The ADA in Higher Education: Questions Regarding Personal Responsibility and the "Interactive Process"

BY LYNETTE PACZKOWSKI • SEPTEMBER 4, 2018

A pending case against Skidmore College, *Jane Doe v. Skidmore College*, could establish new law regarding a school's interest in developing independent adults and regarding whether the Americans with Disabilities Act's ("ADA") "interactive process" requirement applies in educational settings.

Jane Doe brought suit against Skidmore for alleged failures to make reasonable accommodations in violation of the ADA and the New York Human Rights Law and/or to engage in the interactive process of developing alternative accommodations. After filing its answer, Skidmore moved for judgment on the pleadings, arguing, among other things, that the accommodations it made went above and beyond its statutory obligations.

For purposes of the Motion, Skidmore conceded that Doe was disabled and that it owns, leases, or operates a place of public accommodation. The Court therefore focused its attention on the third Camarillo element – whether Skidmore denied Doe a full and equal opportunity to enjoy the services it provides. Discrimination under the third Camarillo element can occur when qualified disabled individuals are denied "reasonable accommodations" that allow them to "take a meaningful part in" the public accommodations at issue. A covered entity, however, need not make an accommodation at all if the requested accommodation would fundamentally alter the nature of the service, program, or activity, or if it would impose an undue hardship on the program's operation. It follows, then, that a disabled individual is not entitled to every accommodation he or she requests or, necessarily, the accommodation of his or her choice.

In this case, Doe and her mother requested eight accommodations recommended by Doe's doctor: (1) a housing change; (2) tutoring and one-on-one support; (3) a possible reduction in Doe's course load; (4) distributing Doe's syllabi to her parents; (5) distributing Doe's grades (including her midterm grades) to her parents; (6) notifying Doe's parents if Doe missed any "assignments, meetings, classes, milestones, etc.;" (7) copying Doe's parents on "any emails, text messages, mailed notices or other communications" sent to Doe "from professors, advisors or other Skidmore personnel" about her academic performance; and (8) requiring Doe's professors and advisors to

send her academic communications through text messages or live phone calls, as well as emails. Doe claims that two Skidmore employees agreed to all of the requested accommodations; Skidmore claims its employees agreed to the first four ("Accepted Accommodations"), but refused the remaining four ("Contested Accommodations").

The following semester, Doe had issues in two classes. In one, she failed to turn in a final paper on time. Her professor informed the ADA office via email, which was then forwarded to Doe's father. Doe then requested an extension, submitted the final paper, and passed the course. In the other class, however, Doe missed a series of intermediate deadlines related to a final paper, and ultimately failed to turn in the final paper. Neither Doe's parents nor advisors were notified of the missed deadlines, and Doe failed the course. The pending lawsuit seeks, among other things, expungement of the failing grade, an opportunity to complete the course, and injunctive relief requiring Skidmore to provide the Contested Accommodations.

Skidmore argues that (1) the Accepted Accommodations went above and beyond Skidmore's obligations; and (2) the Contested Accommodations were unreasonable and would have fundamentally altered the nature of Skidmore's undergraduate program. Skidmore claims that an essential part of its program is training "its graduates to be responsible and productive citizens in society," which in turn entails that "students must be individually responsible for their own assignments, deadlines, and classes." To undertake the Contested Accommodations would be to "allow Doe to rely on her parents instead of accepting responsibility for her own academic obligations," thereby undermining Skidmore's program goals.

The Court declined to decide this case at such an early stage, reasoning that even within the context of higher education, where courts generally give great deference to an institute's decisions, the determination of whether a particular accommodation is reasonable involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the accommodation in light of the nature of the disability in question and the cost to the organization to implement it.

The Court found that Doe satisfied her burden, at least at this early stage of the litigation. The Court was not persuaded that the Contested Accommodations "would fundamentally alter the nature of Skidmore's academic program." Except insofar as the Contested Accommodations contemplate Doe's submission of past-due assignments, the Court found that the requested accommodations would in no way alter Skidmore's grading or graduation standards.

As to the "interactive process" argument, an argument most commonly cited within the context of employment disputes (the ADA requires that "employers and employees work together to assess whether an employee's disability can be reasonably accommodated"), neither party comprehensively addressed whether it applies in the educational context. Thus, for purposes of the Motion, the Court assumed, without deciding, that it applies. Thus, Doe's claims (1) that she was explicitly told that all of her requested accommodations would be implemented; and (2) that Skidmore unilaterally and without any explanation or further communication implemented only half of them, have sufficiently called into question whether Skidmore engaged in good faith in the interactive process.

It will be interesting to see how the Court resolves these issues at summary judgment or trial, particularly the questions of whether the interactive process requirement applies in the educational context, whether an interest and goal of fostering independence is fundamentally altered and undermined by the imposition of accommodations like those at issue, and whether such alteration is enough of an alteration to Skidmore's programs and services as to warrant the Court's deference to its determinations.

Client Tip: In considering accommodation requests under the ADA, it is not one size fits all, and schools should

carefully consider each case. Additionally, remember to communicate with the student throughout the decision-making process. Stay tuned to see whether this case leads to any new developments in ADA law and implementation.

