

## HEALTH LAW

### Technical Standards and Lawsuits Involving Accommodations for Health Professions Students

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#### Abstract

This article will discuss the legal obligations of medical schools to accommodate applicants and students with disabilities. The article begins by describing the problem of denial of medical education to such students, a problem that results from both discrimination in admissions and denial of accommodations to incumbent students with disabilities. The article then discusses the disability rights legislation that prohibits discrimination against—and requires reasonable accommodation of—qualified medical students with disabilities. It concludes by reviewing a number of lawsuits involving requests for accommodation and how disability rights law was applied in those cases.

#### Introduction

Measuring the number of people with disabilities is notoriously slippery because of the variety of ways of defining the category [1]. But a recent CDC survey found that 53.3 million adults, or just over 22 percent of the adult population, reported having disabilities [2]. The rate among graduate students, who are generally younger than the average adult, is 7.6 percent [3]. Several studies have found that less than one percent of medical students have disabilities [4, 5].

This disparity cannot be attributed simply to the inherent effects of disability. Indeed, many successful physicians have disabilities [6]. Rather, I will argue, the underrepresentation of medical students with disabilities is largely attributable to medical school policies and practices that pose barriers to the admission and graduation of such students. At the admissions stage, students with disabilities are often barred by the requirement to meet inflexible [technical standards](#) that emphasize particular physical capacities over the ability to perform tasks that arise in medical practice. And students with disabilities who matriculate might find that their school fails to provide appropriate accommodations for their disabilities despite the passage of the Americans with Disabilities Act in 1990 [7]. A wave of recent judicial decisions demonstrates that schools that do not offer adequate accommodations to students with disabilities face serious risks of liability under antidiscrimination law [8-14].

Medical schools should be concerned about not only the legal liability they face by not offering accommodations to which students with disabilities are legally entitled, but also the harm to students who are unfairly excluded and the [harm to effective medical practice](#). Underrepresentation of students with disabilities in American medical schools reduces the diversity of the medical profession, a result that is inconsistent with the values articulated by professional organizations [15]. But the harm is not merely abstract. An accumulating body of evidence suggests that the lack of exposure to persons with disabilities as peers inhibits the ability of physicians to provide effective medical care to patients with disabilities [16-18]. A lack of appropriate accommodations thus impairs the quality of the education that medical schools provide. Because the population of Americans with disabilities is large and growing as our population ages, this problem is especially acute.

The rest of this article will discuss the legal obligations of medical schools to accommodate applicants and students with disabilities. I will first review disability rights legislation that prohibits discrimination against—and requires reasonable accommodation of—qualified medical students with disabilities. I will then discuss a number of lawsuits involving requests for accommodations and how the courts applied disability rights law in those cases.

### **The Rehabilitation Act and the Americans with Disabilities Act**

All American medical schools must comply with Section 504 of the Rehabilitation Act of 1973 [19] as well as either Title II (for public medical schools and hospitals) [20] or Title III (for private medical schools and hospitals) of the Americans with Disabilities Act [21]. People who believe they have been discriminated against may file charges with the federal government or proceed directly to court; a school that has violated these laws might be required to pay money damages or provide accommodations to the person who complained and possibly make broader policy changes.

Although there are some differences of detail, the basic requirements of Section 504 and Titles II and III are the same: to refrain from discriminating against “qualified” persons with disabilities and to make “reasonable modifications” of policies and practices when necessary to avoid such discrimination—insofar as the modifications would not “fundamentally alter” the nature of an entity’s enterprise [22]. An excessive cost is one of the factors that might make a modification unreasonable or transform it into a fundamental alteration, but the mere fact that an accommodation imposes cost does not excuse a medical school from providing it. A “qualified” person with a disability is one who can meet the “essential” requirements of a program, even if doing so requires reasonable modifications of policies, practices, and services [22]. Among the modifications required is the provision of an “auxiliary aid or service necessary to ensure effective communication” such as interpreters and video remote interpreting systems

when necessary to ensure that persons with disabilities can communicate as effectively as those without disabilities [23].

There is a more fundamental need for reasonable accommodations. The Supreme Court has explained that federal disability rights laws seek “to diminish or to eliminate the stereotypical thought processes, the thoughtless actions, and the hostile reactions that far too often bar those with disabilities from participating fully in the Nation’s life” [24]. The requirement of reasonable modification rests on the view that people often design institutions, and set the criteria for access to those institutions, with “normal” participants in mind [25]. Those criteria will thus exclude people whose bodies and cognitive functions do not fit that taken-for-granted norm, when reflection might show that the exclusionary criteria are not essential to the institutions’ mission and therefore might be modified to accommodate people with disabilities. As I discuss in the next section, some of the practices that have posed barriers to people with disabilities in American medical schools appear to constitute just this sort of unreflective exclusion.

