



Going to College with Diabetes

A Self Advocacy Guide for Students



Prepared by
Katharine Gordon
James A. Rapp
Brian L. Dimmick
Crystal Jackson

First Edition • April 2011

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Acknowledgements

This guide would not have been possible without the generous contributions of numerous individuals. In particular, the authors wish to thank Sarah Blenner, Robert Ennesser, Professor Edward Kraus, Sara Mahoney, and Kelsey Stefanik-Sidener for their valuable assistance in reviewing drafts of this notebook. The authors also want to acknowledge the many students and volunteer advocates who work tirelessly for fair treatment. Without them, students with diabetes would not enjoy the protections afforded them under the law.

About the Authors

Katharine Gordon is an ADA - Novo Nordisk Staff Attorney at the American Diabetes Association. She focuses on providing direct assistance and referrals to students, workers, parents, and prisoners discriminated against because of their diabetes. A former Georgetown University Women's Law and Public Policy Fellow, she is a graduate of Bryn Mawr College and the George Washington University Law School.

James A. Rapp is one of the United States' foremost authors in the area of law and education. His works include a seven-volume treatise, *Education Law*, published by Lexis/Nexis (Matthew Bender & Co.), as well as numerous publications on subjects ranging from school crime and violence, record sharing, victims' litigation, medical malpractice, and tax law. As the father of three daughters, Jim takes a personal interest in education. He is a strong advocate of safe schools, effective discipline, agency cooperation, the critical role of parents in their children's education, and the rights of students with disabilities. Bridging the chasm between scholarly theory and real-world application, he is an attorney with a private general practice in the Midwest town of Quincy, Illinois. Jim serves on the American Diabetes Association Legal Advocacy Subcommittee and Safe at School Task Force. He is a graduate of the University of Illinois and Washington University School of Law.

Brian L. Dimmick is an Associate Director and Staff Attorney at the American Diabetes Association. In this position, he focuses on the Association's efforts to provide assistance to attorneys working to protect the rights of people with diabetes and to end discrimination in employment, education, correctional institutions and other areas. He previously worked as a Skadden Fellow and attorney with Disability Rights Advocates, a non-profit law firm in Oakland, California dedicated to protecting and advancing the rights of people with disabilities. He is a graduate of Wake Forest University and Stanford Law School.

Crystal Jackson is an Associate Director of Legal Advocacy at the American Diabetes Association, where her primary responsibility is managing the Association's Safe at School Campaign. Crystal, a former litigation paralegal, is a parent of a child with diabetes and a long-time ADA volunteer who joined the legal advocacy staff in 1999 after she successfully lobbied the Virginia General Assembly for passage of school diabetes care legislation that has resulted in improved standards of care for students with diabetes. Advocating on behalf of her daughter, Crystal achieved a model OCR resolution agreement for the care of students with diabetes in the Loudoun County (VA) School District. Crystal has contributed to many diabetes publications including the National Diabetes Education Program's *Helping the Student with Diabetes Succeed: A Guide for School Personnel* and is a frequent guest speaker at diabetes conferences and camps. Crystal is a member of the Virginia Diabetes Council, the U.S. DAWN Youth Advisory Board, and serves on a number of diabetes and youth panels.

Glossary of Common Terms

Accommodations: A term often used to refer to changes that allow college students to participate equally in educational programs. The term “accommodations” is more appropriately used in the employment context, while “modifications,” “adjustments,” and “auxiliary services” are the appropriate terms in the education context. While this guide follows the technical terms, the term “accommodations” has become common shorthand in the postsecondary setting.

Americans with Disabilities Act (ADA): A federal law enacted in 1990 that prohibits discrimination against people with disabilities. As it relates to state-run colleges, the requirements of the ADA are almost identical to those of Section 504 of the Rehabilitation Act. The education provisions of the ADA apply to all state-run and private colleges except those controlled by religious organizations. The employment provisions apply to employers with 15 or more employees, including those controlled by religious organizations.

College: For convenience, the shorthand terms “college” and “college students” are used throughout this guide to refer to all postsecondary institutions, programs, and students.

