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TEST ACCOMMODATIONS FOR POSTSECONDARY STUDENTS
The Quandary Resulting From the ADA's Disability Definition

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Legal wrangling precipitated by the Americans With Disabilities Act (ADA) has resulted in courts adopting a narrow view of disability. This narrow categorical disability definition is in conflict with current mental health and educational practice that presumes an inclusive view of disability. Test accommodations for licensing exams based on learning impairments provide an example of the conflict generated by legal versus mental health views of disability. Mental health practitioners often support test accommodation requests for students who do not meet the ADA's strict threshold for disability determination. Mental health practitioners must understand the ADA definition of disability, and test organizations need to examine goals and alter standard practice in a manner that is fair and equitable independent of learning impairments.

A recent Supreme Court decision ruled that professional golfer Casey Martin should be allowed to ride a cart in tournaments (*PGA Tour, Inc. v. Martin,* 2001). In his case, brought under the Americans With Disabilities Act of 1990 (ADA), it was successfully argued that Martin has a disability in walking that is covered by the ADA and that the professional golfers' tour organizers have an obligation to provide this reasonable accommodation. The flurry of opinion articles expressing polarized views concerning the merits of this decision ranged from viewing it as atrocious to admirable (Feinstein, 2001; Leo, 2001; Rohrer, 2001). This decision did not lead to the downfall of professional sports, as suggested by some detractors, nor did it level the playing field for untold numbers of disabled individuals who merely needed some reasonable accommodation to succeed at this level. In fact, it may not be sufficient to help Casey Martin reach his goal of success at the professional tour level. The criticism of this decision highlights significant underlying conflict surrounding the various views of disability, how best to accommodate the disabled, and the role of the ADA in this process.

Lost in the hyperbole of criticism surrounding the *Martin* (2001) decision was the fact that many legal scholars are expressing significant concern that the courts are taking an extremely narrow view of disability as defined by the ADA (Anderson, 2000; Burgdorf, 1997; Friedland, 1999; Lanctot, 1997; Locke, 1997; Mayerson, 1997). In less publicized decisions, the Supreme Court ruled that one is not disabled under this law if mitigating measures effectively remedy the problem (*Albertsons, Inc. v. Kirkingburg,* 1999; *Murphy v. United Parcel Service,*

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1999; *Sutton v. United Air Lines, Inc.,* 1999). More recently, the Supreme Court further restricted the range of people who can be considered disabled within the work environment when it held that impairments must involve those activities "central to daily life" to qualify for ADA coverage (*Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 2002, p. 641). Thus, impairments that restrict the ability to perform special tasks associated with a particular job may not qualify as disabling. The *Sutton* (1999) and *Toyota* (2002) decisions should be of particular concern to mental health professionals because they signal a severe restriction in the definition of disability, including disabilities associated with learning and other psychological impairments, covered by the ADA (Ferrin, 2000; Olsen & Mathison, 1999; Schur, 1999).

One aspect of ADA coverage of particular interest to mental health practitioners, as well as educators, that highlights inherent conflicts in this law reflected in these recent Supreme Court decisions involves students with learning impairments who request test accommodations, particularly when sitting for licensing exams. Testing organizations have found that since the ADA was enacted, accommodation requests for entrance and licensing exams have increased substantially, primarily from students diagnosed with learning impairments associated with learning disorders (LD) and attention-deficit/hyperactivity disorder (ADHD; Morrissey, 1992; Rotunda, 1997; Wightman, 1993). A small number of accommodation requests involve students with other psychological impairments resulting from conditions such as anxiety and mood disorders (Tucker, 2002).

Many testing organizations have grown wary of this steep increase in accommodation requests for LD/ADHD, prompting most to initiate detailed documentation review procedures (Ranseen, 2000). These organizations have begun to deny some accommodation requests for LD/ADHD unless students can fully document diagnosis, provide evidence that impairments associated with the diagnosis are of a severity considered disabling, and offer a clear rationale for requested accommodations. Significant conflict and confusion exist over who should be granted accommodations on licensing exams. Disagreements over the provision of test accommodations on licensing exams have been sufficiently contentious that some students denied accommodations for LD/ADHD have brought suits under the ADA against licensing boards (*Argen v. New York State Board of Law Examiners,* 1994; *Bartlett v. New York State Board of Law Examiners,* 1998; *D'Amico v. New York State Board of Law Examiners,* 1993; *Gonzales v. National Board of Medical Examiners,* 2000; *Pazer v. New York State Board of Law Examiners,* 1994; *Price, Singleton, & Morris v. National Board of Medical Examiners,* 1997). These cases form just some of the accumulating case law interpreting this complex legislation.

Disagreements between students and testing agencies primarily revolve around the question of what constitutes a disability under the ADA. It has been argued that many mental health practitioners, including those who render LD/ADHD diagnoses and routinely support student accommodation requests, have a limited understanding of the ADA and, in particular, its definition of disability (Goodman-Delahunty, 2000; Gordon, Murphy, & Keiser, 1998). This is undoubtedly true, although not surprising. Many have noted that the ADA has led to substantially greater legal wrangling than previous antidiscrimination laws (Burgdorf, 1997; Friedland, 1999) specifically because of disagreement over the ADA

disability definition. As a result, plaintiffs claiming ADA protection may find themselves having to argue that they are both severely disabled and mildly disabled by the same condition. Basic definitional problems with disability and the way that conflict in the ADA has come to center on disability definition help to explain this apparent contradiction. Special test accommodations on licensing exams provide a particularly stark example of how a legal definition of disability is completely at odds with the more inclusive view of disability often implied by current mental health and educational practice. Recent court rulings restricting the scope of the ADA within the work environment have implicitly defined disability in a manner that would seem to virtually preclude the provision of accommodations for LD/ADHD on licensing exams. Nevertheless, such accommodations have routinely been provided for students diagnosed with LD/ADHD at all academic levels over the past few years. In short, educators and mental health practitioners frequently support the practice of granting test accommodations based on the ADA even though current interpretation of the law offers questionable support for the practice. The purpose of this article is to examine the roots of this conflict, particularly in terms of differing views of disability, and to offer some tentative suggestions for reducing the conflict in the future. Because legal definitions are frequently at odds with those based on medical or personal views, we contend that there has never been a completely satisfactory definition of disability. Mental health practitioners and educators need better education concerning the legal approach to disability definition under the ADA. On the other hand, the current legal focus on refining the disability definition might better be spent examining the actual merits of the accommodation practices that a restrictive definition seeks to limit.

