

# ACCOMMODATING STUDENTS WITH DISABILITIES IN CLINICAL AND PROFESSIONAL PROGRAMS: NEW CHALLENGES, NEW STRATEGIES

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College students with disabilities may be entitled to academic and other accommodations in order to benefit from their educational programs. Students with disabilities enrolled in academic programs with clinical components may face special challenges, however; and the institutions in which they are enrolled, as well as the corresponding clinical placement sites, face their own challenges helping students with disabilities meet the academic and technical standards required by clinical placements. Some students enrolled in programs requiring student teaching, internships, residencies, clinical experiences in medical settings, or other experiential learning have found it difficult to meet physical or behavioral requirements of those programs and may seek different accommodations from those accommodations granted for classroom learning. By the same token, institutions may find it challenging to engage in an interactive process with students regarding clinical requirements and may face difficulty determining whether a proposed accommodation is reasonable, on the one hand, or works a fundamental alteration in the program, on the other. Simply speaking, clinical programming may present more difficult, ongoing accommodation challenges for higher education, particularly as students with complex or multiple disabilities enter higher education with increasing frequency.

The Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the nondiscrimination laws of some states require an educational institution to accommodate a student who is "otherwise qualified," in that the student, with or without reasonable accommodation, is capable of meeting the academic and technical standards of the program. This requirement means that colleges and universities must develop such standards, ensure that the standards are truly necessary to the successful training of students in clinical programs, and apply the standards consistently.

Challenges to the application of these standards to students with disabilities tend to arise at two points in the student's academic career: (i) at the time of application and possible admission to a program requiring clinical experiences and (ii) at the time the student completes classroom courses and begins the experiential or clinical portion of the program. Additional difficulties frequently arise if a student has trouble completing the clinical experience and then seeks a reasonable accommodation or second opportunity to succeed in the clinical experience.

As institutions respond to financial and competitive pressures by adding innovative clinical and non-traditional programs, they must prepare to face and address complicated accommodation issues involving students with disabilities. Proper development and application of technical standards will be highly advisable, if not imperative, to ensure that a clinical or professional program reasonably accommodates students while also maintaining the quality and the fundamental academic requirements

essential to programs whose graduates will move into healthcare or serve the public in learned professions.

After a brief review of the statutory and regulatory framework, this article will review leading and developing law related to admission and to accommodation of disabilities at the beginning of—or during—the clinical experience. The article then offers a proposed framework and practical suggestions for addressing the particular accommodation challenges posed by programs with clinical or experiential components.

## I. THE STATUTORY AND REGULATORY FRAMEWORK

### A. Applicable Provisions of the ADA and the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973<sup>1</sup> and Titles II and III of the Americans with Disabilities Act of 1990 (ADA),<sup>2</sup> as well as the nondiscrimination laws of some states,<sup>3</sup> prohibit colleges and universities from discriminating against applicants or students on the basis of a physical or mental disability. The ADA prohibits an institution from “the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, *unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.*”<sup>4</sup> It also requires that an institution “[m]ake reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, *unless a fundamental alteration would result in the nature of the goods and services provided.*”<sup>5</sup> The regulations interpreting Section 504 include similar prohibitions.<sup>6</sup>

Not every applicant (or student) is protected by the ADA, Section 504, or similar state laws. Rather, the individual must have a condition that meets the definitions of “disability” articulated in the relevant laws. The individual must also demonstrate that he or she is “otherwise qualified” by

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1. 29 U.S.C. § 794.

2. 42 U.S.C. §§ 12131–12134 (2009) (Title II); 42 U.S.C. §§ 12181–12189 (2009) (Title III).

3. *See, e.g.*, laws prohibiting discrimination on the basis of disability in Maine (Me. Rev. Stat. Ann. tit. 5, § 4602 (West 2015)), New Jersey (N.J. Stat. Ann. § 10:5–12 (West 2014)), and Wisconsin (Wis. Stat. Ann. § 36.12 (West 2015)).

4. 42 U.S.C. § 12182(b)(2)(A)(i) (Title III) (emphasis added). Title II has similar requirements.

5. U.S. Dep’t of Justice, Disability Rights Section, *Title III Highlights*, [www.ada.gov/t3highlight.htm](http://www.ada.gov/t3highlight.htm) (last visited Sept. 29, 2015).

6. 34 C.F.R. § 104.

being able to meet the “academic and technical standards requisite to admission or participation in the [college’s] education program or activity.”<sup>7</sup> Students with disabilities may request “reasonable accommodations” to help them meet the academic and technical standards of their academic program, and institutions are required to provide those accommodations that do not fundamentally alter the nature of the academic program. As further discussed below, while students with disabilities have, on occasion, attempted to challenge the necessity of certain “academic or technical standards,” the courts typically defer to a college’s justification for its standards. In a few cases, however, the courts have questioned the college’s application of such standards.

The ADA was amended in 2008 by the ADA Amendments Act.<sup>8</sup> The significance of these amendments, for purposes of this discussion, is that it is now much more difficult for an institution to challenge a plaintiff’s claim that his or her physical or mental disorder meets the ADA definition of “disability.” Very few of the cases reviewed for this article addressed that issue; in most, (i) the courts or agency assumed that the plaintiff had a qualifying disability and thus protected by the law, (ii) the institution did not challenge the student’s assertion that he or she had a qualifying disability, or (iii) the facts indicated that the plaintiff clearly met the new, broader definition of disability. Significantly, the amendments did not change the definition of an “otherwise qualified” individual with a disability, and that is the issue upon which most courts focus in these cases.

Students challenging negative admissions decisions or dismissals from an academic program may file a complaint under the ADA, Section 504, or both laws with the U.S. Office for Civil Rights (OCR) within the U.S. Department of Education. They may also file a lawsuit under federal, state, or local nondiscrimination laws (or under multiple such statutory or regulatory schemes). Both the OCR and the courts have issued significant determinations involving alleged discrimination in clinical programs.

#### B. Authority Permitting Use of Academic and Technical Standards

Regulations implementing both the ADA and Section 504 state that, in order to be protected by the laws, the student must be “qualified,” in that the student can meet the “academic and technical standards” of the educational program.<sup>9</sup> While the concept of academic standards may be familiar (examples include the ability to demonstrate knowledge of the course content, as well as the ability to respond to questions and meet a

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7. 34 C.F.R. § 104.3(l)(3).

8. Pub. L. 110-325, 122 Stat. 3553.

9. 34 C.F.R. § 104.3(l)(3) (Section 504); 28 C.F.R. § 35.104 (ADA Title II); 28 C.F.R. § 36.302 (ADA Title III—criteria must be “necessary” for the provision of the [educational] service).

pre-determined standard of academic achievement), technical standards are properly linked closely to behavior.<sup>10</sup> As OCR indicated in 1997, “[s]tandards should be based on the legitimate educational . . . program . . . Standards also could include reasonable standards of conduct to continue in a class, program or activity.”<sup>11</sup> For instance, in the field of medicine, technical standards may include a student’s ability to perform certain medical procedures, such as taking a patient’s blood pressure, performing CPR or other lifesaving procedures, or visually inspecting a patient. In the field of education, technical standards may include the ability to convey information to students, professional demeanor, the ability to control a classroom of students, and so forth. A student with a disability may excel at meeting academic standards, but in some cases a disability may interfere with the student’s ability to meet one or more technical standards required for the clinical portion of the program.

The OCR has provided specific advice in several letter rulings involving application of technical standards. In *Letter to University of Texas Medical Branch*,<sup>12</sup> the OCR official responding to the student’s complaint praised the medical school for the manner in which it evaluated a student’s clinical performance against the school’s written performance standards. In that case, a medical school applicant with dystonia could not perform manual tasks and had difficulty walking and speaking. The OCR letter ruling notes that, having previously adopted technical standards, the medical school “took reasonable steps to obtain a professional determination regarding the complainant’s physical abilities” and the “professionals [on the evaluation committee] had appropriate credentials and used appropriate criteria.”<sup>13</sup>

In its *Letter to Appalachian State University*,<sup>14</sup> the OCR official responding to a student’s complaint explained at length the OCR’s review process. In the letter, OCR offered useful suggestions for developing academic and technical standards:

OCR reviews whether the determination by an institution that a requirement is an essential requirement is educationally

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10. For some clinical programs, there may be an assumption that a student’s health poses a risk to patients or to other students or faculty (for example, if a student is HIV positive or has been exposed to tuberculosis or hepatitis B). However, testing positive for exposure to these diseases may not be used to deny admission or continued enrollment to a student without first making an individualized determination as to whether the student’s clinical requirements will pose a “direct threat” to others. *See, e.g.*, *Letter to Sch. of Med., Sch. of Dentistry, Sch. of Nursing, and Other Health-Related Sch.*, 47 NDLR 122 (2013) (regarding hepatitis B).

11. *Letter to N. Cent. Technical Coll.*, 11 NDLR 326 (1997).

12. *Letter to Univ. Tex. Med. Branch*, 30 NDLR 154 (2005).

13. *Id.* at \*144–45.

14. *Letter to Appalachia State Univ.*, OCR 34 NDLR 176 (2006), NDLR (LRP) LEXIS 578 (2006).

rationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. The degree of deference accorded the institution on these types of decisions should correspond with the nature of the decision. Courts and OCR generally defer to academic determinations by colleges and universities based on the expertise of the institution and the right to academic freedom, as long as the institution can show that it reached the determination through a reasoned and informed process. To the extent that a decision or standard is an academic one, it is entitled to more deference. In general, a determination of the requirements to graduate with a degree in Music Therapy is an academic determination. On the other hand, if the decision is more about the modifications or academic adjustments that a student needs to complete the requirements in a program, it is not an academic determination and therefore is entitled to less deference.

