

## Reasonable Accommodations for Students with Asperger's Syndrome Under the ADA

University administrators across the country continue to be faced with pressing issues regarding academic accommodations for students with disabilities. A recent issue has involved students with Asperger's syndrome and a question of whether or not they must be furnished personal coaches to help them succeed in a university environment. Asperger's syndrome is an autism spectrum disorder characterized by difficulties in social interaction and repetitive patterns of behavior and interests. Students with Asperger's syndrome also experience executive functioning difficulties. Due to these communication and executive functioning problems, Asperger students are increasingly requesting that universities provide them personal coaches to help them interpret and follow syllabi requirements and communicate with professors. In order to evaluate the reasonableness of a request for a personal coach, university officials must be familiar with the Americans with Disabilities Act ("ADA") and applicable case law.

In 1990 Congress passed the ADA to prohibit discrimination against qualified individuals with disabilities on the basis of their disability. Broad in scope, the ADA reaches many segments of society such as private employers (Title I), state and local government entities (Title II), and private providers of public accommodations (Title III). Additionally, Title IV prohibits discrimination through telecommunication services, and Title V includes miscellaneous provisions. In an academic context, Title II covers state universities and community colleges, whereas Title III applies to private institutions of higher education.

The ADA defines individuals with disabilities as (1) those with a physical or mental impairment that substantially limits one or more major life activities, (2) those with records of such impairment, or (3) those who are regarded as so impaired. The statute broadly classifies major life activities as "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." The 2008 amendments to the ADA significantly broadened the component parts of the definition of disability. The life activities of concentrating, thinking, communicating, and learning are all affected in varying degrees in those with Asperger's syndrome. The Act, however, only protects a *qualified* individual, defined as one who, with or without reasonable modifications, meets the essential eligibility requirements for participation in programs or activities provided by a public entity. Therefore, students with Asperger's syndrome must satisfy the requirements for admissions and be able to perform the essential functions of a student with or without reasonable accommodation.

The main goal of the ADA is to ensure equal opportunities for those with disabilities. Consequently, institutions of higher learning must provide reasonable accommodations to guarantee equal educational opportunities and avoid discrimination. Although the ADA requires institutions to provide reasonable modifications, colleges and universities do not bear the burden of identifying students with disabilities. Individuals seeking accommodations must notify the school of their disability and provide relevant documentation. Examples of reasonable adjustments for students with learning disabilities include additional time on examinations, reduced course loads, waiver of courses, and alternative testing methods. An academic accommodation is unreasonable if it results in undue financial or administrative burden, or if it would require a substantial alteration of the institution's program or standards. Moreover,

colleges and universities do not have to supply auxiliary aids, attendants, or services for personal use.

A federal appellate court case, *Wynne v. Tufts University School of Medicine*, 932 F.2d 19 (1st Cir. 1991), established a widely adopted test for determining whether modifications should be provided in a particular situation. In this case, the plaintiff claimed that his learning disability placed him at an unfair advantage in taking multiple choice examinations and that Tufts for no valid reason refused to test his proficiency in biochemistry by other methods. In its decision, the court required officials within the institution to consider alternative means, their feasibility, and their cost and effect on the academic program, and to provide rationally justifiable reasons as to why available alternatives would lower academic standards or require substantial program modifications. *Id.* at 26.

A number of courts have applied the *Wynne* standard to determine whether reasonable accommodations must be provided and the nature of such accommodations. In the context of higher education, courts demonstrate great deference to an institution's policy determinations, particularly regarding academic standards and requirements. Courts are also reluctant to interfere in decision-making unless there is a substantial departure from accepted academic norms.

UAHuntsville, as an institution of higher education, must remove any barriers to equal educational opportunities for students with Asperger's syndrome. By providing reasonable accommodations, the University will level the playing field for Asperger students and avoid the cost and burden of litigation. With respect to any request for a personal coach, academic officials, with the assistance of Disability Support Services personnel in the Counseling Center, should engage in an appropriate analysis to determine whether the use of such coaches would fundamentally alter UAHuntsville academic standards or would result in substantial program alterations. A proposed accommodation that has such an effect is unreasonable and not required. In addition, it is arguable that a personal coach would be considered a device or service of a personal nature, which, as mentioned above, is not required under the ADA. Of course, a student may seek the assistance of a personal coach at his/her own expense.

It is important to remember that U.S. Supreme Court Justice Louis Brandeis, who graduated from Harvard Law School at the age of twenty with the highest grade point average in the school's history, required accommodations as a student. Due to poor vision, he was unable to read for extended periods of time and paid a classmate to read to him. Without this accommodation, his country might not have benefitted from the legal wisdom and insight of the "people's lawyer." Laura Rothstein, *Millennials and Disability Law: Revisiting Southeastern Community College v. Davis*, 34 J.C. & U.L. 169, 199 (2007). Thus, when providing reasonable accommodations or adjustments to students with Asperger's syndrome or another disability, the University is not only ensuring equal educational opportunities for those students but potentially benefitting society as a whole.