Problems Defining Disability

The ADA definition of disability is problematic in part because there has never been any one generally accepted definition of disability (Oliver, 1983; Pfeiffer, 1998, 1999; Reisine & Fifield, 1992; Verbrugge, 1990). Confusion and disagreement over disability definition have a long history, with definitions reflecting the changing influences of culture, politics, economics, interest groups, and goals specific to a given situation (Coudroglou & Poole, 1984; Cwikel, 1999; Joslyn, 1999; Reisine & Fifield, 1992). Medical professionals have often fallen into the role of arbiters of administrative disability benefits, such as social security disability, and have had significant input in defining populations of disabled individuals. This input, however, has been sharply criticized by groups of individuals with various conditions who have, for one reason or another, been labeled as disabled (Eakin, 1985; French, 1993; Oliver, 1983; Shearer, 1981). These groups, which strongly advocate for disability rights, particularly object to being defined by medical disability labels, stressing the importance of their own unique personal perspective in defining disability and the role of the environment in creating and sustaining disability.

Disability has also been analyzed from a postmodern perspective. Such theorists have argued that disability is largely a socially constructed phenomenon rather than an objective reality (Bogdan & Taylor, 1994; Danforth, 1997; Neath, 1997; Smith, 2001). Postmodernists view disability as a subjective concept that is

inherently tied to underlying politics. Thus, disability definitions have been viewed from the perspective of three broad categories: administrative definition, medical definition, and self-definitions (Blaxter, 1976; Eakin, 1985). These definitions differ in the degree to which disability is viewed as an objective reality rather than a subjective state that is a function of culture, environmental demand, and agreed-upon social construct. Administrative definitions assume that disability has an objective reality, whereas postmodernists do not accept this view. Medical definitions may accept that disability can be objectified yet realize that disability is dependent on factors more complex than the identification of how biologic deviation impairs some functional skill.

Medical definitions of disability often conflict with administrative definitions tied to the allocation of social resources (Blaxter, 1976). For instance, social security benefit determination focuses solely on disability as a significant functional limitation within the work setting. This requires a categorical determination whether or not one can work. Categorical decisions necessitated by administrative definition make it difficult to reconcile the relative, dimensional nature of actual disability implied by medical definitions (Duckworth, 1995; Mehlman & Neuhauser, 1999). Administrative definitions also have difficulty dealing with situations in which a disability waxes and wanes or is temporary in duration. Researchers determining such important basic data as the prevalence of disability from a certain condition and the cost of that disability to society have noted that slight changes in one's definition of disability can greatly alter the outcome data (Reisine & Fifield, 1992; Tepper, Sutton, Beatty, & DeJong, 1997). Thus, Cwikel (1999) likened the process of defining disability to tilting at windmills, noting that definitions are inherently linked to the purposes they serve—be these purposes research, patient monitoring, or resource allocation.

Medical definitions of disability generally refer to the impact that physical, mental, and developmental conditions have on a person's ability to meet culturally accepted and expected roles (Verbrugge, 1990). Disability is not defined merely as personal deviance due to a medical condition but rather as a gap between what a person can do and the demands of the specific environment, typically measured in terms of some problem in performing common, everyday activities (Verbrugge & Jette, 1993). The World Health Organization's (WHO) *International Classification of Impairments, Disabilities, and Handicaps*, designed to provide analysis of disease outcomes, attempted to standardize disability terms within the context of a "health experience" (WHO, 1980, p. 28). *Impairment* was defined as "any loss or abnormality of psychological, physiological, or anatomical structure or function" (WHO, 1980, p. 27). *Disability* was defined as "any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being" (WHO, 1980, p. 29), whereas *handicap* referred to the barriers imposed by society.

A revised WHO definition of disability, the *International Classification of Functioning, Disability and Health* (ICF; WHO, 2001b), was recently accepted for international use (Centers for Disease Control, National Center for Health Statistics, 2002). The ICF presented a broad, detailed and unified standard for describing health and health-related states that can be used for research, clinical purposes, education, and social policy (WHO, 2001b). This classification largely removed disease from consideration, focusing on health states in terms of human

structures and functions. These, in turn, interact with the person's "activities and participation" (WHO, 2001b, p. 14) from both individual and societal perspectives. The ICF classification also has a separate component of "contextual factors" (WHO, 2001b, p. 16). These can be environmental or personal and are rated as facilitating or hindering the individual's health status. Thus, disability is described as "the outcome or result of a complex relationship between an individual's health condition and personal factors, and of the external factors that represent the circumstances in which the individual lives" (WHO, 2001b, p. 17). Under ICF classification, impairment can change over time, be temporary, fluctuate, and range greatly in severity.

As an example of ICF classification, an individual could be rated as having impairment in "attention" (*ICF Checklist,* WHO, 2001a, p. 2) which is a subcategory under the general category of Mental Functions. Under "Activities and Participation" (*ICF Checklist,* WHO, 2001a, p. 4), the individual may be affected in the major life activity of higher education. The individual's health status might also be described by a contextual category of "services, systems and policies" (*ICF Checklist,* WHO, 2001a, p. 6) related to the educational system and how these impact—both negatively and positively—the impairment in sustained attention. This rather complicated classification scheme attempts to provide a common language for analyzing health and, therefore, disability across multiple dimensions. Disability is a multidetermined, fluid concept that is not necessarily the result of a disease state. Greater emphasis is placed on the environment as critical in either ameliorating or sustaining disability. The social model of disability is explicitly recognized; "disability is not an attribute of an individual, but rather a complex collection of conditions, many of which are created by the social environment" (WHO, 2001b, p. 20). Thus, disability is in part a political issue that requires societal action in terms of both environmental modification and attitudinal change. At this point, the impact this revision will have on disability research, clinical practice, and social policy is unclear.

Conflict in the ADA's Disability Definition

The ADA was lauded as progressive legislation designed to ameliorate the significant societal problem of discrimination against the disabled. The ADA is a civil rights statute enacted "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (ADA, 1994, 42 U.S.C. § 12101(b)(1)). This antidiscrimination law was designed to protect individuals with disabilities in the workplace and telecommunications, as well as public services, accommodation, and transportation. The crux of the ADA is that the disabled have been routinely subjected to unequal treatment based on misinformation, stereotyping, or prejudice. For example, the ADA protects an individual who is not hired or promoted solely because he or she suffers from bipolar disorder or a heart condition.

Discrimination can also be found if an employer does not or is unwilling to supply accommodations to a disabled person. The language indicates that to qualify as warranting accommodations, a person must be an "individual with a disability" who is "otherwise qualified" in that he or she meets the job prerequisites (United States Equal Employment Opportunity Commission [USEEOC],

1992, p. II-12). The requested accommodations needed to ameliorate the disabled person's limitations must be "reasonable" in that they do not create an "undue hardship" in terms of cost or burden to the employer (USEEOC, 1992, p. I-6). This significant aspect of the law suggests that equal opportunity under the ADA may in fact equate with being treated unequally or at least differently from others (Friedland, 1999). Current society is wary of laws providing entitlements or preferential treatment (Williams, 2001). As such, the provision of reasonable accommodation within the ADA to offer entitlements has become contentious.