In reviewing the process that a postsecondary institution utilizes to determine whether an academic requirement is an essential requirement, OCR considers whether the process has the following elements:

1. The decision is made by a group of people who are trained, knowledgeable and experienced in the area;
2. The decision makers consider a series of alternatives as essential requirements; and
3. The decision follows a careful, thoughtful and rational review of the academic program and its requirements.

An example of this process in the context of a case involving a student teaching program would be that the Dean of Education and a group of experienced staff and professors meet over a period of time to consider a series of options or standards. After a careful, thoughtful review, they develop a group of essential requirements for graduation with a teaching degree that are rationally based on their knowledge of teaching and experience in the field.

In some cases, requirements that are deemed essential by colleges or universities are related to an intended course of study to prepare an individual for a type of job or profession, such as doctor, lawyer, truck driver, teacher, or, as in this case, music therapist. These requirements are often based on the need for a student to master certain skills that are believed to be necessary to perform the duties of the job upon completion of the program. Many of the court decisions in this area have involved essential requirements in professional educational programs and, specifically, various types of clinical settings. An institution

should determine the appropriate or essential requirements for a course of study, not the licensing requirements for a specific jurisdiction, although these requirements may be similar or related. A student who completes a teacher education or graduate speech therapy program may have an expectation that this course of study will allow the student to meet the local licensing requirements to be a teacher or a speech therapist. Some students may still want to take a program or course of study, although they could not or do not desire to practice in the field. Requirements for programs leading to licensure in a profession may often be directly related to performing the duties of that profession. Different institutions may develop different essential requirements for their programs.<sup>15</sup>

Courts have agreed and validated the appropriate application of academic and technical standards in professional programs for students with and without disabilities alike. In the leading case of *Southeastern Community College v. Davis*,<sup>16</sup> the United States Supreme Court ruled in 1979 that a college may impose “reasonable physical qualifications” on applicants for admission.<sup>17</sup> The Court stated that denying admission to a hearing-impaired individual who wished to become a nurse did not violate Section 504 because a requirement that nursing students be able to hear protects patient safety and is necessary in order for a nurse to perform the job.<sup>18</sup> Similarly, a federal appellate court ruled in *Doherty v. Southern College of Optometry*<sup>19</sup> that the college’s insistence that students in its optometry program be able to see well enough to use optometric instruments was not discriminatory.<sup>20</sup> The court concluded that a student with retinitis pigmentosa whose field of vision was restricted was not “otherwise qualified” because he could not use those instruments.<sup>21</sup> A case brought under state law, *Ohio Civil Rights Commission v. Case Western Reserve University*,<sup>22</sup> reached a similar conclusion when a blind student challenged her rejection by a medical school. The court agreed with the school that too many adjustments would need to be made to the clinical portion of the medical school curriculum, and that these adjustments would be unreasonable as a matter of law because the student then would not be

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15. *Id.* at \*338–9.

16. *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979).

17. *Id.* at 397.

18. *Id.* at 407–09.

19. *Doherty v. S. Coll. of Optometry*, 862 F.2d 570 (6th Cir. 1988).

20. *Id.* at 575.

21. *Id.*

22. *Ohio Civil Rights Comm’n v. Case W. Reserve Univ.*, 666 N.E. 2d 1376 (Ohio 1996).

able to perform the functions required of a physician.<sup>23</sup> Accommodations such as these, which are recognized to “fundamentally alter” the nature of the program, are not required by either the ADA or Section 504.

On the other hand, courts have criticized negative assumptions or generalizations about the effect of an applicant’s medical condition or disorder upon the individual’s ability either to succeed in the program or to be a successful practitioner. For example, in *Sjostrand v. Ohio State University*,<sup>24</sup> a federal appellate court reversed a trial court’s award of summary judgment in favor of the university and remanded the case for trial. The applicant suffered from Crohn’s disease (an autoimmune disorder). She asserted that, during an interview that was part of the application process to a doctoral program in school psychology, the two faculty members who conducted the interview focused more on her disease than on her qualifications or professional interests.<sup>25</sup> When she later telephoned to ask why she had been rejected, she claimed that the reasons she was given were vague. Because her grades and test scores were well above those of individuals who had been admitted, and because the court was skeptical as to whether the “vague” reasons given for her rejection were the true reasons, the court ruled that a jury must decide whether or not she had been the victim of discrimination.

In another such case, the Iowa Supreme Court ruled that a chiropractic school that had refused to allow a blind student to continue in graduate clinical work because he could not read X-rays had not performed an individualized assessment of the student’s particular disorder, and the court therefore reversed the trial court’s award of summary judgment to the school.<sup>26</sup> Similarly, in *Peters v. University of Cincinnati College of Medicine*,<sup>27</sup> a case involving the dismissal, rather than the admission, of a student with clinical depression, the court found that the dean who made the dismissal decision without referring either to the student’s medical records or her evidence of recently improved academic performance appeared simply to be assuming that depression would interfere with the ability to be a good doctor. For that reason, the court denied the medical school’s motion for summary judgment. In a pertinent OCR letter also involving the University of Cincinnati, OCR reached a similar conclusion

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23. *Id.* at 1386–87.

24. *Sjostrand v. Ohio State Univ.*, 750 F.3d 596 (6th Cir. 2014).

25. *Id.* at 598.

26. *Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm’n*, 850 N.W.2d 326 (Iowa 2014) (The court was particularly influenced by the fact that the school had allowed a blind student to graduate in prior years, and discounted the faculty’s reliance on technical standards that had been developed in concert with the agency that accredits schools of chiropractic.).

27. *Peters v. Univ. of Cincinnati Coll. of Med.*, No. 1:10-CV-906, 2012 U.S. Dist. LEXIS 126426 (S.D. Ohio Sept. 6, 2012).



that a student who was dismissed for academic failure, and then diagnosed with bipolar disorder, successfully stated a claim of discrimination under Section 504. The agency found that members of the appeals board that ruled on her dismissal asked “generalized questions” about bipolar disorder and its potential impact on the career of a doctor, instead of making an individualized inquiry as to how her disorder and the medications she was taking affected her ability to be a successful medical student.<sup>28</sup>

## II. GUIDANCE REGARDING APPROPRIATE USE OF TECHNICAL STANDARDS IN ADMISSIONS

Consistent with the general rulings outlined above, courts evaluating the application of technical standards in the context of admissions decisions for clinical programs appear to identify, as the key issue, whether there is a close relationship between the program’s academic and technical standards, on the one hand, and the learning outcomes that will enable the student to be a competent practitioner, on the other. Also significant is whether the institution acted appropriately in applying these standards, considering objective information in an individualized review (preferably by a qualified professional) rather than simply acting upon “generalized” assumptions or stereotypes. Where the institution appears to have engaged in an individualized and informed review, courts tend to defer to the college’s judgment in creating and applying these standards, particularly where those standards are clearly linked to the safety of patients, school children, or other clients of the future practitioner.

A good example of the careful creation of technical standards, and judicial deference to application of those standards during the admissions process, is illustrated by *McCully v. University of Kansas School of Medicine*.<sup>29</sup> Ms. McCully applied to the University of Kansas School of Medicine. She had spinal muscular atrophy, resulting in weak upper body strength and inability to walk. In order to meet the accreditation requirements of the Liaison Committee on Medical Education (the unit of the Association of American Medical Colleges that accredits medical schools), the School of Medicine was required to develop technical standards that all medical students must meet. The School of Medicine’s technical standards included a requirement that students “have sufficient motor function to elicit information from patients by palpation, auscultation, percussion, and other diagnostic maneuvers” and be able to perform cardio pulmonary resuscitation (CPR) on a patient.<sup>30</sup> The plaintiff

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28. Letter to Univ. of Cincinnati, 35 NDLR 151 (2006).

29. *McCully v. Univ. of Kan. Sch. of Med.*, No. 12-2587-JTM, 2013 U.S. Dist. LEXIS 156233 (D. Kan. Oct. 31, 2013), *aff’d*, 591 F. App’x 648 (10th Cir. 2014).

30. *Id.* at \*15–16.

could not perform CPR or the Heimlich Maneuver, intubate a patient, or insert a chest tube—all of which require a level of upper body strength. Furthermore, in her application, the plaintiff requested as an accommodation that a staff member serve as her “assistant” during clinical rotations, presumably to perform the functions she could not perform herself. After meeting with the applicant and obtaining extensive information about the accommodations she would need from her treating physician, the admissions committee decided that the plaintiff was unable to meet the technical standards, and denied admission. The court agreed, finding that “motor skills are essential to the learning process for medical students and are skills necessary to becoming a competent, successful clinical practitioner.”<sup>31</sup> Additionally, the court noted that the accommodations that the applicant had requested would fundamentally alter the academic program, which the law does not require. Other cases involving applicants for health-related programs whose physical disorders disqualified them from admission include the OCR proceedings described in *Letter to College of the Sequoias*,<sup>32</sup> and *Letter to University of Texas Medical Branch*.<sup>33</sup> In both cases, OCR found these applicants not qualified because they could not meet appropriate technical standards.<sup>34</sup> In these instances, courts rejected students’ attempts to pick and choose which portions of the clinical curriculum they will master and which they would like to bypass.