Department of Justice (DOJ): The Department of Justice enforces Title II and Title III of the ADA through investigating complaints and bringing litigation against entities that violate these parts of the law. By agreement with DOJ, OCR enforces Title II of the ADA as it applies to educational institutions.

Disability: Under the ADA and Section 504, a disability is defined as an impairment that substantially limits one or more major life activities. Amendments to the definition of disability under both laws, effective January 1, 2009, have made it clear that virtually all, if not all, students and employees with diabetes will meet this definition, and thus, are protected from discrimination.

Disability Services Office: An office which most postsecondary institutions have, sometimes with a different name, that coordinates assistance for students with disabilities. This office is often the first point of contact for students with concerns relating to their diabetes.

Equal Employment Opportunity Commission (EEOC): A federal agency that investigates complaints of discrimination under the ADA by employees and applicants for jobs.

Modifications: Changes made to educational programs that permit postsecondary students to participate on an equal basis. “Adjustments” and “auxiliary aids” are also appropriate terms to refer to these changes.

Office for Civil Rights (OCR): An agency within the U.S. Department of Education responsible for enforcing Section 504 and, by agreement with the DOJ, Title II of the ADA, as they apply to educational institutions. OCR’s duties include investigating complaints and conducting compliance reviews.

Reasonable Accommodations: Changes to a job or work environment that enable qualified applicants or employees with disabilities to participate in the application process or to perform essential job functions. Reasonable accommodations also include changes to ensure that qualified individuals with disabilities have rights and privileges in employment equal to those of employees without disabilities.

Section 504: The section of the Rehabilitation Act (a federal law passed by Congress in 1973) that prohibits federal agencies and programs and recipients of federal funds from discriminating against individuals on the basis of disability. Section 504 requires that postsecondary institutions ensure that qualified students and employees are not discriminated against on this basis.

1. What Is This Guide?

This is an authoritative and comprehensive guide on the rights of people with diabetes in college and a wide range of other postsecondary institutions. It is designed primarily to provide strategies for you, the student, to work with your college, testing agency, internship site, employer, and others to ensure that your diabetes does not prevent you from having an equal opportunity to participate and succeed. Whether you are an applicant or currently enrolled, this guide can help you navigate a wide range of postsecondary institutions.

This guide provides useful self-advocacy tools including:

- Information about your legal rights and your college's legal obligations;
- Strategies for working with your college to get reasonable modifications and accommodations such as permission to reschedule exams, eat food in class, or have breaks in your on-campus job; and
- Practical tips to help you manage your diabetes in a new environment.

The purpose of this guide is not to steer you towards litigation. Rather, when you learn what your rights are and how to advocate for them, you will be empowered to create a positive working relationship with your college. To this end, we provide resources that you can use during the process of working with college personnel, including sample forms.

1.1 Can attorneys and other advocates use this guide?

Yes, this guide also provides detailed information that can be used by attorneys and non-attorney advocates on the legal rights of college students with diabetes and how those rights can be enforced. As discussed in Question 1.6, the guide contains many references to statutes, court opinions and administrative agency letters of finding. These materials should be helpful to advocates without legal training (including students and their parents); however, students and advocates should understand that this guide does not provide legal advice, and cannot substitute for the advice of a licensed attorney in situations where legal advice is needed.

1.2 Why does this guide use the term “disability” to refer to diabetes?

Many people with diabetes do not view the condition as a disability, just a medical condition that must be managed every day. However, sometimes you may be treated unfairly because of your medical diagnosis. If this occurs, using the legal term “disability” can protect you from being harmed by the ignorance and fear of others so you can be judged on your accomplishments and your abilities.

1.3 How is this guide organized?

While it may be useful to read this guide in its entirety, we have organized it into separate chapters that can be read independently. For example, you may just have a question about standardized testing – thus, you may rely exclusively on Chapter 9 for all the relevant information. Each chapter deals with a different topic, including admissions, academic modifications, non-academic modifications, and standardized testing. We have used a concise question and answer format with the goal of making the information more accessible and practical.