Although antidiscrimination laws involving religious or sex discrimination have resulted in some legal wrangling over who specifically qualifies for coverage, ADA litigation has focused extensively on the issue of inclusion. As discussed by Burgdorf (1997), there is a common misperception that antidiscrimination laws in general relate to some specific, defined group when in fact all people are covered by typical antidiscrimination legislation. As an example, sex discrimination covers both men and women. Sex discrimination typically involves discrimination based on gender, a readily definable characteristic that everyone possesses. Such cases usually do not have to argue over inclusion but rather focus on the merits of the discrimination case. In contrast, although anyone could become disabled, there is no assumption that everyone has the characteristic of disability. Thus, disability needed to be defined. The ADA imported a definition of disability from previous laws (Feldblum, 1991).

Disability definition was also necessary because the characteristic of being disabled may have realistic bearing on the stated reason for the discrimination. The history of laws protecting the disabled has reflected fear that discrimination might be confused with eligibility requirements, a problem Burgdorf (1997) explained with the example of the blind bus driver. Employers and other public entities should not be accused of discrimination if the disability (blindness) clearly precludes a person from performing a job (driving a bus) or accessing a specific place or program (attending bus-driving school). In the employment arena, courts did not want to see cases of nonsensical accommodation requests involving people whose limitations obviously prevented them from performing some essential feature of the work. Although it was hoped that there would be a broad class of people who could be covered in terms of pure discrimination, it was recognized that there also needed to be a narrower class of disabled people covered in relation to having been denied an accommodation.

As adopted from the Rehabilitation Act of 1973 (1988), the definition of disability in the ADA stated that disability includes (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such impairment (ADA, 1994, 42 U.S.C. § 12102(2)). As with any nonoperationally defined definition, there is a great deal of latitude in the interpretation of such phrases as *substantially limits* or *major life activity.* Further government regulations and case law have refined the meaning of such terms. Substantially limit has been interpreted as "unable to perform a major life activity that the average person in the general population can perform that same major life activity" (USEEOC, 1992, § 2.1(a)).

Despite the promise of the ADA to end discrimination, there is a growing consensus that the courts are greatly narrowing the range of people who can

be considered disabled under the ADA (Ferrin, 2000; Lanctot, 1997). No consensus exists that certain medical conditions always render a person disabled and, thus, should be universally accepted as such by the courts. Some plaintiffs in ADA discrimination suits who have very serious medical conditions such as cancer, diabetes, and HIV have been unable to meet the threshold by which someone qualifies as disabled under the ADA definition (Lanctot, 1997). ADA cases often focus on threshold for disability determination to the exclusion of examining the actual merits of the case. Thus, the more problematic issue of determining what constitutes reasonable accommodations for various medical and mental conditions in different situations is avoided (Anderson, 2000). Legal precedence has established that disability determination is made on a case-by-case basis. This is in contrast to other antidiscrimination law. Although language in other antidiscrimination laws has resulted in some confusion regarding who is covered, the plaintiff claiming gender or racial discrimination typically does not have to prove group inclusion before the merits of a case can be considered. Ironically, disability rights advocates initially viewed the ADA definition as liberating because it did not focus on medical diagnosis (Silvers, 1996). In fact, ADA cases often require that a plaintiff present extensive evidence of medical diagnosis along with evidence that the condition results in significant functional impairment indicating substantial limitation in a major life activity.

Seeking protection based on the ADA may force an individual to argue mutually exclusive possibilities regarding his or her disability—that it is both severe and not severe. This problem has been likened to a Catch-22 situation (Burgdorf, 1997; Locke, 1997; Schur, 1999). To illustrate, an ADA workplace discrimination case in which the employee brings action to receive an accommodation denied by the employer requires the employee to prove that he or she is disabled and that he or she can meet the essential job requirements when accommodated. Having a disability means proving a substantial limitation in a major life activity. The major life activity might be work itself or a basic function such as walking, breathing, or thinking that substantially impacts work. By definition, this limitation must be substantial or beyond that typical of the average person in the population. However, because the person arguing for protection under the ADA may in fact be working or able to work in many capacities, it can be difficult to meet this threshold for disability determination. The employer who terminates the employee will likely argue that the employee was unable to handle essential job functions, disagreeing with the finding of disability. As a result, the employee claiming a disability that requires accommodation must also prove that the disability is not of a severity to preclude performance of essential job functions if accommodated. In short, the disabled employee who requires accommodations may walk a fine line between proving that a disability is quite severe but not so severe that it prevents essential work requirements if accommodations are provided. As a result, Burgdorf (1997) observed, disabled individuals who possess a wide array of competencies and skills will have particular difficulty seeking ADA protection because it will be difficult for them to meet the basic requirement that the disability be substantially limiting of a major life activity.

Test Accommodations and the ADA

Organizations that conduct exams fall under Titles II and III of the ADA and must not discriminate against the disabled (Burgoyne, 1995). Although it is unlikely that a test organization would ever alter its practice so as to exclude the disabled from taking an exam, discrimination also exists if the usual manner in which exams are conducted prevents successful completion for those deemed disabled. This type of discrimination is based on the idea that certain standard practices ignore differences in physical and mental attributes by having been designed for the ideal user (Burgdorf, 1997), resulting in discrimination by equal treatment. Such discrimination is not typically based on malice but rather on a lack of flexibility. For example, a testing entity administering an exam that requires a significant amount of reading might be viewed as discriminating if unwilling to provide a reading disabled student with an oral version of the exam. This would only be the case, however, if the measurement of reading skill was not considered to be a goal of the exam.

Invoking the ADA to receive accommodation in the workplace requires that an employee be a qualified person with a disability who is able to perform essential job functions if provided reasonable accommodation (Goodman-Delahunty, 2000). Being qualified means that the employee meets the basic training, skill, and educational standards necessary to do the job. In the case of licensing exam accommodations, the exam itself is a fundamental qualification that has not yet been met. A student who has completed professional school is presumably qualified to sit for the licensing exam. However, if accommodations on the exam are sought, the student must prove that he or she has a disability under the ADA. The student requesting accommodation for LD/ADHD is usually required to submit a comprehensive diagnostic evaluation documenting the disabling learning impairments (Keiser, 1998). Typically, this documentation includes evidence of impairments in academic skills and/or symptoms of ADHD that consistently affect academic and test-taking performance. A majority of students who request test accommodation seek extra time to ameliorate deficits in reading speed and comprehension, facility with written language, and ability to sustain attention. Mental health practitioners conducting diagnostic evaluations to document a student's learning problems likely advocate for their clients, arguing that learning impairment requires alteration of standard exam conditions to ensure that students can achieve optimal results.