These cases, and others that are similar, strongly suggest that clinical and professional programs, if they have not already done so, should include legitimate physical requirements as appropriate to the particular clinical or professional program at issue. Developing case law strongly suggests, furthermore, that clinical and professional programs should also include legitimate *behavioral* components in their academic and technical standards. Many clinical and professional programs prepare students for entry into professions requiring that students meet professional, behavioral, and ethical standards. Training students in these behaviors, and assessing whether they are meeting behavioral standards, is a fundamental component of most clinical and professional programs, including medicine, law, and nursing. Having both physical and behavioral standards in place prior to making an admission decision (and using them to evaluate student

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31. *Id.*

32. Letter to Coll. of the Sequoias, OCR Case No. 09-09-2022 (May 8, 2009) (discussing nursing student who could not lift).

33. Letter to Univ. of Tex. Med. Branch, 30 NDLR 154 2005, NDLR (LRP) LEXIS 253 (2005) (discussing medical school applicant with dystonia who could not perform manual tasks and had difficulty walking and speaking).

34. See also *Cunningham v. Univ. of N.M. Bd. of Regents*, 531 F. App’x 909 (10th Cir. 2013) (noting in dicta that a medical student whose visual impairment made his vision “fragmented” had requested accommodations that would have fundamentally altered the nature of the medical school program, and thus were not required by law).

performance prior to making a dismissal decision) will help a clinical or professional program make good decisions reflecting legitimate academic concerns. This, in turn, helps the program defend against allegations of disability discrimination, breach of contract, or tort liability.

OCR and judicial decisions also indicate that, after a program has developed, reviewed, or updated its technical standards, the program should ensure that applicants (and current students) are advised of these standards before making decisions whether to apply to, matriculate into, or continue in a program. A good approach is to communicate with applicants or potential applicants at the outset regarding the institution's technical standards and then, at the point of application or conditional admission, ask applicants to affirm their ability to meet the standards. If they cannot do so, this allows the institution to begin a dialogue about whether the standards can be met with accommodations. One OCR letter that approved a medical school's use of technical standards in its admissions and review process described and approved this kind of two-step process.<sup>35</sup> First, the medical school determined whether an applicant met the academic requirements for admission. If so, the applicant was admitted conditionally, was sent a "technical standards certification form," and was asked to affirm the applicant's ability to meet the technical standards. At that point, if an applicant indicated that he or she could meet all the technical standards, the condition would be satisfied and the student would be admitted. Applicants who indicated that they could not meet one or more standards, or would have difficulty doing so, were considered to have made an implicit request for accommodation. The medical school's "ADA Panel" would then review the student's information, ask for additional information if necessary from the student's medical provider or other relevant professional, and then determine whether the institution could provide appropriate accommodations that would 1) enable the student to meet the technical requirements but 2) not work a "fundamental alteration" upon the program. This process was approved by OCR as a permissible application of technical standards at the point of admission.

Another appropriate method of determining whether an applicant meets the program's technical standards could be to interview conditionally accepted applicants. Determining whether an applicant has the emotional or psychological strength to succeed in a demanding professional program (and subsequently in a demanding career) is a particularly complex analysis. Conducting interviews with applicants may help program faculty ascertain whether the applicant will be able to meet the academic and technical standards with respect to stress and time management, as well as providing an early opportunity to discuss any accommodations that an

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35. See Letter to Univ. of Tex. Med. Branch, *supra* note 33.

applicant may need for a disability that the applicant has disclosed. For example, a court dismissed an applicant's disability discrimination claim in *Manickavasgar v. Virginia Commonwealth University*,<sup>36</sup> in part because the faculty member who interviewed the applicant articulated several objectively reasonable justifications for denying admission. Interviews addressing disability issues are challenging but may be performed in a manner that is both legally compliant and also extremely useful in securing information about a student's ability to meet technical standards. Although a program may not ask a student outright to disclose a disability, the initial application may certainly detail the academic and technical standards for the program, ask applicants to affirm that they can meet those standards, and if not, ask them what accommodations they might require to meet the standards.<sup>37</sup> Use of an interview process in addition to written applications, however, definitely requires that all faculty participants and others involved in interviewing be well educated about the relevant technical standards and the permissible methods of discussing student disability and accommodation issues.

Where institutions act appropriately in adopting and applying technical standards, courts have generally respected and deferred to these judgments. Although judicial deference to academic judgment is not inviolate, the ruling of the U.S. Supreme Court in *Regents of the University of Michigan v. Ewing*<sup>38</sup> is cited frequently in cases involving the denial of admission or dismissal from clinical programs of students with disabilities. There, the Supreme Court emphasized that deference should only be given *when the faculty members were actually exercising academic judgment*.<sup>39</sup> Another case cited frequently for its deference to academic judgment in developing and applying academic and technical standards is *Kaltenberger v. Ohio College of Podiatric Medicine*.<sup>40</sup> In this litigation, the plaintiff had been dismissed from the college's program and asserted that the college had not accommodated her disability of Attention Deficit Hyperactivity Disorder (ADHD) by allowing her a third chance to take an examination—a modification that violated the college's standard policy. The court deferred to the college's policy, and, citing *Doherty*<sup>41</sup> said: "We should only

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36. *Manickavasgar v. Va. Commonwealth Univ. Sch. of Med.*, 667 F. Supp. 2d 635 (E.D. Va. 2009).

37. For useful additional discussion of permissible admissions practices, see S. Heyward, *ADA and Section 504: Application and Impact on Study-Abroad Programs, and Clinical and Other Internships* (NACUA March CLE, 2003); V. Gotkin, *From Diagnosis to Remedy: Responding to Student Claims of Learning, Psychological and Emotional Disabilities* (NACUA Annual Conference, 2002).

38. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214 (1985).

39. *Id.* at 227.

40. *Kaltenberger v. Ohio Coll. of Podiatric Med.*, 162 F.3d 432 (6th Cir. 1998).

41. *See supra* p. 127.

reluctantly intervene in academic decisions ‘especially regarding degree requirements in the health care field when the conferral of a degree places the school’s imprimatur upon the student as qualified to pursue his chosen profession.’<sup>42</sup>

Of course, the court must be convinced that the faculty exercised “genuine academic judgment” before deference will be afforded. In the *Peters* case noted above,<sup>43</sup> the court believed that the decision-maker (the dean) did not exercise genuine academic judgment but, instead, relied upon stereotypes concerning depression to speculate that a student would be unsuccessful as a practitioner. This underscores the need not only for well-drafted technical standards but also for the proper education of decision-makers. They may be particularly prone to make assumptions or rely on stereotypes about the ability of mentally ill students to meet behavioral requirements of the relevant profession.

If a court is unconvinced that the application of academic or technical standards in the clinical context has involved an application of “genuine academic judgment,” it may even order a trial to determine whether a negative decision (at the point of admission or later dismissal) involving a student is entitled to deference or is motivated by discrimination. For instance, in *Ward v. Polite*,<sup>44</sup> the plaintiff student had been dismissed from a master’s program in counseling because she had refused on religious grounds to counsel a client who she believed to be gay. The program faculty said that the code of ethics of the American Counseling Association—the entity that accredits counselors and counseling programs—required practitioners, including students, to accept all clients and not to impose their moral or religious beliefs upon those they counseled. The trial court originally granted summary judgment in favor of the university, but the appellate court reversed, expressing skepticism as to whether the student’s refusal to counsel the client was truly a violation of the code of ethics and suggesting that the faculty’s decision to dismiss her from the program may have been motivated by religious discrimination. Although this case appears to be an outlier with respect to judicial deference, it suggests that, while courts may accept the institution’s right to articulate academic and technical standards, particularly those closely linked to the program’s accreditation requirements, courts may scrutinize the application of those standards for fairness and consistency and institutions should prepare accordingly.

Some plaintiff students have argued that evaluation of clinical performance for behavioral factors does not reflect academic judgment but

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42. *Id.* at 437.

43. *See supra* p. 128.

44. *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012).

instead constitutes disciplinary assessment, to which courts typically do not defer. To date, that argument has been unsuccessful in the present context involving academic programs with clinical components. As the U.S. Supreme Court emphasized in *Board of Curators of the University of Missouri v. Horowitz*:

It is well to bear in mind that respondent was attending a medical school where competence in clinical courses is as much of a prerequisite to graduation as satisfactory grades in other courses. Respondent was dismissed because she was as deficient in her clinical work as she was proficient in the “book-learning” portion of the curriculum. Evaluation of her performance in the former area is no less an “academic” judgment because it involves observation of her skills and techniques in actual conditions of practice, rather than assigning a grade to her written answers on an essay question.<sup>45</sup>

Courts in more recent cases have agreed. In *Doe v. Board of Regents of the University of Nebraska*,<sup>46</sup> the state supreme court declared: “Evaluating performance in clinical courses is no less an academic judgment than that of any other course, and is entitled to the same deference.” And in *Falcone v. University of Minnesota*,<sup>47</sup> the court noted the faculty’s “virtually unrestricted discretion to evaluate academic performance.” Again, however, having technical standards that incorporate legitimate behavioral and professional expectations will greatly aid an institution in identifying behavioral assessments as academic rather than disciplinary decisions.

In sum, courts have regarded the standards of behavior that a student must meet in a clinical assignment to be both academic and technical in nature. In the context of admissions decisions (as well as in continuation/dismissal decisions, which are discussed below), courts defer to the institution’s academic judgment where the court is satisfied that the standards applied were non-discriminatory as framed. Courts will also review whether these standards were then applied consistently to the student with disabilities as well as others.

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45. *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 95 (1978) (Powell, J., concurring).

