



IMPAIRMENT

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CASES THAT HAVE SHAPED DISABILITY SERVICES

***Southeastern Community College v. Davis*, 442 U.S. 397 (U.S. Supreme Court, 1979)**

Summary: The nursing school rejected the application of a student who had a hearing impairment. The school believed that the student would be unable to satisfy the clinical requirements of program. The school was unwilling to allow the student to waive out of the clinical components of the program or to assign an aide to help her communicate in a clinical setting. The Supreme Court determined that Section 504 did not require the College of Nursing to admit the student. The Court's rationale was that 504 did not prohibit institutions from establishing physical qualifications for admission to the clinical program and that the accommodations requested by the student amounted to "affirmative action" that was not required under 504. The Court defined "otherwise qualified" as a person who can meet all of the program requirements in spite of "handicap."

Key Points: Technical standards are permissible; the ruling begins to define "otherwise qualified"; it sets forth an analysis to determine what accommodations are reasonable (required) and what accommodations would impact the essential elements of a program (not required).

***Pushkin v. Regents of the University of Colorado* (10th Cir. 1981)**

Summary: Pushkin was a physician with multiple sclerosis applying for a medical residency at the University of Colorado Psychiatry unit. He was denied admission. Those in the interview committee justified their decision to deny him admission, stating that (a) they were concerned with how patients would react to Dr. Pushkin; (b) they felt Dr. Pushkin had not come to terms with his disability, and that this would affect his ability to treat patients; (c) Dr. Pushkin would not be able to handle the stress on the job because of his condition; and (d) that Dr. Pushkin would require too much medical care to be able to satisfy the requirements of the job. The members of the admissions committee gleaned all this from a 45-minute interview. Dr. Pushkin's therapist offered testimony stating his belief that Dr. Pushkin would be able to handle the stress of the job. Dr. Pushkin offered information on how he would handle his need for on-going medical treatment. The 10th Circuit found that the residency program had discriminated against Dr. Pushkin.

Key Points: *Pushkin* makes clear that there must be an individualized inquiry into the circumstances of each individual and that broad stereotypes of the limitations of individuals with various disabilities are not properly the basis of a decision that someone is not otherwise qualified. Typical applications in higher education involve students in clinical placements or teacher education programs. *Pushkin* teaches that we may not stereotype students with disabilities when deciding whether they are otherwise qualified for such programs, but rather consider how each individual student can or cannot meet program requirements.

***Wynne v. Tufts University School of Medicine*, 976 F.2d 791, 932 F.2d 19 (1st Cir. 1992 and 1991 (en banc))**



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CASES THAT HAVE SHAPED DISABILITY SERVICES (CONT'D)

Summary: Wynne was a medical school student with an LD appealing his academic dismissal on the basis that Tufts had not properly accommodated his disability. Most critically, Wynne had wanted Tufts to refrain from using multiple-choice examinations when testing him. Tufts refused this accommodation request. Initially the First Circuit was unwilling to accept Tufts' explanation as to why it would only use multiple-choice tests. The Court indicated that, while some deference was owed to an institution making academic judgments, such institutions nevertheless have a duty to seek out reasonable means of accommodating students with disabilities. The Court further indicated that to conscientiously carry out this duty, institutions should show that relevant officials considered reasonable means of accommodating a student, considered their feasibility and effect on the program, and came to a justifiable conclusion that providing such accommodations would result in lowering academic standards or substantially modifying the program in question. When the matter came back to the Court a second time, the Court accepted Tufts' explanation that critical thinking skills were taught by use of multiple-choice examinations and therefore allowed the dismissal of Wynne to stand.

Key Points: *Wynne* tells us what thought process an institution should go through before refusing to provide an accommodation on the basis that doing so would lower academic standards and /or substantially modify a program of study. In essence, an institution should show that (a) officials with relevant duties and experiences considered the accommodation request; (b) they meaningfully considered the impact on the program and the availability of alternatives; and (c) they reached a rational conclusion that accommodations could not be offered. *Wynne* Clarifies "otherwise qualified" to mean "can complete program requirements with or without reasonable accommodation."

Ohio Civil Rights Commission v. Case Western Reserve University (CWRU), 666 N.E.2d 1376 (Ohio Sup Ct. 1996)

Summary: A blind applicant to the CWRU Medical School was denied admission and filed suit under state disability law that used the same statutory language as the Section 504 regulations. In finding for the university on the basis that the student was not otherwise qualified, the Court majority relied heavily on an Association of American Medical College technical standard that medical school candidates must have an ability to "observe." The majority opinion identified various tasks that the student would be unable to do, such as insert an IV or directly observe an x-ray and make independent judgments. The majority ignored experiences of a blind medical school graduate (Hartman) who had attended the Temple University Medical School as not "probative." Dissenting opinion seemed to believe that reasonable accommodation existed given the experiences of Hartman at Temple.



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CASES THAT HAVE SHAPED DISABILITY SERVICES (CONT'D)

Key Points: The fundamental question is how far one has to go to accommodate someone before the accommodation becomes “unreasonable.” Both majority and dissenting opinions handle this issue poorly in our view. Hartman’s experience at Temple was important, but not for reasons cited by the dissenters. Temple found it necessary to provide constant one-on-one assistance to Hartman, to exempt him from certain requirements, and to do so at cost of help to other students. This amounts to a substantial change in the way in which the program is taught and the provision of personal aides that go above and beyond what relevant law requires. In that respect, if Temple’s handling of Hartman is the only way that a student can complete the requirements, it is not reasonable to require this of an institution. The facts show what an example of “undue burden” might be. The decision also stands for the proposition that a school can require that its graduates be able to perform a full range of functions (i.e., to be generalists) and need not make an accommodation that exempts a student from certain pieces of a program that s/he cannot complete. For example, an arts school can require all graduates to complete “dance” even though they will not all necessarily have to dance to pursue their desired careers and even though students with mobility impairments may not be able to complete the requirement.

Guckenberger v. Boston University (BU), 974 F. Supp. 106 (D. Mass. 1997)

Summary: A class action suit by students with learning disabilities was brought against BU, alleging discrimination principally because BU would no longer approve course substitutions for a foreign language requirement for students with learning disabilities. Using analysis in *Wynne*, the court ultimately determined that, if BU could establish by such a “deliberative process” that allowing a substitute for a foreign language requirement would either lower academic standards or substantially alter the program of study, it could refuse to permit course substitutions for students with LDs.

Key Points: The existence or merits of an LD as a diagnosis were never called into question by BU or the court. Course substitutions are not per se required as an accommodation if the university can justify unwillingness to offer substitution through deliberative process, as outlined in *Wynne*.

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