Licensing organizations such as state bar committees recognize that they have an obligation to provide reasonable accommodations to disabled students as mandated by the ADA. Unreasonable accommodations are ones that present a high cost or burden to the testing organization. Although some accommodations might be quite burdensome in terms of maintaining test security, there is little evidence that typical requests for extra time, extra breaks, a separate testing room, or altered response format could be routinely considered unreasonable in terms of cost or burden. However, legal decisions have also upheld that a test accommodation is unwarranted if it might change the exam so that it no longer accurately measures the skills it was designed to measure (Eichhorn, 1997; Mehrens, Millman, & Sackett, 1994). For instance, in the decision *Pandazides v. Virginia Board of Education* (1992; Morrissey, 1993), involving a teacher who failed an

accommodated evaluation of teaching necessary to keep her job, the court held that accommodations that compromise the essential educational requirements of a program are not required. In this case, the plaintiff brought action when denied accommodations that greatly reduced her need to demonstrate basic skills of reading and written expression on the teacher exam. The court held that an exam does not have to provide accommodations that substantially change its nature such that it no longer measures skills likely necessary to be competent as a teacher. From the psychometric standpoint, organizations conducting professional licensing exams have legitimate concerns about the predictive validity of exams that are accommodated (Phillips, 1994). Thus, testing organizations usually take the provision of accommodating learning impairments quite seriously.

The Catch-22 situation observed in some ADA workplace discrimination decisions has also been described in the situation in which a postgraduate student diagnosed with LD/ADHD invokes the ADA as protection for his or her accommodation need on a licensing exam (*Bartlett v. New York State Board of Law Examiners,* 1998). This is particularly true if the student has a fairly recent diagnosis, as is often the case (Ranseen, 1998). Having met the basic background-eligibility requirements for taking the exam, the student finds it quite difficult to meet the standard for being disabled. He or she must document a disability that affects a major life activity, usually the major life activity of learning or a major component of learning such as reading or being able to maintain attention. However, the testing organization can legitimately question, on the basis of the ADA, why a condition that causes a disability in learning did not prevent high school, college, or even professional school completion. Alternatively, some have argued that an inability to successfully negotiate a licensing exam is disabling in terms of the major life activity of working because exam failure prevents access to a profession. However, the student likely has some history of successful work performance that largely precludes making an effective argument that he or she possesses a disability in working. It is unclear whether test taking can be considered a major life activity. Even so, completion of each successive academic level usually means that the student has been successful on a variety of previous entrance exams well beyond an average person within the general population.

In short, a student claiming disability must provide evidence that he or she has basic impairments that impact learning or working even though the most obvious evidence—one's performance to date—often strongly argues against this contention. Consequently, the ADA places the student in a bind in which being disabled under its strict definition precludes the possibility that he or she would be in a position to request accommodation in the first place. Additionally, the testing organization might express concern that if the student claims disability at a severity that prevents a major life activity such as concentration or reading, can the student truly perform the essential features of the profession?

Interpreted literally, the implications from recent court decisions seem to further restrict a postsecondary student from successfully arguing that he or she has a disability covered by the ADA. The Supreme Court ruling in *Toyota* (2002) implied that symptoms associated with LD/ADHD such as slow reading speed or poor ability to maintain concentration cannot be considered major activities of central importance in the life of the average person simply because they make test taking difficult. The Supreme Court ruling in *Sutton* (1999) impacts two situations

that are commonly encountered with students requesting test accommodations for LD/ADHD. First, many students with ADHD admit that their symptoms abate with medication. *Sutton* held that one should not be considered disabled if the condition is adequately alleviated with treatment. Second, many students diagnosed with LD/ADHD view a past history of scholastic success as a function of their own hard work or ability to self-accommodate for disabilities. Once again, *Sutton* suggested that a history of adequate self-accommodation precludes a finding of disability. Legal questions remain, however, as to whether the exact implications of these ADA workplace rulings apply directly to the specific situation of accommodation for licensing exams.

Evaluators who support student accommodation requests often argue that the student's impairment becomes a disability only within the context of a serious environmental demand—perhaps only within the context of a lengthy exam (Ranseen, 2000). The ADA disability definition, however, does not allow for considering unusual environmental demand as a component in deciding disability threshold. This issue, specifically involving denial of test accommodations on licensing exams, has been contested in the courts. The legal interpretation of the ADA indicates that a judgment of disability—a substantial limitation in a major life activity—should be made in relation to the environment consisting of the average person in the general population. Although courts have differed as to whether a student in professional school diagnosed with LD/ADHD could meet the ADA threshold for disability, they have upheld the average person standard for determining disability.

The *Bartlett* decision is in fact a series of decisions that illustrate the legal confusion in deciding how to determine disability threshold for a student at this level of academic accomplishment (*Bartlett v. New York State Board of Law Examiners,* 1997, 1998, 1999, 2000, 2001). *Bartlett* involved a law student initially denied accommodations for LD (reading disability) on the New York bar exam who sued the state bar. Bartlett was an individual with a history of LD diagnosis but also a history of academic success including a doctorate and a law degree. Some of her success was achieved with formal accommodation, and some did not require it. As discussed by Burgoyne (1999) and Burgoyne and Mew (2001), the district court originally found Bartlett not disabled in the major life activity of reading. On remand, an opposite conclusion was reached—that she was in fact disabled. In reaching this decision, the court held that her history of effective self-accommodation for reading disability and the negative impact of having to engage in such accommodation should not be considered in disability determination. In light of the *Sutton* (1999) ruling indicating that self-accommodation should be a factor in disability determination, this decision was vacated and the case remanded for further review.

In 2001, the district court upheld a finding of disability in the *Bartlett* case. The defendant argued that Bartlett was not disabled because she showed a history of success in past endeavors requiring reading skill (graduate school) and because some objective test findings revealed reading scores consistent with average skill for the general population. Nevertheless, Bartlett was found to have a substantial limitation in the major life activity of reading when compared with the average person in the population. The court gave weight to subjective aspects of reading

disability determination provided by experts who focused on Bartlett's lack of automaticity in reading and her slow reading speed.

In essence, the court upheld the average person standard yet implied that subjective decision making is acceptable for determining inclusion under this standard. In theory, this suggests that there is an objective standard for determining disability, whereas, in practice, there is flexibility in applying this standard. Burgoyne and Mew (2001) saw this final decision as troubling for testing organizations because the court seemingly awarded more weight to experts who offered subjective clinical judgment of impairment while discounting more objective data. On the other hand, Stefan (2001) agreed with this decision, pointing out that if an average man reference standard is to be used in a rigid manner, it will effectively bar any professional from requesting test accommodations at this level.