46. *Doe v. Bd. of Regents of the Univ. of Neb.*, 846 N.W.2d 126, 151 (Neb. 2014).

47. *Falcone v. Univ. of Minn.*, 388 F.3d 656, 659 (8th Cir. 2004).

### III. USE OF TECHNICAL STANDARDS IN EVALUATING CLINICAL PERFORMANCE

The admissions process is the initial circumstance in which academic and technical standards potentially impact the educational aspirations of students with disabilities. The more significant (sometimes, intractable) disputes may arise, however, when a student with a disability matriculates into a clinical or professional program and, after a period of some success, encounters difficulties performing the clinical or field work requirements of a program. Many of the significant judicial and OCR decisions regarding technical standards (including several discussed above) arise in the context of a student's requests for accommodations, performance difficulties, or academic failure during the clinical component of an academic program. Some such scenarios arise from dismissals for academic failure or clinical incompetence.<sup>48</sup>

The most complicated of all involve a student's inappropriate conduct or inability to observe professional conduct standards during an internship or clinical rotation, especially when the student's difficulties appear to arise at least in part from a disability that has not been or cannot be reasonably accommodated. These are immensely difficult and painful scenarios for student and program alike; typically, the student and institution have invested a huge amount of time and resources in bringing the student to the clinical point, and no one wants to see the student fail or be dismissed. In such circumstances, and as discussed above, courts and agencies have generally recognized the institution's right to apply uniform academic or technical standards, even if the student's difficulties stem from a disability. But, as emphasized in Section IV below, these situations may raise challenging accommodation issues requiring careful management.

Generally, institutions may enforce uniform academic and technical standards upon students with disabilities even when issues occur in the context of internship or clinical experience. For instance, in *Herzog v. Loyola College in Maryland, Inc.*<sup>49</sup> a clinical psychology graduate student with ADHD who had earned good classroom grades was dismissed because of his "unprofessional behavior" during a required internship. The court ruled that his poor behavior during the internship was a legitimate, nondiscriminatory reason to dismiss him. Medical students whose "unprofessional behavior" interfered with their clinical performance have

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48. See, e.g., *Widomski v. State Univ. of N.Y.*, 748 F.3d 471 (2d Cir. 2014); *Betts v. Rector & Visitors of the Univ. of Va.*, 145 F. App'x 7 (4th Cir. 2005).

49. *Herzog v. Loyola Coll. in Md., Inc.*, No. RDB-7-02416, 2009 WL 3271246 (D. Md. Oct. 9, 2009).

also been found “not qualified” and thus unprotected by the ADA or Section 504.<sup>50</sup>

Difficulties often arise and are similarly addressed in the context of education programs involving student teaching. In most states, students preparing to be K-12 teachers must not only meet coursework requirements but also perform successfully in student teaching in order to be licensed—and, in some cases, in order to successfully complete their academic degrees. Previously manageable difficulties on the part of students with disabilities may become significant in the context of student teaching. For instance, in *Reichert v. Elizabethtown College*,<sup>51</sup> an undergraduate with ADD and epilepsy was barred from student teaching because he frequently interrupted people, could not create lesson plans in a timely fashion, and muttered to himself as a coping strategy. The college had implemented a “Teacher Disposition/Foundational Competencies Policy” that required students to be able to communicate in a professional manner, demonstrate emotional maturity, and respond constructively to criticism. The court ruled that the faculty’s attempts to determine whether the plaintiff was otherwise qualified by evaluating him against these criteria were not discriminatory, and that the student, in fact, was not otherwise qualified.<sup>52</sup>

Other disciplines requiring field work, such as social work or counseling, frequently adopt disposition/competency policies (sometimes as required by professional accreditors or licensing agencies). In such circumstances, a non-discriminatory application of the requirements to students with disabilities presumably would be permissible as in *Reichert*, on the theory that any other result would constitute a fundamental alteration of the program (or even, in aggravated cases, would place future clients of the student at risk). In one such case, a student with ADD challenged her dismissal from a doctoral program in professional psychology after she failed a required internship for lateness, was exceptionally disorganized, and acted in a “socially inappropriate” manner during the placement. In that case, *Patel v. Wright State University*,<sup>53</sup> the court ruled that the student neither had a disability nor was otherwise qualified. Likewise, another student with ADHD was expelled from a graduate program in clinical psychology because of “continued behavioral concerns” and “continued

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50. See, e.g., *Bhatt v. Univ. of Vt.*, 958 A.2d 637 (Vt. 2008); *Halpern v. Wake Forest Univ. Health Sci.*, No. 10-2162, 2012 U.S. App. LEXIS 5287 (4th Cir. Feb. 28, 2012); and *Schwarz v. Loyola Univ. Med. Ctr.*, No. 08-C-5019, 82749 2012 WL 2115478 (N.D. Ill. June 11, 2012).

51. *Reichert v. Elizabethtown Coll.*, No. 10-2248, 2012 WL 1205158 (E.D. Pa. Apr. 10, 2012).

52. For a similar case with a similar outcome, see *Oyama v. Univ. of Haw.*, No. 12-00137 HG-BMK, 2013 WL 1767710 (D. Haw. Apr. 23, 2013).

53. *Patel v. Wright State Univ.*, No. 3:07-cv-243, 2009 WL 1458908 (S.D. Ohio May 22, 2009).



difficulties with professional responsibilities.”<sup>54</sup> The court awarded summary judgment to the university.

In short, judicial and agency decisions consistently recognize the right of institutions to develop and enforce appropriate academic and technical standards in the context of clinical and professional programs, even after the student has matriculated and performed successfully during classroom portions of the curriculum. As with application of these standards at the point of admission, the basic judicial deference and ADA principles apply: courts will defer to the academic judgments of institutions, but the institutions need to be prepared to demonstrate that their decisions regarding the performance of a student with disabilities reflect “well-reasoned professional judgments” and were not based upon ill-will or discriminatory stereotypes.<sup>55</sup>

#### IV. REASONABLE ACCOMMODATIONS IN CLINICAL PLACEMENTS

Although courts and OCR have been very clear to recognize the rights of institutions to impose uniform academic and technical standards on students with disabilities in clinical programs, it is also the case that institutions must frequently respond to requests for reasonable accommodations from students with disabilities during or after the clinical portion of an academic program.<sup>56</sup> In cases involving proposed academic modifications and accommodations, “the burden is on the institution to demonstrate that relevant institution officials considered alternative means, their feasibility, cost, and effect on the program, and came to a rationally justifiable conclusion that the alternatives would either lower academic

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54. North v. Widener Univ., No. 11-6006, 2013 WL 3479504 (E.D. Pa. July 11, 2013).

55. Wong v. Regents of the Univ. of Cal., 192 F.3d 807 (9th Cir. 1999).

56. As discussed in Section II *supra*, these requests—and consequent challenges—can also arise where an institution notifies an applicant during the admissions process about technical standards for which an applicant believes he or she would need reasonable accommodation. In the *University of Texas Medical Branch* and *Virginia Commonwealth University* decisions discussed in Section II *supra*, the University’s admissions process encouraged discussion of potential accommodations prior to admission of students, both because the institutions made effective use of technical standards and also because, in the case of VCU, the University used an effective personal interview method to air these issues. Letter to Univ. of Tex. Med. Branch, 30 NDLR 154 (2005); *Manickavasgar v. Va. Commonwealth Univ.*, 667 F. Supp. 2d 635 (E.D. Va. 2009). Accommodation issues may still arise in this context and, in some cases, they result in lawsuits or charges filed with an agency. As discussed in Section II *supra*, where the institution has carefully developed reasonable technical standards and applied them uniformly, the standards will likely be upheld as reasonable; the institution will still, however, need to engage in a consideration of reasonable accommodations where an applicant requests such an accommodation, prior to the institution’s making an admissions decision.

standards or require substantial program alteration.”<sup>57</sup> And, given the nature of clinical programs (which frequently involve assignment of students to conduct field work at locations not supervised by institutional representatives), this presents unique challenges that an institution must address to ensure compliance with the ADA and Section 504.

The general law with regard to the obligation to provide accommodations is the same in the clinical context as in the classroom: the institution must, upon request and proper documentation, provide “reasonable accommodations” or auxiliary aids, as long as the accommodations or aids do not result in fundamental alteration of the program or cause undue burden to the institution. How this plays out in clinical programs varies, but the legal obligations are the same as in the context of traditional classroom accommodation.

#### A. Timing of an Accommodation Request

In the context of clinical placements, as well as in the classroom context, the timing of a request for accommodation (and the institution’s notice of a student’s potential needs) is often determinative in assessing whether an institution has violated the ADA by imposing uniform standards upon students with disabilities. In many instances, a student with disabilities fails to request accommodations or even self-identify as having a disability. Then, the student fails a clinical rotation or exhibits difficult conduct that becomes the subject of a disciplinary or termination hearing. At that point, the student self-identifies as having a disability and requests readmission or a new clinical placement as an accommodation.

The issue of whether students are entitled to readmission or “second chances” after declining to self-identify prior to an academic failure has been frequently litigated and discussed by courts, agencies, and commentators. It has been well recognized in a variety of contexts that institutions are only required to make accommodations for students with known disabilities.<sup>58</sup> Courts and agencies continue to recognize this

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57. Laura Rothstein, *Millennials and Disability Law: Revisiting Southeastern Community College v. Davis*, 34 J.C.U.L. 169, 185 (citing *Wynne v. Tufts Univ. Sch. of Med.*, 932 F.2d 19, 26 (1st Cir. 1991)).

