are to be determined on a case-by-case basis, and may include removing architectural or physical barriers; providing auxiliary aids or services; or modifying policies, practices, and curriculum.

Although *Alexander v. Choate*[29] did not involve a college, it is nonetheless significant, because of the Supreme Court's discussion of the term "reasonable accommodation." In that case, the Court explained its decision in *Davis* as an attempt to balance the statutory rights of individuals with disabilities to be integrated into society with the legitimate interest of entities that receive Federal funding (in *Davis*, a college) to preserve the fundamental nature and integrity of their programs. The Court stated in *Alexander* that the balance struck in *Davis* required that an otherwise qualified handicapped individual must be provided with meaningful access to the program that the grantee of federal financial assistance offers. In order to ensure I that this meaningful access is given, reasonable accommodations in the grantee's program may be necessary.[30]

The discussion of the concept of "reasonable accommodations" by the First Circuit in *Wynne v. Tufts University School of Medicine*[31] is also important. *Wynne* involved the issue of "reasonable accommodations" under § 504 in the academic context when a student with significant learning disabilities sued his medical school for refusing to accommodate his disabilities by providing multiple choice tests in an alternative format. Mr. Wynne lost because the accommodation of his needs would have imposed an undue hardship on the medical school by requiring it to lower its academic standards, thus fundamentally altering the nature of the program.. The court stated that in determining whether a student meets the "otherwise qualified" prong of § 504, it is necessary to take into account the extent to which reasonable modifications that will satisfy the legitimate interests of both the school and the student are (or are not) available. If they are available, the college must explore those alternatives, and must demonstrate that alternative means, their feasibility, cost, and effect on the academic program were considered. If the college then arrives at a rationally justifiable conclusion that the available alternatives would result in lowering the academic standards or requiring substantial program alteration, it will be deemed to have met its obligation to seek reasonable accommodation.[32]

6. *"Undue Hardship"*

A college (or other recipient of federal funding) need not provide an accommodation to a disabled individual if the accommodation would cause the college "undue hardship."[33] An accommodation will be deemed to cause undue hardship if it would

a) fundamentally alter the nature of the program;[34]
b) pose a safety risk to the individual

with a disability or to others;[35] or

c) create an undue administrative or financial burden.

The undue hardship limitation adds little to the law, because, almost by definition, an accommodation that caused undue hardship would not be reasonable.

B. Americans with Disabilities Act of 1990[36]

Section 504 has protected college students with disabilities from discrimination since 1973, but the ADA has unquestionably impacted upon this area by renewing an awareness of the obligations of colleges toward students with disabilities. Title II of the ADA[37] extends the protection given by § 504 to qualified individuals with disabilities in state and local government services, programs, and activities, including those that do not receive assistance from the federal government. State colleges, therefore, must comply with the mandates of Title II. Entities subject to the provisions of Title II were required to have conducted a self-evaluation of their services, policies, and practices by July 23, 1992.[38] The self-evaluation had the goal of identifying any changes needed—from architectural changes to program modifications—and developing a plan for making the changes.

Title III of the ADA[39] protects individuals with disabilities from discrimination on the basis of a disability by private entities that provide public accommodation. Private colleges, as places of education that open their doors to the public, fall within Title 111.[40] Private colleges are not required to undergo a self-evaluation (beyond that which they may have been required to do under § 504 if that statute applies to them) as state colleges are, but they are required to remove architectural barriers to the extent that it is "readily achievable" to do so. The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense."[41]

In addition, Title III of the ADA also prohibits discrimination on the basis of a disability in examinations or courses related to application, licensing, or certification for secondary or postsecondary education and professional or trade school. The ADA requires that these examinations and/or courses be offered in an accessible manner or place, or that alternative arrangements be made to ensure accessibility.[42] This provision would apply, for example, to state boards of bar examiners.

Issues that are addressed by the ADA more extensively than they are by § 504 are campus transportation systems,[43] accessibility of facilities,[44] and drug testing and substance use and abuse.[45] The ADA's statutory language is more detailed than that of § 504 with regard to the terms "discrimination,"[46] "reasonable accommodation,"[47] and "undue hardship."[48] This more detailed statutory language probably reflects the judicial interpretation given to those terms under § 504.