Other cases involving licensing exams have upheld the average person standard and not found the plaintiffs disabled. In *Price, Singleton, & Morris v. National Board of Medical Examiners* (1997), medical students with solid records of academic success without accommodation prior to medical school were denied accommodations for LD/ADHD on the United States Medical Licensing Exam (USMLE). In *Gonzales v. National Board of Medical Examiners* (2000), a medical student with LD was not granted accommodations on the USMLE because the diagnosis was based on test findings interpreted in comparison to an above-average normative group. The court held that Gonzales was not learning disabled under the ADA because his test findings were within a normal range when interpreted using norms for the general population. Thus, the courts have agreed that the ADA involves a disability determination based on the average person, yet *Bartlett* appears to support a much more lenient standard for making this determination of average.

The issue of accommodations for postsecondary students poses a dilemma because of this confusion in the ADA disability definition. Mental health clinicians generally accept that high-functioning individuals can suffer from ADHD or LD (Adelman & Vogel, 1998; Hallowell & Ratey, 1994; Richard, 1995). Academically and vocationally successful people are regularly diagnosed with these conditions. Presumably, such individuals have had to overcome significant challenges over a lengthy period of time to achieve academic and professional success. However, simply having a clinical diagnosis of LD/ADHD does not necessarily equate with being disabled under the ADA (Foote, 2000; Gordon et al., 1998; Ranseen, 1998). Similarly, physical conditions such as diabetes, a back injury, or even cancer may not be disabling unless they result in symptoms that cause significant functional impairment in life. If the learning impairment resulting from LD/ADHD is judged in comparison to the average person's academic accomplishments, it is unlikely that advanced students can successfully claim discrimination under the ADA to obtain accommodations on a licensing exam. A history of academic success, even if hard fought to achieve, makes it unlikely that a student with LD/ADHD can meet the basic threshold of disability.

The question of whether this is fair remains. Does requiring such a strict standard of disability proof preclude some students from successfully completing this final step that is critical for their professional life? When the stakes are this high, it is not surprising that mental health practitioners may advocate for

students, arguing that any learning impairment that potentially prevents licensing exam success should be viewed as disabling. However, this implies the use of a highly flexible environmental standard for disability determination, an approach that has been criticized in regard to LD diagnosis (Gordon, Lewandowski, & Keiser, 1999). Increasingly, students who perform adequately (or even above average) during primary school but struggle in college are determined to have learning impairments as young adults. The learning impairment causes a problem for the student only within the context of this more rigorous academic setting. Taken further, what if a learning impairment such as difficulty with sustained attention causes a problem only in the specific situation of taking difficult, lengthy examinations? Should this be considered a disability? Critics might well argue that if test failure is the only indication of a learning disability, the concept is so relative as to have little meaning—virtually everyone is disabled in learning once placed in a sufficiently demanding environment.

Other criticisms of accommodating high-functioning students have been voiced. Submitting a request for accommodation requires a detailed diagnostic evaluation that is typically quite costly. Rather than reducing discrimination, the current practice of providing accommodation to select diagnostic groups may actually encourage further discrimination against a different group of students—those of lower socioeconomic status and perhaps specific racial makeup (Rotunda, 1997; Williams, 2001). Some students with learning impairments may be unable to afford expensive LD/ADHD evaluations necessary for the documentation supporting licensing and entrance exam accommodation requests. A report suggesting that the demographics of SAT test accommodation requests are skewed toward upper income, high-achieving students supports this criticism (Weiss, 2000).

Although proper disability determination is the source of significant conflict surrounding test accommodation practices, the more important underlying issue is the extent to which test accommodations undermine the purpose of the evaluation. From the psychometric standpoint, this involves questions of predictive validity. To the extent that a licensing exam attempts to measure speed and performance under time pressure, accommodating a disability may nullify one of the reasons established for taking the exam in the first place (Phillips, 1994). It seems unlikely that LD/ADHD of a severity to cause substantial limitation in learning or thinking would only affect test-taking performance without affecting the application of these skills in the profession to which the test secures entry. The underlying concern, of course, is that individuals unprepared to practice successfully will be allowed into a profession by passing an accommodated test yet would have been successfully excluded with a standard test administration. Unfortunately, there has been no scientific research on how accommodations for learning impairments alter predictive validity on licensing exams. There is, however, indirect evidence bearing on these issues based on research conducted with the SAT. In a dated yet very comprehensive study of the SAT, Willingham et al. (1988) found that accommodated SAT test results for LD students significantly overpredicted first-year college grades. Assuming that the goal of the SAT is to predict college success based on grades, this strongly suggests that the meaning of accommodated scores (extra time) is different from that of scores obtained under standard administration.

Recently, this issue has been revisited under pressure from disabled students concerned with the practice of *flagging* accommodated test scores on the SAT, a practice that was supported on the basis of the Willingham et al. (1988) study. Flagging involves signifying (usually with an asterisk) when a score indicates a nonstandard test administration. It is done so test users can identify scores that may not have the same meaning as scores obtained under standard test administration. Additional studies have upheld the finding that extra time to accommodate LD leads to grade overprediction on the Law School Admission Test (Wightman, 1993) and on the SAT (Camara, Copeland, & Rothschild, 1998). The concern with this practice is that a flagged score undoubtedly signifies a disability, possibly lowering one's chances of college entrance. A lawsuit involving flagging (*Breimhorst v. Educational Testing Service,* 2001) reached an agreement to convene a panel of six experts to study this issue. Based on a four-to-two majority vote, the panel recommended that the practice of flagging be discontinued (Brennan & Saleh, 2002; Gregg, Mather, Shaywitz, & Sireci, 2002). The Educational Testing Service accepted this recommendation.

Although the SAT is not designed to measure speed of answering questions, extended time confers advantage to all test takers, indicating that speed is of some importance. The increase in SAT scores is more substantial for those with LD, suggesting that LD students are more harmed by the speed factor than the typical test taker. The panel acknowledged that extended time has an impact on predictive test validity when using first-year grades as a criterion. However, those voting to discontinue flagging accommodated SAT scores noted that the degree of grade overprediction (.02 for female test takers/.21 for male test takers) was similar to prediction discrepancies reported for other groups (e.g., African Americans), yet only the disabled groups had scores denoted with a flag. They also found that, although accommodated SAT scores may lead to less effective prediction of first-year grades, research indicated that this problem is easily rectified if high school grades are added to the prediction equation. Because the practice of flagging scores might be harmful to select students and because test users could easily solve the problem by using additional information, the recommendation was made to end flagging SAT scores obtained with accommodations.

