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Schools May Not Need to Provide All Accommodations Suggested by Student's Doctor

By Denise Del Priore

In *Oser v. Capital University Law School*, a student sought to enjoin a law school from dismissing him and from refusing to allow him to attend classes, alleging that the school dismissed him without reasonably accommodating his Attention Deficit Hyperactivity Disorder (“ADHD”) in violation of the Americans with Disabilities Act (“ADA”), the Rehabilitation Act of 1973, and the Ohio Civil Rights Act.

During his first semester of law school, the plaintiff student performed poorly on his exams and was placed on academic probation in accordance with school policy. The student was also placed in a mandatory academic support program which offered numerous support services, including individualized academic counseling and workshops on study techniques. After a series of evaluations demonstrated that the student had certain behavioral characteristics associated with attention deficit disorder, he was referred by the program to a school psychologist. Also suspecting attention deficit, the psychologist in turn referred the student for a medical evaluation. The student was diagnosed with ADHD, and the evaluating doctor recommended that the school adopt several academic accommodations, including providing the student with extra time (30 minutes extra for a 3-hour exam). The student was also prescribed medication.

The school psychologist reviewed the recommendations put forth by the evaluating doctor and compared those recommendations to accommodations given to similarly impaired students. The school decided to offer the student an additional five minutes per hour of exam time and the option to take exams in a private room. Although offered the academic accommodations on all of his exams, the student opted to utilize the accommodations on only two exams. The student performed slightly better on his spring semester exams and achieved higher marks on the exams for which he did not use the accommodations. Despite his improved performance, the student's GPA was still too low, and he was dismissed from the law school.

The student subsequently filed suit against the school, (*cont'd* ➔)

alleging that the school dismissed him without reasonably accommodating his ADHD in violation of the Americans with Disabilities Act, the Rehabilitation Act, and the Ohio Civil Rights Act. The student argued that by not fully implementing his evaluating doctor's recommendations, he was not accommodated.

Under the ADA a disabled or handicapped individual is otherwise qualified to participate in a program if he or she can meet its necessary requirements with reasonable accommodations. Although an educational institution may be required to make reasonable accommodations, it is not required "to lower or to effect substantial modifications to its programs to accommodate the disabled." Further, when evaluating the accommodation requirement, "courts must give deference to professional academic judgments." However, to be entitled to deference, an academic institution must show that in reaching its decision: 1) it made itself aware of the student's disability; 2) it explored alternatives for accommodating the student; and 3) it exercised professional judgment in deciding whether the requested accommodations would give the student the opportunity to complete the program without fundamentally or substantially modifying the school's standards.

The court in *Oser* determined that the law school was entitled to deference because

it met all of the aforementioned requirements. First, the school administration made itself aware of the student's disability because it initially recognized the student's possible ADHD and referred him for evaluation and diagnosis. Second, the school explored alternative accommodations and even added accommodations, like allowing the student to take his examinations in a private room and providing various academic support services. Lastly, the school used its professional judgment, based on numerous years of successfully assisting students with similar disabilities, when fashioning the student's accommodations. Thus, the court held that the law school's determination of what constituted a reasonable accommodation was entitled to deference. Furthermore, the court found that the law school did not fail to reasonably accommodate the student's ADHD by refusing to waive its policies of dismissal. Therefore, the student was "accommodated" under the ADA.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



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