1. *Who must comply?*

As discussed above, the ADA applies to state colleges under Title II; to private colleges under Title III; and to entities providing courses and examinations for certification under Title III.[49]

2. *Basic mandate*

The mandate on colleges under the ADA is essentially the same as that under § 504: nondiscrimination plus reasonable accommodation in the least restrictive environment. Under Title II, state colleges may not exclude an otherwise qualified individual with a disability[50] from any of their programs or services, or otherwise discriminate against an applicant or student with a disability. Under Title III, private colleges, as places of public accommodation, are equally prohibited from discriminating against an individual on the basis of a disability with respect to the full enjoyment of its programs and services.[51]

In addition to the nondiscrimination mandate, colleges are required to provide reasonable accommodations, adjustments, or modifications when required. They must also ensure that students with disabilities are informed about how to access appropriate supportive services. To comply with this requirement, most universities have an office that coordinates these services. UALR, for example, has its office of Disability Support Services, whose Director is Ms. Susan Queller.

Finally, colleges are required to operate their programs in the "least restrictive environment" possible. This means that the use of their facilities must be in the most integrated setting, appropriate to the needs of the individual, with the assistance of any auxiliary aids and services that may be required by the individual with the disability. Physical/architectural barriers must be removed in existing facilities, and new construction and alterations must be designed to be accessible.[52]

3. *Who it Protected?*

Under the ADA, as under § 504, an "*individual with a disability*" is one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.[53] The statutory terms have been interpreted as under § 504.

4. *Qualified Individual with a Disability*

Title II, like § 504, is designed to protect a "qualified individual with a disability." Title II defines this term as an individual with a disability who "with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."[54] Title III, applicable to private colleges, does not include the language "qualified individual with a disability." Nonetheless, it is clear that private colleges, like state colleges, are required to offer modifications only to students who, with the aid of the modifications, can meet the essential requirements of participating in their programs.

The definitions of the terms "reasonable accommodations" and "undue hardship" under the ADA are essentially the same as under the Rehabilitation Act.[55]

III. ISSUES THAT ARISE FROM THE APPLICATION OF THESE LAWS

To determine whether any (or a combination) of these three provisions (§ 504, Title II or Title III) applies, the college or university must go through a four-step analysis:

1. Does the student (or applicant) have a "disability" as defined in § 504 or the ADA?
2. If so, is he "otherwise qualified" with or without reasonable accommodations?
3. What accommodations does he need?
4. Are these accommodations "reasonable," or would they create an undue hardship on the university?

The answers to each of these questions bring about a multitude of issues that can be difficult to resolve.

1. *Does the student have a disability?*

In the case of obvious physical disabilities, such as mobility, visual, or hearing impairments, it will normally be easy to determine that the student has a disability under federal law. However, it will be harder to determine whether learning disabilities, developmental and

mental disabilities, health conditions, and alcohol and drug abuse and/or dependency constitute disabilities that will entitle the student to protection.

a. If the student discloses his condition--for example, a learning disability—and requests accommodations, the college must ask for a report of a recent and thorough evaluation by a qualified professional. The report must explain the nature of the disability, how that disability manifests itself and affects that student's thought processes and/or ability to function, and the modifications that will be necessary in order for that student to be able to participate in the program. This report and other documentation concerning the student's disability from a qualified professional certifying that the student does have a disability must be updated during the student's association with the college.[56]

b. If the student does not disclose his condition, the college may not make any preadmission inquiries concerning the existence of disabilities. The goal sought in prohibiting preadmission questions about the existence of a disability is to ensure that the admissions decision is made on the basis of the student's ability rather than disability.[57] After the student has been admitted to the program, if faculty and/or administrators suspect that the student may have a disability; the college still may not ask any questions related to a disability, refer the student to the office that coordinates services for students with disabilities, or suggest to the student that he undergo an evaluation. Under these circumstances, it is unclear what the college's obligation, if any, will be. Some courts have held that as long as the college is not specifically informed of the disability; it has no obligation to accommodate.[58] On the other hand, some courts have held that if the college has any indication that the student may have a disability, it is obligated to look into the possibility of providing accommodations.[59]

2. *Is the student "Otherwise Qualified"?*

Students have been found to have a "disability" and, yet, not entitled to protection because they were not "otherwise qualified." As stated above, under the Rehabilitation Act, a student is "otherwise qualified" if he "meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity."[60] Under the ADA, a "qualified individual with a disability" is someone who, with or without reasonable modifications, meets the essential eligibility requirements of the program.[61]

These two standards stand for the proposition that in considering the admission of a disabled applicant for a program (or the continued enrollment of a disabled enrolled student), the college must determine what academic modifications and adjustments would be required for admission (or continuation in the program). If the modification is substantial, the change in the program is fundamental, or an undue hardship is otherwise imposed on the university by such modification, the applicant (or continuing student) will be deemed unqualified.