The panel clearly recognized that the current research intended to guide accommodation practice is inadequate. Additionally, research with the SAT has only indirect application to licensing exam validity issues. The predictive validity of a licensing exam is a more serious issue than whether a mistake is made predicting first-year college grades. The potential stakes are much higher both for the examinee and also for the public, which has an interest in limiting incompetent practice. Although it is understandable that an examinee with learning impairments would want any necessary accommodation on a difficult licensing exam, it is equally understandable that the licensing organization would want to limit this practice. Despite a consensus to end the practice of flagging accommodated scores on college entrance exams, a licensing agency would be rightly concerned that research with the SAT in fact shows differential predictive validity between scores obtained under standard test administration and those obtained with an accommodated administration. Additionally, some studies of accommodated tests have found that extra time may benefit both LD and nondisabled test takers alike

(Zuriff, 2000). Thus, if the accommodation helps everyone, it is not alleviating a disability but simply making the test less demanding for a select few.

Test Accommodations in Perspective

Students with LD/ADHD who request test accommodations and mental health professionals supporting these requests are often in conflict with testing organizations that need to make an administrative decision whether or not to grant these accommodations. Each invokes the ADA as the legal basis for considering these requests yet adopts differing views of disability definition. Whereas students view disability personally and professionals are apt to take a medical–clinical view, testing organizations require an administrative definition to make a decision. Theoretically, disability is an interaction between personal limitation and environmental burden. At its most inclusive, disability can involve impairments that may be subtle yet sufficient to result in a substantial limitation only when placed in a situation in which the environmental burden is high. At its most exclusive, disability involves substantial limitation in basic skills needed by anyone in the general population when faced with typical environmental demand. Thus, a student requesting accommodation for ADHD may view an inability to concentrate for 2 hours as a personal disability that prevents successful completion of a licensing exam—a failure that can have profound career implications. The licensing entity, however, may see this student's problem with concentration on lengthy exams as seemingly normative of people in the general population, most of whom lack the skills to be in a position to take a professional licensing exam. The interest of licensing boards is not to help or hinder the student from achieving a desired outcome but to prevent incompetent professional practice.

Although the licensing board relies on a mental health professional's evaluation to document the student's disability, it is much more likely to take a restrictive, categorical view of disability determination guided by current interpretation of the legal definition of disability. Mental health professionals who perform the evaluations that support a student's accommodation request typically view disability from a more inclusive, multidimensional vantage. Current medical disability definition, best reflected in the updated WHO definition (WHO, 2001b), is most congruent with the view that disability requires a fluid, flexible definition focusing on functional limitations within specific environments. In fact, the ICF definition highlights the need to examine social context as both sustaining and even creating disability.

Mental health professionals are trained in a diagnostic system, embodied in the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed.; American Psychiatric Association, 1994), that also implies a flexible approach to determining impairment. A diagnostic criterion for ADHD states that there "must be clear evidence of clinically significant impairment in social, academic, or occupational functioning" (American Psychiatric Association, 1994, p. 84). A diagnosis of a reading disorder requires that reading skill be "substantially below that expected for age, schooling and level of intelligence" (American Psychiatric Association, 1994, p. 46). Thus, a flexible environmental standard for disability determination is implied. There is no guideline or standard practice by which a professional must gauge impairment. The ADHD student's report of poor concentration when taking

lengthy exams can be accepted as evidence of impairment. Disability is implied by the diagnosis even though the degree of functional impairment may be minimal or evident only within demanding environments.

An inclusive approach to definition is in conflict with the ADA definition particularly because court decisions have interpreted disability in a more restrictive manner, as is often the case in administrative decisions that reflect underlying concerns regarding cost and politics. Disability is not present unless there is substantial limitation and then only in a major life activity. The *Sutton* (1999) ruling indicated that a limitation adequately ameliorated by treatment or compensated for by the individual is not a disability. The *Toyota* (2002) ruling indicated that the substantial limitation must be in a basic life function such as walking, seeing, or taking care of oneself. Test taking is not likely to be a major life activity. Courts ruling on ADA licensing exams issues have upheld the average person standard requiring that impairment be judged in comparison with the general, typical environment for disability determination, not with an environment that is unusual in its demands, such as taking a professional licensing exam.

The tension between being inclusive and exclusive in definition is seen in the double bind it can place on students currently requesting test accommodation for licensing exams. They must convince the testing agency and, ultimately, the court that their disabilities are substantial while at the same time arguing that they are not so severe as to have prevented past academic success or to prevent competent future professional practice. In ADA parlance, the student must argue that he or she is substantially limited but not that substantially. As a result of the concern that the ADA disability threshold is simply too strict, a variety of proposals to alter the definition have been suggested to make it more inclusive. For instance, Anderson (2000) suggested that the term *substantially limits* should be removed to shift the focus of ADA cases from disability determination to employer practices, including the merits of accommodation practice. Mayerson (1997) suggested that the disability definition based on perceived disability should be utilized more often in cases in which a plaintiff cannot meet the demands of proving disability on the basis of substantial limitation.

Additional tension in categorically defining learning (and other psychological) impairments as disabilities undoubtedly stems in part from societal skepticism concerning nonphysical impairments. These problems may be viewed as indicating personal deviance or shortcomings (Smith, 1999; Stefan, 2001). An unwillingness to view LD/ADHD as disabilities in need of accommodations might be seen as additional confirmation of this societal bias. Skepticism regarding learning impairments is aggravated by the lack of uniformly agreed-upon tests to confirm inclusion within LD or ADHD diagnostic categories (Brackett & McPherson, 1996; Eichhorn, 1997; Murphy & Gordon, 1997; Vellutino, 1994). Even if most clinicians agree that LD/ADHD are conditions that involve complex underlying neurobiological deficits (Barkley, 1997; Nadeau, 1995; Quinn, 1995; Torgeson, 1998), others argue that these diagnoses are partly cultural constructs that have mushroomed in recent years specifically to take advantage of educational and legal entitlements (Eichhorn, 1997; Williams, 2001).

Differences in interpreting the ADA's disability definition are not surprising because disagreement exists whether the original legislative intent was to cover a small, tightly defined group of severely disabled people, such as Casey Martin, or

a large and inclusive group with various conditions and limitations (Burgdorf, 1997; Friedland, 1999; Lanctot, 1997; Sparboe, 1995; Williams, 2001). Although the need to combat pure discrimination against the disabled is considered a laudable goal by everyone, defining a group of disabled people who merit accommodation has proven contentious. This reflects judicial and societal concerns that accommodating many disabilities could be costly and burdensome, lead to lower standards, and promote unfairness. The focus on restricting who qualifies for coverage means that these potentially more contentious issues are not addressed. The Supreme Court decision in *Martin* (2001) provides a glimpse of how contentious the issue of reasonable accommodation can become. Disability qualification was not argued in this case because the plaintiff qualified under all definitions. Significant criticism of this decision focused on the merits and future implications of providing a specific accommodation to one specific individual.