Most chapters are followed by a section of “Notes” which provide more detailed information on certain questions. Where there is a note provided for a particular question and answer, this is indicated by a superscript annotation. While this guide is designed so that it can be successfully used without consulting these notes, we provide them in case you would like to explore an issue in more depth. Also, as explained in Question 1.1, these notes will be especially valuable to attorneys and non-attorney advocates. Question 1.6 explains how to interpret the legal references contained in these notes.

In the Appendix, we have included sample forms so you can get a sense of the types of documents you might use if you request modifications from your college. We have also included a basic description of the science of diabetes that you can share with professors and administration officials who may not be familiar with the condition.

1.4 What topics does this guide cover?

- *What Is This Guide?* Chapter 1 (this section) describes this guide and its organization.
- *What Are My Legal Rights as a College Student with Diabetes?* Chapter 2 discusses the legal rights of college students with diabetes as well as the anti-discrimination obligations of colleges. It introduces the two main federal laws that protect you as a student with diabetes: the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973(Section 504). This section discusses which individuals and which schools are covered by each law.
- *What Are My Rights in the Admissions Process?* Chapter 3 discusses the admissions process. Are colleges allowed to ask about diabetes? What are the pros and cons of revealing that you have diabetes in your application? These and other issues are addressed.
- *How Can I Work with My College Disability Services Office?* Chapter 4 discusses how you can work with your college’s disability services office to get the modifications that you may need to be successful in college.
- *What Academic Modifications Might I Expect?* Chapter 5 describes some typical academic modifications that you might request. Colleges do not have to provide all of the academic modifications that elementary and secondary schools do, and the types of modifications will be quite different. This section explains in detail many of

the specific academic modifications you may consider requesting, including changes to exam scheduling, breaks during exams, and attendance policies.

- *What Modifications Are Available for Other Programs and Services?* Do you play sports and want to make sure your coach is aware of the possibility of hypoglycemia? Do you need nutritional information for cafeteria food? Chapter 6 discusses modifications outside of the academic context. These areas include housing, fraternities and sororities, meal plans, health clinics, athletics, and international study.
- *What Can I Expect in Internships, Clinics, and Work?* Chapter 7 discusses issues relating to clinics, internships, and employment. A large proportion of college students work, either for pay or as part of an educational program. As a person with diabetes, you are protected against discrimination in these settings and your college may have responsibility for ensuring that discrimination does not occur. This chapter provides an introduction to these protections.
- *How Are Disagreements Resolved?* Chapter 8 addresses the procedures to be followed when disputes cannot be resolved informally. This section covers procedures under the ADA and Section 504, including complaint procedures, deadlines, and prerequisites to litigation.
- *How Can I Get the Modifications I Need on Standardized Tests and Licensing Exams?* Chapter 9 provides information about requesting modifications on standardized tests such as the SAT and GRE, and licensing exams such as medical boards and bar exams.

1.5 How does the American Diabetes Association assist students with diabetes?

Founded in 1940, the American Diabetes Association is the nation's premier nonprofit voluntary health organization. The Association's mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes through diabetes research, information, education, and advocacy. While maintaining our leadership in research and education, in recent years we have also become very active in working to eliminate discrimination against people with diabetes through the use of education and negotiation, federal and state litigation, legislation, and regulatory reform.

Here are some of the resources the Association offers to fight discrimination:

- We provide extensive self-advocacy material for individuals with diabetes (www.diabetes.org/discrimination).
- By calling 1-800-DIABETES, individuals who believe they have experienced diabetes discrimination can request to speak with one of our legal advocates. While unable to represent individuals, our legal advocates (who are licensed attorneys) provide information about legal rights, provide self-advocacy and negotiation tools, and, where necessary and appropriate, guide callers through the applicable legal process (www.diabetes.org/living-with-diabetes/know-your-rights/how-to-get-help).