Determining whether a student is "otherwise qualified," therefore, presents difficult issues. Both § 504 and the ADA prohibit colleges from using eligibility criteria in the admission process that tend to screen out individuals with disabilities, who would otherwise be qualified, from participating in the program or activity, unless such criteria can be shown to be necessary for the program.[62] Section 504 requires that colleges "not make use of any test or criterion. . . that has a disproportionate adverse effect on handicapped persons. . ."[63] An exception to this prohibition is found when the test has been validated as a predictor of success in the educational program, and alternate tests or criteria that have a less disproportionate effect are not available.[64] An example of eligibility criteria that would impermissibly screen out a student with a certain disability would be to require a student with a learning disability, for whom processing foreign languages would be particularly difficult, to have taken a foreign language in high school. Another example would be requiring a student who is physically impaired to have participated in athletics as a prerequisite for admission.[65] Requiring applicants to take standardized tests for admission may also present a

problem, because these tests may prove to be almost impossible for students with certain learning disabilities.

3. *What accommodations does the student need?*

Determining the nature of the accommodations and modifications the student needs will be a critical component in the analysis to determine whether the student is "otherwise qualified" to participate in the program. *Southeastern Community College v. Davis*[66] and subsequent decisions interpreting it essentially require colleges considering an applicant to determine what modifications and adjustments would be required for admission, and if a modification is substantial or a programmatic change fundamental, the applicant will be considered to not be "otherwise qualified." Stated differently, if the accommodations and modifications the student needs will result in altering the fundamental nature of the program and/or creating an undue hardship on the college or university, the student will not be "otherwise qualified." When students are found to not be "otherwise qualified," courts generally base their decisions on the fact that the student is not able to satisfy one or more essential components of the program. Courts are customarily highly deferential to the college's determination of what is an "essential component" of the program.[67] Sometimes, courts will find students, not "otherwise qualified" because, their disability is determined to pose a direct threat to the safety of the student and society at large. This is particularly so when the student is applying for admission to a program in a health-related profession.[68]

Generally speaking, however, the accommodations or adjustments students will need will be considered "reasonable." These accommodations are divided in two broad categories: architectural modifications to allow physical access, and program modifications. Architectural modifications are not as difficult to address, and are not an issue as often, as program modifications. This is so because § 504 has required barrier removal since 1973, because Title II of the ADA required entities falling under its mandates to undergo and finish a process of self-evaluation by 1993 to determine which structural changes were needed, and because Title III of the ADA requires entities falling under its mandate to architecturally modify their facilities to permit easy access to students with physical disabilities. Moreover, the cost of such modifications is purely economic, and relatively easy to assess.

Program modifications, by contrast, are frequently problematic. They must be determined on a case by case basis, special technological equipment is often needed, and individual faculty members may oppose the adjustments requested by the student.

Program modifications are divided into two categories: curricular modifications and auxiliary aids and services. Examples of curricular modifications are light course loads; reduction, substitution, waiver or adaptation of some courses; exam modifications (extra time, different format, separate room or extra rest time); extension of time to complete assignments; extension of time allowed for degree completion; and permission to tape record classes. Generally, these curricular modifications do not involve out of-pocket expenses, but may involve some administrative and operational costs.

The curricular modifications needed by each student are determined based on the documentation received from the professional(s) who tested the student and determined the existence of a disability. The implementation of these curricular modifications is coordinated by the office in the college responsible for providing services to students with disabilities. The modifications are made in consultation with faculty whose courses may be affected, school administrators, and the student.

The expense in providing auxiliary aids and services to students with disabilities, unlike curricular modifications, can be substantial. Regulations implementing § 504 require colleges to "take such steps as are necessary to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination... because of the absence

of educational auxiliary aids for students with impaired sensory, manual, or speaking skills."[69] Examples of auxiliary aids and services include providing help in ordering books; taping lectures, texts, and/or tests; giving tests orally; providing tests in Braille; providing tests in large print; providing a distraction-free room for tests; helping find notetakers; and providing assistive listening devices, sign language interpreters, readers, and classroom equipment.

In terms of financial responsibility for the significant expenditures that may be required in making reasonable accommodation, it is clear that the student is not required to bear the expense, even if financially able to do so. The expenses will be borne either by the state Rehabilitation Services Administration (if the student is eligible for state-provided services) or by the college.[70]

4. *Will these accommodations and modifications create undue hardship on the university?*

If the accommodations the student requires will be too expensive or too disruptive administratively or operationally, the accommodations are unreasonable in that they would create an undue burden on the school. Section 504 does not require entities falling under its mandate to provide accommodations that would cause "undue financial or administrative burdens."[71] The ADA similarly states that only accommodations that are "readily achievable," that is, those that can be implemented without much difficulty or expense are required. Under the ADA, factors that would be considered would be the nature and cost of the accommodation, the overall financial resources of the program, and the impact of the action on the program.[72] Obviously, the legal tests involved provide ample room for disagreement.

