

The Laws that Changed the Game for Lawyers with Disabilities

A Milestone Moment for Reflection

Laura Rothstein

Almost half a century has passed since the first major federal law was enacted to protect individuals with disabilities. Section 504 of the Rehabilitation Act was passed in 1973 without much fanfare. It was a reauthorization of the Vocational Rehabilitation Act and provided that programs that received federal financial assistance must not discriminate on the basis of disability (the language in 1973 used the term “handicap”). Because most employers were not recipients of federal funds, the impact of the Rehabilitation Act was not comprehensive. Law schools, however, because of guaranteed student loans, did receive federal funding and they were required to begin practices of nondiscrimination, and also of reasonable accommodation.

Initially, the new law had little impact on lawyers or law students with disabilities. Regulatory agencies were slow to promulgate regulations. Enforcement was almost nonexistent. Few people, even lawyers, knew anything about it.

Section 504 had the first significant impact on institutions of higher education and health-care institutions, so colleges and universities became the laboratories for how Section 504

would work. The federal special education law that was enacted in 1975 (often known as PL 94-142, today referred to as IDEA—the Individuals with Disabilities Education Act) would be the push that started more focus in higher education. As students with disabilities benefitted from IDEA, they began being prepared to attend college (and eventually law school).

Students with learning disabilities were given related services and other supports. They were provided accommodations on SATs for college admission. Within the world of legal education, however, it was not until the mid-1980s that there were disability accommodations of additional time and other supports on the LSAT. I was asked to co-chair a task force that recommended such accommodations that began in 1984. After those recommendations were implemented, there was a substantial increase in the number of applicants with learning disabilities who took the LSAT.

As more students with disabilities entered law school, the need for greater awareness and understanding of what was required in the classroom and for the bar exam increased. While extra time and other accommodations

for learning disabilities received much of the attention, other disabilities raised questions for law schools. In 1988, I chaired a Special Committee on Disability Issues in Legal Education for the Association of American Law Schools that resulted in a comprehensive report and set of recommendations in 1990 (the year that the Americans with Disabilities Act passed), and I later chaired two conferences for legal education about these evolving legal mandates affecting law students and future lawyers.

The Americans with Disabilities Act of 1990 brought together the strands of support for today’s lawyers with disabilities. The ADA had three major provisions relevant to lawyers. Title I applies to employers with 15 or more employees—most law firms and employers of corporate in house counsel and other entities that employed attorneys. Title II also applies to state and local governmental agencies. Title II applies to the state entities that implement bar admissions through the bar exam and the character and fitness process. Title III applies to private providers of twelve categories of accommodations open to the public, which would include private law firms. Title III

also applies to the Law School Admissions Council, making mandatory in 1990 what had already been implemented earlier because of an appreciation by LSAC that, while it was not subject to Section 504 of the Rehabilitation Act, the law schools that used its scoring report services were.

The ADA incorporated the case law interpretations and the Section 504 regulations into much of its more detailed statutory language and provided the basis for more comprehensive and detailed guidance from federal agencies. The Department of Justice and the Department of Education implemented regulations and other interpretations guiding law school and bar admission authorities on a range of issues. These included who is protected by the statutes, how to determine what is required as a reasonable accommodation and what process should be implemented to address requests and resolve disagreements.

Between 1973 and today, there have been significant changes affecting everything from architectural accessibility in law school classrooms, libraries, clinic placement settings and

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Portrait UNVEILING

You are cordially invited to attend the unveiling of Bob Haddad’s portrait and its placement alongside his brother Frank’s portrait in the “Sanctuary for Solicitors” at the Jefferson County Judicial Center. It will henceforth be known as the “Frank & Bob Haddad Sanctuary for Solicitors” and continue to provide a haven for lawyers in the courthouse. The ceremony is scheduled to begin at 4:00 p.m. on Thursday, October 20th, on the second floor of the Judicial Center across from the Jury Pool Room. Bob’s family welcomes and encourages his friends and colleagues to join them in honoring Bob’s memory and his 63 years of extraordinary service to Louisville’s legal community.

Thursday, October 20
4:00 p.m.
2nd floor of the Judicial Center
 (across from the Jury Pool Room)



You Are Appreciated

LBA Member Appreciation & Awards Luncheon

Wed., November 2 | 11:00 a – 1:00 p
Ice House, 226 E. Washington St.

Please join the LBA as we thank and recognize members from the Louisville legal community. In addition to honoring this year’s award winners, we will also be thanking members who have given their time and talents to help the LBA provide services to the community and beyond.