- We provide free technical assistance to attorneys taking on diabetes discrimination cases. For instance, we maintain an extensive online library of research materials, provide individual consultations to help formulate strategy, review legal pleadings, file friend of the court briefs in selected cases, and locate expert medical consultants (www.diabetes.org/living-with-diabetes/know-your-rights/for-lawyers). To request these services, attorneys may email legaladvocate@diabetes.org.
- We maintain a network of attorneys interested in protecting the rights of people with diabetes. These attorneys are often willing to serve as advocates for students. We always welcome new attorneys to our Attorney Advocacy Network.
- We participate in important litigation having a broad impact on the lives of people with diabetes. The Association's Legal Advocacy Subcommittee, whose membership includes attorneys and health care professionals, supervises these efforts.

The Association encourages students to take advantage of these and other resources by calling 1-800-DIABETES or consulting our web site, www.diabetes.org.

1.6 How should the legal references in the notes be used?

These notes contain references to statutes, regulations, court cases, or administrative decisions. Some understanding of the differences between these sources is helpful. While the sources referenced (statutes, regulations, agency decisions, and cases) are all important parts of the legal framework governing the responsibilities of colleges to students with diabetes, some types of legal sources are more persuasive and more binding than others. Recognizing the differences between these sources can be important:

- Statutes (or laws) are passed by federal and state governments and are binding on the colleges or individuals they cover. Federal statutes are cited by the chapter and section in the U. S. Code (U.S.C.); for example, 42 U.S.C. § 12133.
- Regulations are developed by government agencies to clarify the law and give more detail about what it means. Most of the regulations discussed in this guide are issued by the U.S. Department of Education to implement the federal civil rights laws that protect students with diabetes. The U.S. Equal Employment Opportunity Commission issues regulations to implement the federal civil rights laws that protect employees with diabetes. Further, many states also have regulations that may need to be considered. Regulations are also binding on those to whom they apply, unless they are clearly in conflict with the laws they were issued to implement (which happens infrequently). Federal regulations are cited by the chapter and section in the Code of Federal Regulations (C.F.R.); for example, 34 C.F.R. § 104.7(a).
- Court cases can affect the rights of students with diabetes if they result in published opinions. Courts are organized hierarchically, and decisions from higher courts are more likely to be persuasive than decisions from lower courts. For example, the federal court system has three levels: the U. S. Supreme Court, circuit courts of appeal (which are generally numbered and each of which covers a different geographic region of the country), and district courts (trial courts) in each state. Court opinions are legally binding on courts which are lower in the hierarchy than the

deciding court. For example, a decision by the federal 9th Circuit Court of Appeals would be binding on federal district courts in the region covered by the 9th Circuit (much of the Western U.S.) but not on district courts in other regions. Even when not binding, however, often a court's interpretation of the law will be persuasive to another court. The way court cases are cited differs depending on which court the opinion is from, but all case citations in this guide include the abbreviated name of the court and the year of the decision in parentheses; for example, *Gonzales v. City of New Braunfels*, 176 F.3d 834 (5th Cir. 1999).

- Administrative decisions are issued by government agencies which have responsibility for investigating individual cases of discrimination. These decisions are only legally binding on the parties involved in the case, and the same agency investigating similar facts in a different case may come to a different conclusion. Administrative decisions may be persuasive to a court, but generally hold less weight than the other types of legal documents discussed in this question. Most of the administrative decisions cited in this guide are issued by the U. S. Department of Education's Office for Civil Rights (OCR). Many administrative decisions cited in this guide are published in the Individuals with Disabilities Education Law Reporter® (IDELR), published by LRP Publications, and are cited by the volume and section number from that publication; for example, 34 IDELR 102. These citations also include, in parentheses, the agency that issued the decision (typically OCR) and the year of the decision; for example, *Huntsville City (AL) Sch. Dist.*, Complaint No. 04-96-1096, 25 IDELR 70 (OCR 1996).

The text of the statutes and regulations cited is generally available on the internet. A helpful link to statutes and regulations is provided through Cornell University Law School's Legal Information Institute at www.law.cornell.edu. For cases and administrative decisions, colleges and universities often provide free online research tools, including Lexis and Westlaw, to their students. Local law libraries are another good source of such information.

