

Put disability-discrimination claims to the ‘reasonableness’ test

By John F. Finnegan III, Esq. and Monvan Hu, Esq.

Higher education institutions are legally obligated to provide reasonable accommodations for students with disabilities.

A recent case (*Chin v. Rutgers, The State University of New Jersey, et al.*, 2016 WL 2653908, D.N.J. May 9, 2016) gives critical guidance as to the test of whether a disabled student’s requested accommodation is *reasonable* and must be provided, or whether it is *unreasonable* and may be denied.

A former New Jersey Medical School student sued the school under the Americans with Disabilities Act, the Rehabilitation Act, and the New Jersey Law Against Discrimination, alleging the school improperly denied her a reasonable accommodation for her long-term disabilities of bipolar disorder, depression, and anxiety.

After multiple deadline extensions and examination failures, the student requested NJMS allow her a third attempt at each of the two U.S. Medical Licensing Examination Step-2 exams. Granting such a request would have waived NJMS’s Step-2 policy limiting its students to two attempts at each of the Step-2 exams, as well as two other school policies requiring students to complete all academic requirements, and graduate, within prescribed time periods. Therefore, NJMS upheld its academic policies, denied the student’s request, and subsequently dismissed her from the school, pursuant to its Step-2 policy.

Review court’s findings

The court granted summary judgment in favor of NJMS, finding: (1) the school demonstrated that allowing the student to retake the exams would have fundamentally altered the standards of its M.D. program by effectively waiving three academic policies, and (2) the student failed to demonstrate that she would have likely passed the exams even if the school had granted her requested accommodation.

The *Chin* court considered the substantial history of NJMS’s provision of reasonable accommodations for the student. Indeed, the evidence demonstrated the school had continuously engaged in an interactive process with the student and accommodated her disability throughout her eight-year tenure at NJMS.

For example, NJMS had granted several leaves of absence and extensions of time to allow the student to prepare for and complete the Step-1 component of the USMLE exam. NJMS’s associate dean of stu-

dent affairs also met with her on several occasions to provide academic assistance.

Even leading up to the school’s denial of the student’s request to retake the Step-2 exams, high-ranking NJMS administrators helped her navigate the school’s internal academic appeal process and assisted in drafting and filing her written appeal of the Step-2 policy.

About the authors

John F. Finnegan III, Esq., and Monvan Hu, Esq., are associates of Saiber LLC of Florham Park, N.J., the law firm that represented the defendants in the case discussed in this column. Email JFinnegan@saiber.com or Mhu@saiber.com, or go to www.saiber.com. ■

Consider lessons learned

It is clear from *Chin* that higher ed institutions must continually engage in the interactive process with a disabled student. Schools are best served by documenting all of the instances in which they assisted a student or granted an accommodation. After recounting in detail all of the accommodations NJMS provided, the *Chin* court deferred to the school’s academic judgment that providing the student’s latest requested accommodation — which would have waived three NJMS policies — was unreasonable.

Chin also makes it clear that a school should establish and adhere to an appellate process by which students may challenge decisions regarding their requested accommodations. NJMS allowed the student to explain the reason for her accommodation request both at a committee review hearing and in a private meeting with the dean of NJMS. However, the student failed to explain adequately how retaking the Step-2 exams would have addressed her disability or likely ensured she would have passed those exams.

Finally, to make a fully informed determination whether to grant a student’s requested accommodation, a school should consider, and even proactively seek, information regarding the link (if any) between the requested accommodation and the student’s disability.

In *Chin*, the student submitted a letter from her psychiatrist attributing her inability to pass the Step-2 exams to her disability. Deeming the letter vague and conclusory, NJMS contacted the psychiatrist for additional information but still found an insufficient basis on which to conclude the requested accommodation was *related* to the student’s disability.

The student’s failure to justify her request and NJMS’s proactive conduct supported the court’s decision to defer to the school’s judgment.

By following NJMS’s example, schools can discern which accommodations are reasonable for students with long-term disabilities and which requests may be denied because they fail the “reasonableness” test. ■