### **Technical Standards and Lawsuits Involving Accommodations**

Pursuant to guidance from the Association of American Medical Colleges, US medical schools have established “technical standards” as criteria for admission [26]. Technical standards often require students to demonstrate motor functions, intellectual abilities, and the capacities for observation and communication. Inflexible application of these standards rests on the premise that all medical school graduates should have the basic skills and abilities to enter any field of medicine—that is, that they should be “undifferentiated graduates.” In today’s world of medical specialization, however, that ideal is unrealistic and unclear. And even if there is some pedagogical value to giving all students who have these basic skills and abilities preparation to receive specialized training in any practice area, it’s not clear why or according to whom that outcome is worth the risk of entirely excluding some applicants with disabilities who could successfully practice in many specialties. Although some schools use “functional” technical standards that look to whether “medical students possess the skills necessary to be effective doctors, without dictating the precise means that they must use to do so,” many others use “organic” technical standards that “focus on how students will perform tasks” without accommodations [27]. Bioethicist Alicia Ouellette has described organic technical standards as “ableist” because they specifically exclude persons with various disabilities (such as those who cannot see, hear, or use their hands) from attending medical school as they do not meet program requirements the school deems “essential” [28]. But why, for example, should the inability to use one’s hands prevent a person from studying to become a psychiatrist? That is just the sort of question that disability discrimination law, with its focus on “reasonable” accommodations and “fundamental” alterations, requires schools to ask.

The Iowa Supreme Court asked a version of this question in *Palmer College of Chiropractic v Davenport Civil Rights Commission* (2014) [8]. Palmer College had rejected a blind applicant because he could not meet its technical standard for “sufficient use of vision” to perform “the review of radiographs” [8]. The court held that the school was required to modify that technical standard, relying on evidence that many chiropractors are not called upon to visually interpret radiographic images in their practices and that other medical schools had successfully accommodated blind students.

Other cases have shown more deference to the inflexible application of ableist technical standards. In *McCulley v University of Kansas School of Medicine* (2014) [9], for example, the federal Tenth Circuit Court of Appeals held that a medical school could refuse to admit an applicant with spinal muscular atrophy that prevented her from lifting and positioning patients, stabilizing elderly patients, and providing basic life support. Even though the applicant did not intend to pursue a physically demanding specialty, the court deferred to the school’s decision to adopt “a broad, undifferentiated medical curriculum that prepares students to serve as physicians in a wide range of practice areas” [9].

Although *McCulley* shows that medical schools can ultimately prevail in litigation if they insist on inflexible ableist technical standards, *Palmer College* demonstrates the significant risk that they could lose—a risk that will grow as more and more medical schools accommodate students with disabilities and concomitantly relax the undifferentiated-graduate ideal. And the court’s conclusion in *Palmer College* is more consistent with the basic premises of disability discrimination law—and the ethical obligation to diversify health professions—than is the court’s conclusion in *McCulley*. Medical schools would thus do well to learn from the *Palmer College* precedent.

### **Successful Lawsuits for Accommodations**

After applicants with disabilities gain admission to medical school, they can confront difficulties in obtaining needed accommodations from their schools. One common example is the denial of [communication aids to deaf students](#). Although a pre-ADA case upheld a nursing school’s refusal to allow a student to use a sign-language interpreter [10], more recent decisions have concluded that medical schools may not refuse to provide interpretive services. In *Argenyi v Creighton University* (2013) [11], a jury found that the defendant medical school violated the law by denying real-time transcription services to a deaf student. And in *Featherstone v Pacific Northwest University of Health Sciences* (2014) [12], the court granted a preliminary injunction that required the school to provide interpreters for a deaf student; the parties later settled. These decisions make clear that the provision of an “auxiliary aid or service necessary to ensure effective communication” [23] can be a required accommodation under the law, even if providing that accommodation imposes a meaningful cost on the school.

Another example of an accommodation that is commonly denied involves [requests for extra time](#) to study for tests or extra opportunities to take classes and tests. In *Dean v University at Buffalo School of Medical & Biomedical Sciences* (2015) [13], a student who was being treated for depression sought additional leave beyond that provided by school policies to study for Step 1 of the US Medical Licensing Exam. He argued that he needed the time to permit his medication regime to stabilize before he could study. The school rejected his request; he sued; and the federal Second Circuit Court of Appeals held that his case should proceed to trial. The court explained that the school had not shown that it had “diligently assessed whether the alteration would allow Dean the opportunity to continue in the MD program without imposing undue financial and administrative burdens on UBMED [University at Buffalo School of Medical & Biomedical Sciences] or requiring a fundamental alteration to the academic caliber of its offerings” [13]. But there are limits to the accommodations that a school must provide. In *Powell v National Board of Medical Examiners* [14], the same court held that a medical school did not violate the law when it insisted that a student with a disability, like all other students, pass the Step 1 exam by the third try. In that case, the court found the school’s pedagogical arguments sufficient to make the requested modification of a fourth attempt unreasonable.

### **Conclusion**

Both the law and the ethical imperative to diversify the medical profession demand that medical schools reconsider inflexible practices that thoughtlessly exclude disabled students. Although many schools retain ableist technical standards for admission, the inflexible application of these standards is vulnerable to litigation under disability discrimination laws. Where technical standards and curricular requirements for enrolled students pose barriers to students with disabilities, the law will force schools to defend their refusal to modify those rules by showing that strict adherence to them is essential to their educational programs. The requirement to modify exclusionary policies is not limitless, but it is one that schools must take seriously if they are to prepare their graduates to serve the more than 50 million Americans with disabilities [29].

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