IV. CONCLUSION

Federal law protecting students with disabilities affects the practices of virtually all colleges. Faculty and administrators should not be skeptical or intimidated, however.
The basic, underlying premise of the law must be understood: as a society, we want to open the doors of colleges to students with disabilities who, with reasonable modifications, can participate in educational programs, and become productive members of society.

The law in this area continues to evolve, and uncertainty may diminish over time. It will never disappear, however. Like the concept of "reasonableness" in tort law, vague terms such as "reasonable accommodation," "otherwise qualified individual with a disability," "undue hardship," "readily achievable," and reference to a college's resources and the impact of a modification on its program, provide anything but a bright-line rule. Nonetheless, present law is sufficiently clear to enable colleges to determine their legal responsibilities toward students with disabilities in most cases.

Endnotes

1. 42 U.S.C. §§ 12101-12213.
2. Laura F. Rothstein, DISABILITIES AND THE LAW 184 (1992) (citing Profile of Handicapped Students in Post-Secondary Education, 1987, Department of Education, Doc. No. 065-000-00375-9).
3. 29 u.s.c. § 794.
4. UALR Disability Support Services 1997-98 Data Summary Report, Educational and Student Services Division, University of Arkansas at Little Rock, distributed Spring 1999. The disabilities of students served by the Disability Support Services at UALR are as follows: Learning disabilities 35%; medical impairments 21%; mobility impairments 16%; psychological impairments 11%; visual impairments 9%; and hearing impairments 8%. *Id.* 1997-98 Primary Disability Distribution.
5. 20 U.S.C. §§ 1400-1461.
6. Laura F. Rothstein, DISABILITY LAW, Cases, Materials, Problems 509 (2d ed. 1998).

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7. Faculty and employees with disabilities working in institutions of higher education are protected from employment discrimination on the basis of their disability by § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1973) and Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111-12117.
8. 29 U.S.C § 794.
9. *Id*
10. *Id* § 706(8)(B).
11. 29 C.F.R. § 1630.2(j); § 35.104(1)(i).
12. 34 C.F.R. § 104.3(j)(2)(ii).
13. *Id* (C)(i) and (ii).
14. *Id* (iv). See e.g., *Anderson v. University of Wisconsin*, 841 F.2d 737 (7th Cir. 1988), in which a student who was an alcoholic was given two opportunities at rehabilitation but still fai1ed to meet the academic standards to continue. He was then expelled. He sued the University of Wisconsin, alleging that it had violated § 504 of the Rehabilitation Act. The court held that because he was unable to meet the academic standards of the school of law, he was not a qualified individual with a disability and, therefore, the university had not violated § 504 when it denied him continued enrollment.
15. 29 U.S.C. § 706 (E)(ii).
16. *Id* (F)(i).
17. *Id* (ii).
18. *Id* (iii).
19. 29 U.S.C. § 794.
20. 34 C.ER. § 104.3(k)(3).
21. 442 U.S. 397 (1979).
22. *Id* at 407 (emphasis added).
23. *Id* at 4lO.
24. *Id* at 4l3.
25. *Id* at 405.
26. *Id* at 412-13.
27. *See, e.g. Alexander a Choate*, 469 U.S. 287 (1985).
28. 34 C.F.EL § 104.12.
29. 469 U.S. 287 (1985).
30. *Id* at 3O1.
31. 976 F.2d 791 (1st Cir. 1991).
32. *Id* at 794-95.
33. 34 C.F.R. § 104.12(a).
34. *See, e.g., Wynne v. Tufts Univ. Sch. of Medicine*, 976 F.2d 791 (1st Cir.1992); *Southeastern Community College v. Davis,* 442 U.S. 397 (1979). *See also supra* text accompanying notes 21-23.
35. *See, e.g., Doe v. New York Univ*., 666 F.2d 761 (2d. Cir. 1981), in which a medical school student who suffered from mental illness was denied admission to the program. The university successfully argued that it had denied admission to the student out of concern for the safety of the public.
36. 42 U.S.C. §§ 12101-122 13.
37. *Id* §§ 12131-12161.
38. 28 C.F.R. § 35.205.
39. 42 U.S.C. §§ 12181-12189.
40. Title III of the ADA does not apply to private colleges and universities that are controlled and operated by religious entities.
41. 28 C.F.R. § 36.304.