Reducing Test Accommodation Conflict Engendered by the ADA

The current, restrictive ADA definition of disability largely precludes the practice of granting special accommodations on licensing exams. Legal decisions appear to be tightening the definition to include only those with severe, uncorrectable impairments and then only if the impairments substantially limit a major life activity. Nevertheless, licensing organizations have routinely provided test accommodations for applicants diagnosed with learning impairments in recent years (McKinney, 1996; Sparboe, 1995; Stefan 2001). With these precedents, it would be difficult to simply conclude that accommodations will no longer be granted. Although many students requesting accommodations on a licensing exam will have a difficult time proving that their condition is disabling, licensing organizations may also have difficulty proving that many typical test accommodation requests are either burdensome or likely to lower the standards for the exam.

The ADA involves legislation that affects mental health professionals and can also open practice opportunities (Foote, 2000). However, as discussed by Goodman-Delahunty (2000) regarding workplace discrimination and Gordon et al. (1998) regarding licensing exams, many psychologists continue to have a limited understanding of the ADA, its disability definition, and the way this definition differs from other, more inclusive definitions. Unquestionably, policies that educate mental health professionals about disability law need to be encouraged. The ADA requires that disability determination be made on a case-by-case basis. Mental health professionals provide the majority of evaluations that document learning impairments in students requesting educational and test accommodations, including accommodations on licensing exams.

Restrictive disability definition based on the average person standard and the requirement to document a substantial limitation in a major life activity present a challenge for the mental health professional supporting an accommodation request from a postsecondary student. Consultants to test organizations who have reviewed LD/ADHD diagnostic evaluations submitted specifically to support student accommodation requests have found that these reports frequently offer little objective evidence of past learning impairment (Murphy & Gordon, 1997; Ranseen, 1998). Additionally, they do not consistently explain how the student

meets all diagnostic criteria, frequently ignore alternative explanations for a student's difficulties, and may interpret average or even above-average test findings as indicative of disability based on a discrepancy model for determining LD. Such reports seem to make an implicit assumption that a diagnosis is a disability regardless of whether impairment resulting from the condition is minimal. Under the ADA, however, impairment must be chronic, severe, and broad based. Thus, an attempt must be made to objectively document the student's functional impairment over time, as well as documenting that the impairment continues to exist at present. The impact of impairment should be shown to affect a basic life activity, not just the ability to successfully pass a complicated, lengthy exam.

Individuals involved in the accommodation process for licensing exams have been active in disseminating information concerning the interpretation of the ADA, contrasting this law with educational entitlement laws (Gordon et al., 1998). Clinicians and educators have routinely recommended accommodations for students diagnosed with LD/ADHD at all academic levels on the basis of a belief that these accommodations facilitate academic success (McGuire, 1998; Quinn, 1993; Richard, 1995; Spinelli, 1997). However, the focus of educational entitlement laws is the facilitation of student success rather than the alleviation of a disability and, thus, is more inclusive in orientation.

Recognizing that professionals who support accommodation requests often lack knowledge of the ADA, licensing organizations such as the National Board of Medical Examiners have also been proactive in designing detailed guidelines that clarify documentation requirements needed by students who request accommodation for learning impairments on the USMLE (Federation of State Medical Boards of the United States & the National Board of Medical Examiners, 1997). Many state bar exam organizations have developed similar guidelines (Ranseen, 2000). Guidelines can provide an excellent template to help clinicians perform comprehensive diagnostic evaluations that stress the importance of documenting impairment based on the ADA disability definition (i.e., substantial limitation in a major life activity). Although such guidelines are quite helpful, it should be acknowledged that requiring extensive, updated comprehensive diagnostic evaluations often makes the process of requesting accommodation both costly and onerous for the student.

Continued education of clinicians concerning legal standards for disability definition will help. However, it may not reduce this conflict substantially unless students, clinicians, and testing organizations are eventually provided legal guidance concerning key disagreements typically observed in licensing exam accommodation requests. For instance, testing organizations do not understand how a student can have a developmental disability of a severity sufficient to qualify under the ADA when his or her transcripts reveal a long history of average or above-average grades. Both LD and ADHD are developmental conditions. Obviously, a student's limitations in learning might be more pronounced within advanced academic environments, as would be true of anyone in the general population. However, does the ADA's average person criterion set an objective standard, even if imperfect, that disqualifies a determination of developmental disability after a long history of successful self-accommodation, as suggested by the *Sutton* (1999) ruling? If so, it would seem unlikely that any student who has

graduated from college and achieved average performance without accommodations would ever be considered developmentally disabled on the basis of the ADA.

A second key issue is on the horizon. Because the practice of granting accommodations during primary and secondary education has become common during the past few years, licensing organizations are fielding increasing numbers of requests from students who have a lengthy, documented history of receiving accommodations for learning impairments (Ranseen, 2000). If a student has been diagnosed with LD/ADHD at 8 years old and has succeeded academically while receiving accommodations since third grade, is it reasonable to deny those accommodations at a later date on the basis of the history of academic success? Some have argued that students with a history of test accommodation should qualify as disabled on the basis of the second prong of the ADA definition indicating that a record of impairment qualifies as a disability (McKinney, 1996). However, a record of accommodations does not necessarily equal a record of impairment. Primary school students are often provided accommodations for a learning problem on the basis of lenient rules for disability determination. At present, students with a history of accommodations who, not surprisingly, want these accommodations to continue are typically required to obtain updated, comprehensive evaluations that document current impairment. Often, the current learning impairment is based on the presumption that prior accommodations have been critical to the student's success. At present, it is unclear if this indicates a disability based on ADA requirements.

Given recent legal decisions, it seems likely that ADA cases will continue to struggle over disability inclusion issues. The history of administrative disability definition suggests that definitional clarification will primarily serve to move the disability threshold bar up or down, but the bar remains quite subjective. Making the definition less restrictive would undoubtedly encourage other students with varying degrees of learning impairments to seek accommodation on licensing exams. Conflict in ADA employment decisions over disability threshold is seen at times as ignoring the important and potentially more complex issues regarding accommodations (Anderson, 2000; Friedland, 1999). The same can be said about licensing exam accommodations. Deciding who is sufficiently disabled to receive accommodations is one issue. Others include the following: Which accommodations are reasonable and for what disabilities? Do accommodations for LD/ADHD alleviate these disabilities in a manner that meets the societal goal of being inclusive, or do they increase incompetent professional practice? Do accommodations lead to unfair advantage for those deemed disabled? In short, does this practice even make sense? None of these questions are particularly easy to answer, but they cannot be answered by arguing over disability threshold. Mental health professionals can be useful in facilitating research to guide testing practices by examining the merits of test accommodations for different conditions.