58. Barbara A. Lee, *Dealing with Students with Psychiatric Disorders on Campus: Legal Compliance and Prevention Strategies*, 40 J.C. & U.L. 425, 429 (2014). See also *Halpern v. Wake Forest Univ. Health Sci.*, 669 F.3d 454, (4th Cir. 2012) (discussing medical student with ADHD and anxiety disorder did not request accommodations until several academic years after engaging in unprofessional acts); *El Kouni v. Trustees of Bos. Univ.*, 169 F. Supp. 2d 1, 3–5 (D. Mass. 2001) (no denial of accommodation for period before medical student requested accommodations); *Garcia v. State Univ. of N.Y. Health Sci. Ctr.*, 2000 WL 1469551 (E.D.N.Y. 2001) (summary judgment granted where student dismissed from medical school for unsatisfactory performance prior to identification of disability); *Tips v. Regents of Tex, Tech Univ.*, 921 F. Supp. 1515 (N.D. Tex. 1996) (no violation of ADA because graduate psychology student did not reveal learning disability or request accommodation).

limitation in the context of cases involving requested accommodations in clinical or professional programs.<sup>59</sup> Where a student requests accommodation after having already performed poorly on a test or evaluation, institutions are not required to change grades or, generally, permit a “do-over” of a project or clinical experience.

It is important to note, however, that there is some authority to the effect that institutions should at least *consider* the effects of a disability in evaluating a student’s request for reconsideration of a decision to fail the student, dismiss the student, or terminate a clinical placement.<sup>60</sup> And the peculiarities of these issues as they arise during clinical or professional programs offer strong practical reasons to consider, at the very least, whether additional opportunities should be provided.

First, as a matter of basic fairness, it is always worth considering whether there is some reasonable way to help the student salvage his or her hopes for a clinical or professional career. Students enrolled in professional or clinical programs have frequently invested a very significant amount of time, energy, and financial resources in the particular program. Institutions are often highly motivated to help them obtain at least partial value from the educational experience; depending upon the nature of the program, it is often worth exploring whether there is reason to believe that the student could, in fact, succeed in a second placement if provided reasonable accommodations. This is particularly the case where, for instance, a student develops a disability in the course of the program or a disability is newly identified during the course of a program.<sup>61</sup>

In addition, issues involving accommodation of disabilities during clinical work often arise in an unusual procedural context that lends itself to a dialogue about accommodations—and, conversely, makes it questionable to argue that the student is just “too late.” Often a student engaged in field work or student teaching may have been dismissed from a field placement, perhaps by a third-party provider, but the student is still entitled to additional process within the institution before being dismissed from the particular program or even from the college or university. Indeed, in many programs, dismissal from one field placement does not automatically equate to termination even from the particular program,

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59. *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807 (9th Cir. 1999). *See* cases cited in footnote 50 involving clinical and professional programs.

60. *See, e.g.*, Letter to DePaul University, 4 NDLR 157 (1993) (involving dismissal of student with disabilities from law school prior to student’s self-identification and request for accommodations).

61. *See, e.g.*, *Singh v. George Washington Univ. Sch. of Med. and Health Sci.*, 508 F.3d 1097 (D.C. Cir. 2007) (appellate court reversed summary judgment award to medical school in part because school did not demonstrate that it would be unreasonable to provide the accommodations requested by the student when newly-diagnosed disorder was discovered).

much less from the college or university. The program must still institute its own internal process for evaluating whether the student may be placed into a second clinical experience and the conditions under which this can happen. In such clinical programs, at least, this is not the same situation as the typically litigated accommodation requested after a student has been definitively dismissed from a program or institution. In short, depending upon the nature of the clinical program, dismissal from a placement is far from an automatic end to a student's career at the institution, and it may not be accurate or legally compliant simply to disregard an accommodation request as "too late."

It should also be strongly emphasized that many of the cases in which courts or agencies exonerate institutions from allegations of disability discrimination arise after institutions have first provided accommodations but the student has nonetheless failed to succeed. Even where an institution *could* take the position that accommodation was not timely requested, entering into a dialogue and suggesting reasonable accommodations that provide the student a final chance to succeed is often prudent as a risk management strategy and consonant with the institution's mission.

In short, an institution will not necessarily wish to disregard a tardy self-identification made in the context of clinical (or even professional) programs. Dismissal from a placement often is not tantamount to dismissal from the entire program or institution; an institution may still be committed to undertake an appropriate interactive process and consider reasonable accommodations as it determines the significance of the student's failure in one placement or clinical experience. Moreover, students in clinical or professional programs are often high achievers exceptionally invested in success. For their part, institutions are equally invested in helping those students succeed, as long as academic standards are maintained and no fundamental alterations are required. This is a situation in which risk management and policy imperatives align. The law is clear that, where accommodations are requested by a qualified student with disabilities before or during a program, the institution must consider them, enter into an interactive process, and grant reasonable accommodations if warranted; the policy reasons for doing so in clinical contexts, even when the student's timing and ultimate prospects of success are questionable, are often valid.

#### B. Reasonableness of Specific Accommodations

Several interesting OCR letters and judicial decisions discuss the scope of the accommodation obligation in professional/clinical programs and the issue of "fundamental alteration" in clinical or professional placements. In one such case, a student in a clinical program sought as an accommodation substitution of fieldwork for classroom work. The student, who was enrolled in a Pharmacy Assistant program, requested that she be permitted to substitute additional cooperative work experience for two classroom

theory courses, maintaining that her learning disability and her consequent memory problems compromised her ability to pass formal examinations. The college declined to substitute field work for classroom work, noting that the two courses at issue were “an integral component of the program in that they present fundamental information and theory.” OCR agreed that the institution need not modify coursework requirements that it demonstrated to be essential to the program.<sup>62</sup>

More typically, students with disabilities have experienced difficulties and sought accommodation during clinical placements or second opportunities for clinical placements, despite having performed at a satisfactory level during classroom work. In another OCR case, a medical student who documented a mental illness sought an abbreviated “call schedule” during her clinical rotations. She argued that adhering to the regular schedule would cause her stress and extreme sleep deprivation, which might in turn cause her to become unstable.<sup>63</sup> The institution denied this request on the grounds that this would fundamentally alter the clinical training program and result in her not being adequately prepared for the residency program. Significantly, the institution instead offered her the option of beginning her clinical rotations with specialties that had fewer “call” requests and, presumably, would result in shorter hours and less sleep deprivation. She declined that offer of accommodation and filed an OCR charge. OCR ruled in favor of the school, finding that the school was not required to modify the call schedule because it demonstrated that the requirement was essential to the program of instruction. Several other cases involving requests to alter residency requirements or “call schedules” also resulted in decisions favoring the institution, again because the requested accommodation would work a “fundamental alteration” in the course of study.<sup>64</sup>

Many such decisions were issued following good faith attempts by the institution to offer reasonable accommodations that did not fundamentally alter a program; this reflects that, even in clinical or professional programs,

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62. Letter to N. Seattle Cmty. Coll., 10 NDLR 42 (1996).

63. Letter to Morehouse Sch. of Med., 17 NDLR 94 (1999).

64. See *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d 1041 (9th Cir. 1999) (upholding a refusal to rearrange clinical rotation schedule of student with learning disability on the grounds this was a fundamental alteration of program); *Maczaczj v. New York*, 956 F. Supp. 403 (W.D.N.Y. 1997) (student who could not participate in residency requirement due to severe panic disorder was denied request to participate in residency requirements by telephone on the grounds that this constituted a fundamental alteration of the program; he was deemed not otherwise qualified for the program). See also *Amir v. Saint Louis Univ.*, 184 F.3d 1017 (8th Cir. 1999) (court refused to second-guess the University’s denial of a student with disabilities’ accommodation request to complete his clinical rotation in Israel under a different supervisor; this was inconsistent with school’s uniformly-applied policy prohibiting students experiencing academic difficulties from attending other universities).

institutions will want to interact appropriately and, if possible before taking drastic action, first provide accommodations generally recognized not to constitute “fundamental alterations” of academic programs. For instance, in *El Kouni v. Trustees of Boston University*,<sup>65</sup> a student dismissed from a joint medical and Ph.D. program exhibited academic and behavioral issues before requesting accommodations during examinations. Those accommodations were granted, but he was eventually dismissed for unsatisfactory grades and inappropriate conduct. He subsequently sued, arguing that his poor performance was attributable to his disability and should have been disregarded by the school due to this alleged causation. The court concluded that this student was not discriminated against or denied reasonable accommodations but, in fact, was held to the same standards and terminated for poor performance as were similarly situated students.<sup>66</sup> The student’s argument, after the fact, that his previous poor grades and conduct were attributable to (and excused by) an unaccommodated disability probably would not have persuaded the court in any event. But it is not irrelevant that, despite the student’s unreasonableness, the institution had appropriately provided exam-timing accommodations once accommodation was requested. This underscored that the institution was striving to provide the “level playing field” that is the underlying reason for the accommodation requirement and, most likely, encouraged the court to defer to the institution in its insistence upon holding the student to basic academic standards.<sup>67</sup>

Although the cases discussed in this article indicate that courts are likely to defer to the academic decisions of institutions using appropriate technical standards and accommodation procedures, it must be repeatedly emphasized that this deference is not unlimited. For instance, in *Wong v. Regents of the University of California*, the university argued that a medical student’s completion of third-year rotations within a prescribed period of time was an essential program requirement.<sup>68</sup> The court did not defer to this determination. Instead, the court found a jury question regarding potential denial of reasonable accommodation because the university had previously approved extra time for the student to complete two previous rotations. It had also allowed him to take a leave of absence during his third year (therefore already deviating from the consecutive rotation schedule that it now argued to be “essential.”) These factors, as well as the fact that a medical school faculty member had recommended to the university that the requested accommodation be accepted, raised a genuine

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65. *El Kouni v. Trustees of Bos. Univ.*, 169 F. Supp. 2d 1, (D. Mass. 2001).