42. 42 U.S.C. § 12189.
43. *Id* § 12141-12165; 27 C.F.R. § 3725.
44. *Id* § 12183.
45. 28 C.F.R. § 35.13 1.
46. 42 U.S.C. § 12132.
47. *Id* § 12111(9)(A) and (B).
48. *Id* (I0)(A) and (B).
49. When determining which Title of the ADA will apply in a particular case, it should be understood that § 504 almost certainly will also apply because most colleges and universities receive federal finding. *See* Rothstein, *supra* note 2, at 348.
50. 42 U.S.C. § 12132.
51. *Id* § 12182(a).
52. 42 U.S.C. §§ 12182 and 12182(b)(I)(B).
53. *Id* § 12102(2). The ADA excludes from protection the same individuals excluded under § 504 of the Rehabilitation Act of 1973. *See supra* text accompanying notes 10-15.
54. *Id* § 12131(2).
55. *See supra* text accompanying notes 28-32.
56. All documentation concerning the student's disability is to be kept confidential, except for administrators, faculty affected, and staff from the office coordinating services for students with disabilities.
57. Bonnie Poitras Tucker, FEDERAL DISABILITY LAW in a Nutshell 208 (1998).
58. *See, e.g.. Salvador v. Bell*, 622 F. Supp. 438 (N.D. III. 1985), *aff'd*, 800 F.2d 97 (7th Cir. 1986), in which the court held that the institution had not violated § 504, because it had not been informed that the student had a learning disability.
59. *See, e.g., Narhanson v. Medical College of Pennsylvania*, 926 F.2d 1368 (3d Cir. 1991), in which the court remanded the case for a determination as to whether the medical college had reason to know that the student's back condition was a disability and whether the school had provided the student with reasonable accommodations if it were found that the school had reason to know that the student had a disability.
60. 34 C.F.R. § 104.3(k)(3).
61. 42 U.S.C. § 36.201(a); § 35.130; § 35.130(b)(8).
62. Rothstein, *supra* note 2, at 192.
63. 34 C.F.R. § 104.42(b)(2).
64. *Id* (d).
65. *Id*
66. 442 U.S. 397 (1979).
67. *See supra* text accompanying notes 28-32. *See also e.g., Doherty v. Southern College of Optometry*, 862 F.2d 570 (6th Cir. 1988) (student with retinitis pigmentosa, a visual and neurological disorder which resulted in diminished vision and motor skills, was found not otherwise qualified, because disability prevented him from operating certain equipment required as an essential component of the optometry program); *Villanueva v. Columbia University*, 746 F. Supp. 297 (S.D. N.Y. 1990) (graduate student with cerebral palsy who failed written qualifying exams twice was not otherwise qualified); *Ohio Civil Rights Commission v. Case Western University*, 76 Ohio Sr. 3d 168, 666 N.E.2d 1376 (S. Cc. 1996) (blind applicant for medical school found to not be "otherwise qualified," because accommodations needed for course work would impose undue hardship on school and blindness prevented her from participating in essential component courses of program,

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such as radiology; anatomy, physiology, all of which would be essential for skill of medical observation and diagnosis).
68. *See e.g.. Doe v. New York Univ*., 666 F.2d 761 (2d Cir. 1981) (medical school student who had a mental illness was denied admission to the program). See also cases cited in preceding footnote.
69. 34 C.F.R. § 104.44(d)(1).
70. *See Barnes v. Converse College*, 436 F. Supp. 635 (D.S.C. 1977) (cost is not a factor in requiring colleges to provide sign language interpreters for college lectures for hearing impaired students); *United States v. Board of Trustees*, 908 F.2d 740 (11th Cir. 1990) (upholding the Department of Education's interpretation of its regulations under the Rehabilitation Act as prohibiting a university from denying auxiliary aids to disabled students who did not show financial need. The university may have the student request assistance through state vocational rehabilitation programs and private charitable programs, but, ultimately, the university is responsible for the cost of the auxiliary aids needed. Undue financial or administrative burdens could be a defense, but such defense was not applicable in that case.)
71. *See Southeastern College v. Davis*, 442 U.S.
397, 412 (1979); *United States v. Board of Trustees*, 908 F.2d 740, 747 (11th Cir.
1990). But see *Barnes v. Converse College*, 436 F. Supp. 635 (D.S.C. 1977), in which the court held that cost is not a factor in requiring the college to provide sign language interpreters for hearing impaired students.
72. 42 U.S.C. § 12181(9). See also Rothstein, *supra* note 2, at 205. *See supra* text accompanying notes 33 and 34.

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