RSVP no later than Thurs., October 27 to Marisa Motley, mmotley@loubar.org or (502) 583-5314.

Ticket Prices: Members \$35 Non-Members \$70 Table for eight \$275

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public spaces, to additional time for exams and assignment submissions, and whether students who had received accommodations for exams during law school would be eligible for those same accommodations on the bar.

Most of the focus within legal education has been on student issues, but there is a more recent attention to faculty members with disabilities, and COVID concerns about attendance remain an issue with the return to in person classes, often without mask mandates on campus. Many questions remain about whether remote work or learning should/can/must be continued in light of individuals who are immunocompromised or who live with or have other close relationships with those with health concerns. These affect students, faculty and staff.

I have been asked why there is only recently a law school organization for students with disabilities at our law school, and nationally, why it has taken so long for law professors with disabilities to form a group devoted to the issues of concern to those with disabilities.

One answer lies in the broad range of concerns that individuals with different disabilities have. The law student/lawyer/professor who uses a wheelchair is often focused on architectural access and parking questions, while the individual with a learning disability has very different concerns. Auxiliary services for individuals with sensory impairments (vision/hearing) involve different needs including navigating websites that

may not have good electronic “curb cuts” or transcription of audio content or descriptions of images. Accessible written materials are of concern to those with vision impairments and some types of learning disabilities. Those with health impairments (ranging from food sensitivities to cancer to diabetes) will have quite another set of needs that may include modification of attendance requirements and when assignments are due.

What all of these students and lawyers (including faculty members) have in common, however, is that the combination of Section 504 and the ADA now provide an avenue to seek not only protection from discrimination, but also a requirement that programs provide reasonable accommodations.

The issue of mental health has long been a concern, one that has been highlighted whenever there is a campus shooting. The mental health of those who are in the legal profession and law students has been, and remains, an issue of great attention, in Louisville and nationally. The LBA has hosted several programs on these issues. There are often interacting concerns of mental health and substance abuse that require thoughtful and sensitive attention by law schools, employers and bar admission authorities.

Issues of students who were depressed, distressed and even disruptive, and how to respond to them in various settings, is not new. The level of mental distress in legal education has received much attention. Stress resulting from COVID has exacerbated those concerns. The mental health issues have ex-

tended beyond law school to the practicing lawyer, also receiving much attention, but no clear resolution.

This past spring, the Louisville Law Review (with support from the LBA) hosted a conference on the issue of mental health. A law review symposium issue resulting from that event, including articles by nationally recognized leaders on the topic, addresses a range of issues for lawyers and law students. One of the key issues, about which I have written and advocated extensively for decades urges bar admissions authorities not to ask applicants for admission and law school administrators about diagnosis and treatment for mental health conditions, but to only ask about behavior, discipline and conduct. Years of research has demonstrated what I observed firsthand in my years as an administrator and faculty member; these questions deter students from getting needed treatment and counseling, and there has not been a demonstration that asking about treatment instead of conduct protects the public.

The upcoming 50th anniversary of Section 504 provides a milestone date for reflection on disability discrimination policy generally, and how it has been implemented broadly in society, within the legal profession and within legal education. When I was a law student in the early 1970s, there was no course on disability law. I had the privilege to write some of the first textbooks, treatises and articles on disability discrimination that now serve as a resource to lawyers, law school faculty and

administrators, and law students.

This year is a personal milestone for me. After 22 years in Louisville, we have moved to San Diego. I am teaching two courses at the Brandeis School of Law this fall (a combination of in person, guest speakers and zoom classes). I hope to continue consulting and being involved in a range of activities relating to disability awareness. But, at the end of December, I will end my full-time law school teaching career and my connections to this extraordinary legal community.

Since 1979, I have had the privilege of being on the front lines of disability law as it was evolving—both broadly and within the legal profession—and I thank my students, colleagues and members of the legal profession for allowing me to share my interest in and concern about issues affecting those with disabilities, and for providing me insights and ongoing understanding of a broad range of issues. My approach to advocacy on social justice issues has never been to “make a scene” (although sometimes “good trouble” is necessary). Instead, I try to “raise awareness.” I thank this legal community for allowing me to do that.

Laura Rothstein currently serves as Professor and Distinguished University Scholar at the University of Louisville Brandeis School of Law (where she served as dean from 2000 to 2005). She has served as a member of the LBA Diversity Committee since 2005. ■



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