Conflict can also be lessened if licensing organizations reexamine their own goals and current practices in meeting these goals with licensing exams. The ADA is encouraging testing organizations to clearly examine the ways in which their test administration potentially discriminates against those with disabilities, including disabilities resulting from learning impairments. On the basis of legal guidelines, the testing organization has to provide reasonable accommodations that are

not a burden in terms of cost or test security. Efforts are being made to articulate the types of accommodations considered reasonable, and many testing guidelines now offer this clarification. Because a test accommodation is also unreasonable if it nullifies a purpose of giving the exam, accommodations also need to be examined in this light. Unquestionably, this is difficult without appropriate research that examines differential predictive validity for standard versus nonstandard test administration. At minimum, it requires that the testing organization articulate the abilities and skills the exam attempts to measure and the reasons why these are deemed important.

For example, a request for extra time is the most common but contentious accommodation request made by LD/ADHD students taking licensing exams. Test organizations see this as an accommodation that potentially offers an unfair advantage rather than the alleviation of a disability. If an exam is time sensitive even though time pressure is not considered an important construct, the exam likely does discriminate against students whose disabilities impair test-taking speed. Reasonable accommodation should be offered to such disabled students, perhaps without need for extensive disability documentation. On the other hand, if a test is time sensitive because the organization believes that measuring knowledge or skills under time pressure is an essential goal of the exam, the organization should consider the extent to which an accommodation alleviates the disability without nullifying the goal of the exam. This would be similar to an employer deciding whether a certain skill is an essential job feature and whether this skill can be accommodated.

Typically, licensing exams aim to provide the public with assurance that practitioners have some minimal, acceptable knowledge and competence to practice (Kane, 1982; Mehrens, 1987). However, even for an exam such as the state bar exam, there is little evidence that the original goal was to measure skills under time pressure (Mehrens et al., 1994) although an argument can be made that time pressure should be a measured construct. Performance under time pressure is obviously a common and perhaps essential feature of the work involved in professions such as law (Mehrens et al., 1994) or medicine. This does not necessarily mean that loosening the time pressure on a licensing exam would allow professional entry to practitioners who are incompetent because they think slowly under the pressure of an exam situation (Heywood, 1999; Sparboe, 1995). Although a profession may often demand knowledge and problem solving performed under time pressure, it is not typically known whether a licensing exam measures this ability in any meaningful manner. Despite a lack of research for clear guidance, the testing organization should still articulate why the measurement of this skill is considered an essential feature of the exam. For instance, a strong case can be made that demonstrating knowledge and skill under time pressure is a necessary, essential feature of a physician's work. Thus, the demonstration of knowledge and skills under time pressure should probably be an explicit objective of the USMLE. If so, extra time should either not be provided or be provided only for those few whose disability meets the strict ADA definition of disability.

The other underlying societal concern is whether an accommodation such as extra time is truly fair—does it level the playing field or tilt it for a select few who qualify as disabled? Unlike accommodations for physical or sensory disabilities

(ramps for access, braille tests, etc.), most accommodations for learning impairments could seemingly help any test taker. Fairness ultimately involves allowing any test taker the same accommodation. Thus, testing organizations that do not view time pressure as an essential exam construct could consider the pros and cons of lengthening time on the exam so that all test takers, disabled or not, have ample time to answer all questions. Beyond concerns with the cost and logistics of lengthier exams, there is also concern that some disabled students will never view any standard format as reasonable—they will simply want even more time, particularly if they fail the exam. Additionally, despite the intensity of some learning impaired students' insistence on the necessity of having extended time, some granted this accommodation on the bar exam have found it to make the exam too demanding and stressful (Overton, 1991). Thus, lengthening an already lengthy exam may simply make it more stressful for everybody.

Reducing the need for accommodation while ensuring fairness may also be accomplished in the future by adopting newer technology to provide standard test administration that could potentially eliminate discrimination against those with certain learning impairments. For instance, students with LD often request accommodation to use a computer with word processing rather than to write answers longhand. Even though most professionals use computers in daily life and rarely have any need to perform written work in longhand, some licensing exams continue to require longhand-written responses—a format that is more difficult for some with LD impairments. The Colorado Law Board accepts the request of any student—not just those with documented disabilities—to take the Colorado bar exam on a computer installed with software that ensures test security. Other states are considering the same change. Thus, using a word processing program is no longer an accommodation because it can be requested by anyone.

As another example, a common impairment reported by students with ADHD is a high level of distractibility. Students requesting accommodation for ADHD typically ask for a separate testing environment to lessen the distractions potentially evident when standard administration involves a large, heavily populated testing room. Such students also may request alteration in response format because of difficulty with attention to detail, particularly when marking answers on multiple-choice sheets. The National Board of Medical Examiners recently began administering the USMLE on a computer in an individualized testing station (Federation of State Medical Boards of the United States & the National Board of Medical Examiners, 1999) largely free of the distractions potentially evident in a large testing hall. This less distracting setting with altered response format should lessen certain problems that affect ADHD students. Bar exam administrators are also showing interest in computer-based testing (Case, 2002). Whether these changes will mute conflict between students requesting accommodations for learning impairments and testing organizations reluctant to provide accommodations is unclear. Testing organizations are undoubtedly concerned that different test administration may simply lead to different types of accommodation requests in the future. Nevertheless, some typical accommodation requests may indicate a need to consider changes in test format that are reasonable for all students whether or not they have some diagnosed learning impairment. Standardizing the test in a different manner may greatly reduce the need to even request certain accommodations, allowing fair assessment of all examinees with-

out having to clash over who truly is or is not a person whose learning impairment is of a severity sufficient to be considered disabling.

The history of disability definition indicates that there has never been complete acceptance of any one definition that could serve all purposes. Legal decisions interpreting the ADA disability definition in a manner to restrict inclusion are in contrast to current medical and mental health approaches to disability definition that expand inclusion. Restrictive ADA disability definition should stimulate mental health professionals to take a more critical look at how concepts of impairment and disability are defined and determined within clinical practice. On the other hand, an inclusive approach to disability definition may eventually influence legal decisions that examine the actual merits of accommodations for various conditions. An inclusive definition has already changed the landscape of education and testing, including high-stakes licensing exams. No longer are tests always administered in an inflexible, standardized format. Whether this flexibility benefits the disabled while maintaining the value and integrity of licensing exams is unknown. Until this question can be satisfactorily answered, testing organizations administering licensing exams should consider changes in test procedures that are potentially fair and equitable for all test takers, including those with LD/ADHD and other disabilities.

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