66. *Id.* at 2–4.

67. See Rothstein, *supra* note 577, at 24, for an exhaustive discussion of additional judicial and OCR decisions regarding academic accommodations viewed as reasonable (or insufficient) by courts and agencies.

68. *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807 (9th Cir. 1999).

issue of fact as to whether the institution's insistence upon consecutive completion of third-year rotations was genuinely an essential element of the curriculum.<sup>69</sup>

*Wong* serves as a useful reminder that, while judicial and agency deference to genuine academic determinations remains strong, particularly with regard to clinical or professional programs, institutions need to be prepared to interact in good faith. They are also well-advised to offer reasonable accommodations where warranted, and be prepared to justify accommodation denials by reference to academic standards that are rational and consistently applied.

#### V. A FRAMEWORK FOR APPLYING TECHNICAL STANDARDS AND ACCOMMODATING STUDENTS IN CLINICAL PROGRAMS

As NACUA presenter Salome Heyward perceptively noted in 2003, clinical programs and internships raise significant ADA compliance issues. She highlighted three reasons: (1) the "heightened importance of technical standards," (2) the "obligation of institutions to monitor the treatment of students by third parties," and (3) the "responsibility of students to be 'otherwise qualified' in settings that incorporate both academic and professional requirements."<sup>70</sup> Since 2003, these observations have certainly been validated, both in court and agency decisions and also through the experiences of institutions offering an increasing array of clinical opportunities for undergraduate and graduate students. To these three observations, we would identify several additional factors that appear to be increasing the frequency and the complexity of disability issues involving clinical programs:

- the influx into higher education of students experiencing mental challenges, particularly autism spectrum issues; difficulties arising from these kinds of conditions may not manifest themselves until students are placed in field or clinical settings requiring complex social interactions;
- increasing regulation of disability issues not only on the federal but also on the state and local levels, with state compliance laws being adopted that are sometimes broader in scope than the ADA or Section 504; and
- increased collaboration between academic institutions and outside clinical placement locations (both in the United States and abroad), where behavioral standards and expectations may

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69. *Id.*

70. S. Heyward, "ADA and Section 504: Application and Impact on Study-Abroad Programs, and Clinical and Other Internships" (NACUA March CLE, 2003), at 1.

be different outside the institution from expectations within the institution itself.

Of the three additional factors noted, perhaps the most significant to this discussion is the influx into higher education of individuals experiencing significant mental illness challenges, such as autism spectrum issues. Students with mental challenges of this significance may experience social difficulties that do not manifest themselves in the classroom, but become very limiting in interactive experiential learning contexts such as student teaching or fieldwork. Institutions need to be prepared to develop and apply technical standards, as well as engage in an interactive process about accommodations, in a manner that properly recognizes the needs of these students while upholding the academic and technical standards of the particular program. In addition, students with mental challenges may experience difficulty even discussing accommodations, much less in agreeing to and adhering to an accommodation plan. Institutional counsel will likely encounter with increasing frequency the involvement of private attorneys or social service agencies purporting to represent such students. Indeed, in some cases, the involvement of advocates for the students may prove constructive in negotiating appropriate accommodations.<sup>71</sup>

The following are strategies, derived from a review of the above case law as well as from the collective experience of campus counsel, for a framework that helps clinical programs properly integrate the requirements of the disability laws, and the special needs of students with disabilities, into the operation of the clinical programs. Essentially, we advocate an approach that views ADA compliance, in the context of clinical program management, as an ongoing priority in the operation of a clinical program—one that should be emphasized from the point of admissions through the completion of all degree requirements, including clinical components. Faculty in each clinical program should discuss, adopt, and properly implement technical standards that incorporate legitimate academic, physical, and behavioral requirements. Program personnel should learn about the ADA accommodation process and, when appropriate, communicate with clinical sites about accommodation issues. The goal of strategies such as those summarized below is to help programs balance the various interests and factors to achieve a compliant result that maintains the academic standards of programs while honoring the rights and needs of applicants and students with disabilities:

1. Adopt Technical Standards for all Clinical Programs.

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71. Attached as Exhibit A are examples of communications provided to program faculty, the student, and the student's counsel to facilitate discussion of an accommodation plan for a student with Asperger's syndrome regarding his assigned second practicum.



- Given the potential for conflict between a student with a disability who is judged unable to meet academic and technical standards of a clinical program and the institution, it is important that clinical programs (or any program requiring some form of experience beyond the traditional classroom), develop a list of appropriate academic and technical standards that are applied uniformly to applicants and current students. These should include appropriate physical and behavioral requirements. In developing standards, program faculty should be encouraged to review the requirements of accrediting agencies, professional associations, and other groups that are knowledgeable about—or, in some cases, specifically articulate—the behavioral and skill requirements of the relevant profession. This does not necessarily mean that students unable later to meet licensure requirements should be denied admission to or continuation in a program; this depends upon the particular program and, specifically, whether it is designed primarily or entirely to prepare students for licensure or, rather, has a broader and less “practical” purpose. Program faculty members, as well as those involved in accreditation, are essential participants in the development of technical standards.
2. Periodically Review and Update Technical Standards.
    - Technical standards should be reviewed periodically to ascertain whether advances in technology or professional practice suggest that the standards should be altered—particularly those physical standards that could preclude students with physical or mental disabilities from completing a clinical program. Limitations that were reasonable even five years ago may be rendered obsolete and potentially unlawful by advances in technology. Technical standards should be reviewed whenever regional or professional accrediting standards change, to ensure that the standards being applied institutionally are justifiable and adequate in light of external accrediting modifications. Technical standards should also be reviewed whenever federal or state disability law changes or when significant additional regulatory guidance is issued by agencies. And, of course, advances in technology or medical management of certain disabilities may call for modification of technical standards.
  3. Consistent and Non-Discriminatory Application of Standards during Admissions Process.
    - Consistent and appropriate application of technical standards during the admissions process is essential to ensure that the institution is admitting students who are “otherwise qualified” to fulfill the essential requirements of a program. All

information provided to applicants and students considering whether to matriculate should refer to the academic and technical standards so that both groups are clearly on notice of the institution's requirements. Indeed, it is probably a "best practice" to require, as part of the admissions process, that students specifically review, acknowledge, and certify their ability to meet each specific technical standard. Some institutions use this type of certification process to begin productive interactive processes, where students identify specific technical standards for which they will need reasonable accommodation.<sup>72</sup> Many difficult dismissal cases might be avoided if institutions made more effective and rigorous use of technical standards at the point of admission.

4. Additional Discussion of Technical Standards at the Point Students Begin Clinical Rotations.

- One perhaps underutilized strategy is to discuss with all students, prior to the commencement of clinical rotations or fieldwork, technical standards that will be enforced in a consistent and appropriate manner during fieldwork. This may forestall a student's failure in a clinical rotation; it also addresses the situation in which a student began the program without having disability issues but has been diagnosed with them or developed them during the course of the program. There is never any harm in communicating on a periodic basis about the institution's consistent expectations and in inviting students with disabilities to request accommodations or engage in a dialogue *before* difficulties arise.

5. Individualized and Rigorous Review of Requests for Accommodation.

- Requests for accommodation should be encouraged and, if made, reviewed on an individualized basis by professionals qualified to analyze documentation provided by the student. An individualized determination should be made as to whether that particular student's disorder or condition can be reasonably accommodated sufficiently to meet the technical standards. In close situations, and unless health or safety issues preclude such an approach, institutions should make every effort to offer some sort of reasonable accommodation that would allow current students an opportunity to succeed.

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72. See, e.g., technical standards and related certifications attached to Vicki Gotkin's useful 2002 outline discussing medical school technical standards. V. Gotkin, *From Diagnosis to Remedy: Responding to Student Claims of Learning, Psychological and Emotional Disabilities* (NACUA Annual Conference 2002), at Exhibit A-C.

6. Consistent and Effective Documentation of Interactive Processes and Accommodation Plans.
  - All such discussions and offers should be documented not only internally but with the student (and, if the student is amenable, with the field placement personnel – as further discussed below). Attached to this Article as Exhibit A are redacted examples of an accommodation plan and communications with a student with disabilities, prepared in an attempt to ensure a smooth second placement of a student with Asperger's syndrome who was unable to complete an initial clinical rotation.
7. Effective and Clear Appeal Process(es).
  - Section 504 requires that all institutions offer some sort of appeal process in the event a student is denied an accommodation, but appeals frequently become a source of confusion and potential legal risk where accommodation issues arise in the context of clinical placements. In some cases, a student's dismissal from a field placement does not equate to automatic dismissal from the program or institution as a whole. In that situation, it is not always clear whether the appropriate appeal is of the field termination, the denial of accommodations, or both. There is no single way to address this situation, but it should be addressed. Clinical programs should be clear on the appeal process that applies when a student's field placement is terminated—and general institutional policies should clarify how programmatic appeals harmonize with appeals of alleged ADA discrimination issues. Program faculty typically have a difficult time evaluating the significance of disability in addressing field placement terminations; leadership should address which appeal process applies in which situation and should be prepared to modify appeal processes to ensure a substantially fair hearing for a student who claims that a dismissal is the result of a denial of accommodation.
8. Education of admissions staff, faculty, and administrators of clinical programs.
  - A related, and very critical, component of this compliance process is education of program personnel, field placement administrators, admissions employees, and all others called to deal with these issues. All need to know the academic and technical standards applicable to each program and the proper manner in which to apply those standards and handle accommodation requests. Ideally, program personnel will also communicate with and educate supervisors at the students' placement sites.

9. Attention to confidentiality and proper communication within the program and institution.
  - Many clinical programs are offered in the context of health science, counseling, social work, or psychology programs. Professionals working in these areas and serving as program faculty often are sensitive to confidentiality issues involving their own patients and clients, but they may not understand the important limitations (arising not only from the ADA but also from state medical confidentiality laws) to maintain confidentiality of student disability issues and requests. They also may not be sensitive to the importance of not engaging in unofficial diagnoses or launching e-mail threads in which program faculty theorize about the perceived or actual disability of a particular student. These scenarios are extremely common and highly regrettable. As such, this is an important, additional point of education for program personnel and academic administrators. All of them need to understand the importance of limited, appropriate discussion of student medical issues only on a “need to know” basis (and the dangers inherent in “unofficial diagnosis” of students with disabilities).
10. Coordination with Clinical Sites.
  - It cannot be emphasized enough that institutions must engage in proper oversight of clinical placement sites, as well as communicate consistently with clinical sites regarding the requirements of the ADA and the need for appropriate response to student disability issues. ADA/accommodation requirements should be noted in affiliation agreements with clinical sites, just as such agreements commonly acknowledge an obligation on the part of the site and the school to cooperate where sexual harassment or other civil rights issues are raised.
11. Appropriate Policies Regarding Information Provided to Site Personnel.
  - A significant caveat, of course, is that the institution may not be entitled to discuss with the placement site concerns about a particular student absent the agreement of the student. This is a difficult problem. Although program personnel are probably within their rights communicating to site supervisors issues regarding direct observations of students, where these observations arise from concerns about disability or obvious manifestations of disability, it will be all too tempting for program personnel to violate medical confidentiality or ADA confidentiality limitations in making such disclosures. Institutions should discuss these situations and educate program personnel about the circumstances in which disability issues

may or may not be discussed with site personnel. In some instances, it may be possible to incorporate such policies into site affiliation agreements. Program personnel should also have a process for talking with students with disabilities about potentially self-identifying to the site supervisor, asking for accommodations on-site, and releasing the program personnel to have conversations with site personnel about the student's issues and/or accommodation needs. This kind of communication has to be handled carefully, to avoid discrimination claims by the student, but it can be a part of the discussion of technical standards.

12. Consistency of technical standards, procedures and policies as between different clinical programs.
  - Institutions should review technical standards and procedures as between different clinical programs, to ensure consistency (where appropriate) between different programs' description of essential requirements. The University should also review program descriptions of essential functions and technical standards to ensure that termination processes and accommodation processes used within individual programs and colleges are reasonably consistent with those used within the rest of the institution. This will assist the University in defending both its decision not to engage in "fundamental alterations" and its decisions about the reasonableness of specific proposed accommodations.

## APPENDIX A

### REMEDIATION PLAN FOR STUDENT X

Introduction to the Remediation Plan: The elements of this Remediation Plan are aligned to the required performances for teacher candidates as mandated by the State Professional Teaching Standards as ruled by the State Board of Education pursuant to Part \_\_ of the State Administrative Code. Each standard has been incorporated into the Remediation Plan (1<sup>st</sup> column). The plan also includes a corresponding goal to guide Student X in his work to address the required performances (2<sup>nd</sup> column) and to promote communication between Student X and his faculty mentor and site supervisor. Finally, the Plan includes the actions/evidence required of Student X to demonstrate that he can achieve each of the goals set forth in the Plan (3<sup>rd</sup> Column).

As a pre-requisite to be eligible for a second student teaching assignment, the remediation "Plan" also includes a semester-long credit-

bearing Practicum course designed to provide Student X with additional exposure to field-based/clinical work in classroom(s). The University would suggest that Student X complete this practicum course EDU-\_\_\_\_ Independent Study in Education (3 credit hours) during the fall 20XX term. The tuition cost for this practicum course is approximately \$1500.00. Professor Y will serve as Student X's principal contact and as a resource for Student X during the Practicum course. Another important element of the Remediation Plan is for Student X to enter into counseling at his expense for the development of communication and interpersonal skills. The University also asks that Student X sign release forms authorizing the University to communicate with (a) Dr. Z, Psy.D., and any other professionals at Dr. Z and Associates regarding Student X's diagnosis and their treatment recommendations as they relate to Student X's performance as a student teacher; and (b) the social workers or other counseling professionals whom Student X engages as part of the Remediation Plan, regarding their recommendations and Student X's progress with regard to the elements of the Remediation Plan.

The Practicum course must be successfully completed before the University can seek a partner K-12 school for a second student teaching experience. Although the University cannot guarantee Student X or any other student a student teaching placement, if Student X successfully completes the Practicum course, the University will seek to place Student X with a K-12 school for a second student teaching experience as soon as practicable following his successful completion of the Practicum (hopefully, during the Spring 20XX term, which starts in January of 20XX).

Such placements are not assigned; rather, they are carefully worked out in communications between the University, K-12 schools, and the student teacher/intern. The K-12 school partner may end the student teaching experience at any time if the school partner determines that the student teacher is not performing adequately or is otherwise not meeting the school's expectations.

For purposes of communicating with any potential K-12 school partners, the University would use the following communication to ensure that the potential school partners are aware of relevant information regarding Student X's background.

We are seeking a 16-week student teaching placement for Student X for spring term, 20XX. This will be Student X's second student teaching assignment.

Student X did not successfully complete his first assignment, and subsequent to this experience, he was diagnosed with Asperger's Syndrome and ADHD.

Student X has requested that he be allowed another attempt at student teaching with specific accommodations related to his disability. The University is doing all that it can to honor that request.

We also want to emphasize that we share not only a commitment to Student X, our teaching candidate, but also to you, our school-based partners, in the preparation of pre-service teachers. We could not successfully train our candidates without your commitment and expertise.

It is in that spirit that we share with you this background information regarding Student X as you consider our request to place him in your school. He has consented to our sharing this information with you. We want to assure you that we will be working closely with Student X both before and during his field experience in an effort to ensure that he is as prepared as possible for this experience.

If you require further information, do not hesitate to contact the Office of Field Experience Director, Ms. \_\_\_\_\_.

<b>Performance Goal</b>	<b>Remediation plan goal</b>	<b>Action required to meet goal</b>
<b>1. Knowledge of Subject Matter</b>		
1.2 Exhibits thorough understanding of content	Increase content knowledge	Complete additional classroom observations.
1.3 Evaluates teaching resources and curriculum materials for their comprehensiveness, accuracy, and usefulness	Work with a variety of resources to be used in planning for instruction	Complete additional classroom observations.
1.4 Makes choices that reflect diverse perspectives in content areas	Develop a bibliography of different resources that can be used to present core content material	Complete additional classroom observations. <i>After completion of additional observations related to building content knowledge, write journal entries that demonstrate enhanced content knowledge and how you will decide on diverse resources to teach a variety of content material.</i>
<b>2. Knowledge of Human Development and Learning</b>		
2.2 Designs	Review unit and	Enroll in a

instruction that meets learners' intellectual, social, personal, and developmental needs	lesson planning information from course work	practicum/directed study that will provide a review and additional instruction in unit and lesson planning
2.4 Makes instructional decisions based on knowledge of human development	Role play how you will handle different classroom situations- work with counselor/ social worker to rehearse decision making in a variety of contexts such as those required daily in the school building and classroom.	Complete personal journal entries reflecting on your learning and listing the specifics on how you believe you have improved in this area.
<b>3. Adapting Instruction to Diverse Learners</b>		
3.1 Makes appropriate provision for individual students who have particular learning differences or needs	Review the material from unit and lesson planning that deals with accommodating to the special needs of learners. Review material from the exceptional learner class.	Complete journal entries in which you address how you will specifically plan for the needs of diverse learners in your classroom.
3.2 Uses cultural diversity and individual student experiences to enrich teaching	Review material from exceptional learner and methods courses.	Complete journal entries in which you address how you use student diversity to enrich your classroom. Observe and note practices you experience in the practicum assignment.
3.4 Identifies and designs instruction that recognizes student differences in learning styles, multiple	Review material from exceptional learner and methods courses.	Construct a matrix or other graphic organizer that will guide you through the process of



intelligences, and developmental needs		differentiating the instruction you are planning.
<b>4. Multiple Instructional Strategies</b>		
4.2 Promotes students' critical thinking, problem solving, and performance capabilities	Complete additional reading on incorporating critical thinking and problem solving strategies in classroom instruction.	Successfully Complete Practicum course.
4.3 Evaluates and uses alternative teaching strategies and materials to achieve different instructional purposes to meet student needs	Review material from exceptional learner course.	Successfully Complete Practicum course.
4.4 Encourages student interaction with subject matter in a variety of ways	Complete additional reading on how to actively engage students in learning activities.	Successfully Complete Practicum course.
4.5 Monitors and adjusts strategies in response to learner feedback	Complete additional reading and reflection on formative assessment and how to use it to support student learning.	Successfully Complete Practicum course.
<b>5. Classroom Motivation and Management Skills</b>		
5.2 Organizes, allocates, and manages resource of time, space, and materials to constructively engage students	Review management articles from the EDU-6060 course	Successfully Complete Practicum course.
5.3 Manages the classroom environment and makes decisions that enhance social relationships, student	Review management material from the EDU-6060 course	Successfully Complete Practicum course.

motivation, and engagement in productive work		
5.4 Manages transitions effectively	Observe how other teachers handle these situations in the classroom.	Complete journal entries that outline strategies you have seen employed in the classrooms you observed.
5.6 Responds to unanticipated sources of input and adjusts plans to meet student needs	Observe how other teachers handle these situations in the classroom.	Complete journal entries that outline strategies you have seen employed in the classrooms you observed.
<b>6. Communication skills</b>		
6.5 Asks questions at different cognitive levels to stimulate varying responses	Review additional material about asking higher-level questions in the classroom.	Successfully Complete Practicum course.
6.6. Exhibits and responds to non-verbal communication	Work with counselor/social worker to improve processing of non-verbal communication	Complete journal entries regarding what you have learned from these sessions.
6.7 Uses clear, accurate presentations and alternative explanations	Reflects on how to achieve greater clarity in presentations and more effective listening skills in working with both students and adults	Journal how you will improve in these areas.
<b>7. Instructional Planning Skills</b>		
7.2 Selects and creates learning experiences that are appropriate for curriculum goals, relevant learners, and based upon principles of effective instruction	Review material from classroom teaching skills course as well as methods classes.	Successfully Complete Practicum course.
7.3 Develops creative	Review material	Successfully

lessons and activities that operate at multiple levels to meet the developmental and individual needs of diverse learners, including learning styles and performance modes	from classroom teaching skills course as well as methods classes and the diverse learner course.	Complete Practicum course.
7.5 Creates long-term plans that are linked to student needs and performance	Review material from assessment course taken previously.	Successfully Complete Practicum course.
7.6 Reflects effectively to improve teaching methods	Develop patterns and strategies to engage in regular professional reflection.	Complete journal entries regarding how you will engage in regular reflection during your next student teaching assignment.

<b>8. Assessment of Student Learning</b>		
8.2 Uses a variety of formal and informal assessment techniques to enhance learners' knowledge and evaluate their progress	Review material from assessment course.	Successfully complete Practicum course.
8.3 Monitors and adapts teaching strategies and behavior in relation to student success	Review all material on formative assessment.	Successfully complete Practicum course.
8.4 Uses assessment strategies to involve learners in self-assessment activities	Review all material from assessment course.	Successfully complete Practicum course.
<b>9. Professional commitment and responsibility</b>		
9.1 Uses classroom observation, student information, and research as sources for evaluating outcomes and as a basis for experimenting with, reflecting on, and revising practice	Develop strategies for engaging with school-based personnel in a more effective way to receive and reflect upon feedback given.	Journal as to how you will interact more effectively with school-based personnel to use feedback to improve performance.
9.2 Acts professionally and appropriately to unanticipated situations	Learn to monitor your own behavior to eliminate inappropriate or unprofessional responses. Discuss these issues and potential strategies with a counselor.	Journal about how you will make improvements in this area.

Agreed:

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Student X

Agreed:

\_\_\_\_\_  
University

### Proposed Practicum Schedule

Fall Semester, 20XX

This Practicum is dependent upon securing a partner school and cooperating teacher. In anticipation that Student X will accept this plan, the office of fieldwork has started preliminary inquiries to locate a suitable site that can provide the supportive environment needed and is willing to accept the increased workload that will come with the practicum. Our framework is time-sensitive in that we need to have Student X's commitment no later than October 15, 20XX. The earlier we receive his commitment, the sooner we can finish the planning and have everything put into place.

Eight Week Practicum

Start Date: October 22, 20XX

End Date: December 14, 20XX (end of fall term)

Expectations: Weekly schedule is to report to assigned classroom Monday – Thursday (actual times to be determined by school). Friday meeting with university supervisor on the Main Campus.

Should this not be possible to accomplish due to unavailability of sites or if Student X is unable to begin on October 22, this practicum can be organized for the Spring 20XX semester.

Please let Dr. \_\_\_\_\_ know if Student X decides to move ahead with this plan.

Dr. \_\_\_\_\_, Dean

Accommodations to be implemented for Student X  
Practicum EDU-XXXX, Fall 20XX Academic Year

Confidential – do not share unless specifically authorized by the Dean

1. Please find the document “Mid-Term Evaluation.” The Mid-term Evaluation is the best summary to provide for Mr. Student X because it documents every area of weak performance from his internship. The document is an assessment Rubric aligned to the performance standards required by the State Educator Preparation and Licensure Board. Should Mr. Student X continue to have questions about any of the standards (not his rating), the faculty practicum supervisor will assist Student X to gain an understanding. It is important to note that these standards and concepts are covered in the previous course work that Student X successfully completed.

2. The practicum offered will provide Student X with clear instructions written in a familiar course guide format. The Practicum Guide will include the written remediation plan with all the assessments and instructions included. All assignments will have clear instructions and Student X will have weekly meetings with the practicum instructor to ask questions and receive support. All textbooks used in his previous coursework are good resources of information to help him with his practicum assignments. The college requires use of a specific lesson plan format which is available online with complete instructions. Student X received training in his courses in the use of both lesson plans and unit plans. The practicum instructor will review these plans with Student X. Student X is encouraged to ask questions through email when he has need. The practicum instructor will respond within a reasonable time. Common terms and professional vocabulary are in the resources used in previous coursework; Student X should feel free to consult his textbooks for definitions and operational meanings.

3. Student X will be required to meet with his university practicum course instructor weekly to review his work, classroom activity, and performances. This weekly conference/meeting with his practicum instructor can include discussions of his overall strengths, weaknesses, and overall progress. This discussion will be based on the practicum instructor’s written observation notes, which will be supplied to Student X. This meeting will be scheduled to be held on the Main Campus. The meeting will be used to review the supervising classroom teacher’s comments on Student X’s performances, examine Student X’s reflections, and support his work on lesson planning and unit planning. Feedback will be provided in a variety of formats as is practical and useful. Written notice of any areas/skills/requirements for which Student X is not meeting expectations or performance requirements will be accompanied by support as is useful including mentoring, demonstrations, and other instructive measures. The meeting times can be used to seek support for his preparations for those assignments given by his classroom cooperating teacher. The weekly meeting is for Student X to seek clarification for any

assignments, use of forms, reports due to his supervising teacher, and any other need. The university practicum instructor will provide coaching, mentoring, and recommendations through both oral and written communications to Student X to assist him in developing effective teacher performances and practices.

4. Field work logs and reflections will be required of Student X during this practicum. They will be emailed to his university practicum instructor each day following his work in the classroom. These logs and reflections will be used to monitor his formative development on those areas identified as weak and unacceptable from his Mid-term evaluation cited in no. 1 above. The practicum instructor will review these logs with Student X at the weekly meetings.

5. A weekly meeting with the supervising classroom teacher will be expected. The purpose of this meeting will be to review Student X's performances and practice in the classroom with his cooperating teacher. The cooperating teacher opens his/her classroom to Student X and is not a faculty member of the University. The invitation to open the classroom to Student X to enter and work with students does not include an expectation that the classroom teacher provide Student X with additional support over and above what is routinely expected in field work settings. The cooperating teacher will continue to use the university performance rubrics, as is routine practice. These assessment rubrics are the critical performance assessments to be used during this practicum. This practice will focus on those areas identified from the internship, which need improvement in order to document Student X's progress on achieving State Professional Teacher Standards in order to be successful in the classroom as a teacher.

6. As the record from the past internship demonstrates, Student X has always been provided written instructions and guidance by the University. Written communications from the University will continue to be provided to Student X and will include agendas for meetings that identify the purpose and topics to be addressed. Meetings requested by Student X will be transcribed, included in the academic record, and supplied to Student X. We experienced many impromptu meetings where Student X walked into the office. All future meetings will be scheduled and all documents such as agendas and notes will be provided. What is expected of Student X is a disposition of professionalism that includes respect for others in his communication and human interaction. The State is moving to a licensure system and will no longer certify teachers after February 1, \_\_\_\_\_. To address the regulations and expectations in the State Educator Code of Ethics, which applies to teacher candidates, the college has established a Teacher Candidate Review Board to uphold these new expectations. (link)

Student X will need to familiarize himself with these expectations, as will other teacher candidates. This Plan will help him do it.

7. The University has an expectation that Student X is able to identify tasks or terms with which he is struggling and is able to articulate questions to seek assistance. Learning is a cooperative venture and requires diligent participation from both student and teacher. Student X, in this plan, is provided substantial support not normally provided to teacher candidates. Student X should understand that this level of support almost certainly cannot be offered in student teaching. The overarching goal of student teaching is for the teacher candidate to assume personal responsibility to demonstrate competence in planning instruction, leading instruction, and managing a classroom without the presence of supervisors in the classroom.

8. Student X is expected to have read, and is committed to following policies and expectations as published in the university catalog and the Teacher Education Handbook. A course guide will be provided with specific requirements and expectations for the practicum.

9. The University will request that as Student X is given the task to lead instruction that he permit video of his practice instruction to be captured for the purpose of review and reflection. Oftentimes, seeing oneself engaged in an activity will be useful in monitoring one's strengths and weaknesses, and it is also helpful in mentoring a student's improvement. This accommodation may assist Student X in processing his experiences and understand what is successful and what is missing or weak.

10. The university will assign a member of the education faculty to provide assistance to Student X to process his experiences and the feedback he has received as well as helping him to communicate with faculty and staff, in addition to his practicum instructor.