2. What Are My Legal Rights as a College Student with Diabetes?

Federal laws and some state laws require colleges to provide access to educational opportunities, including extra-curricular opportunities, without discriminating against people with disabilities. Legally, diabetes is considered a disability. Colleges covered under these laws may not exclude or single out individuals based on their diabetes, e.g., prohibiting athletes from participating in interscholastic sports because they use insulin. Further, they must provide certain modifications such as allowing students to eat snacks during exams.

Unlike elementary and secondary schools, colleges have no responsibility to identify students with disabilities. They do not have to provide modifications unless you request them. You must take the initiative to ensure you get what you need to succeed. Knowing your rights is the first step.

2.1 What federal disability laws protect college students with diabetes?

There are two important federal laws that protect college students with disabilities:

- The Americans with Disabilities Act (ADA)
- Section 504 of the Rehabilitation Act of 1973 (Section 504)

The ADA applies broadly to all state-run and private colleges, except that it does not apply to those operated by religious institutions. Title II of the ADA applies to state-run colleges. Title III applies to private colleges. Section 504 applies to federally operated colleges and all colleges—including religious colleges—that receive federal funds. Only a very few colleges are not subject to either the ADA or Section 504 protections.¹

2.2 Am I covered by the ADA and Section 504?

Because of recent legislative changes, students with diabetes should be covered. In technical language, individuals are covered if they have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or are regarded as having such an impairment. Students with diabetes are protected by the ADA and Section 504 because their diabetes substantially limits the functioning of their endocrine system.²

2.3 What are some of the general differences between the obligations of K-12 schools and colleges?

Public elementary and secondary schools that receive federal funding have an affirmative obligation to provide a “free appropriate public education” or FAPE to each qualified person with a disability in their jurisdiction. Colleges have no such obligation to provide an education to any particular person or to ensure that a particular person can

benefit from their programs. However, colleges must not discriminate against otherwise qualified students.

Importantly, colleges are not required to provide modifications which would impose an undue burden or fundamentally alter a program. The obligations of elementary and secondary public schools are not limited in this way. In practice, this means that some things a secondary school might be required to do would be too burdensome for a college. A college student is entitled to receive some modifications but colleges are not required to change their standards. See Question 2.7 for more information.

As part of providing FAPE, elementary and secondary schools may be required to provide health services. For example, they monitor younger students' blood glucose levels, treat hypoglycemia, help calculate carbohydrate content in foods, and administer insulin. Colleges do not have the same legal obligation to care for the health needs of their students, and most college students manage their diabetes independently.

Public elementary and secondary schools must identify children with disabilities. In contrast, college students have the burden of identifying themselves as individuals with disabilities. If students need any modifications, they must proactively request them, typically by working through their college's disability services office. College students should seek modifications that may be needed in advance and not wait for the lack of modifications to cause problems.

Finally, while many elementary and secondary schools document agreed-upon modifications in a written plan such as an Individualized Education Program (IEP) or Section 504 Plan, colleges typically do not. While college students should request written documentation of any modifications or services the school agrees to provide, this documentation will not typically be called a "Section 504 Plan."³

2.4 Because I successfully manage my diabetes with insulin, does that mean that I do not have a "disability" under the ADA and Section 504?

No. Prior to the passage of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which went into effect on January 1, 2009, individuals were often excluded from coverage under the ADA and Section 504 if they used "mitigating measures" such as insulin to control their diabetes. Precisely because they succeeded in managing their diabetes, they were told they had no protection against discrimination.

With the passage of the ADAAA, the ADA and Section 504 have now been amended to make clear that your successful use of "mitigating measures" cannot be used as an excuse to deny you protection against discrimination. This means that college students with diabetes will be considered to have a protected disability.⁴

2.5 Am I eligible for services under the Individuals with Disabilities Education Act?

No. You may have had an Individualized Educational Plan (IEP) and received services under the Individuals with Disabilities Education Act (IDEA) in elementary or secondary school because of your diabetes or other conditions. This law requires that states accepting federal special education funding provide a free appropriate public education

(FAPE) to all students with disabilities that adversely impact their learning. However, this law does not apply to postsecondary education. States have no duty to provide services under IDEA to students after they graduate from high school.

As already mentioned, colleges do not carry over or adopt IEPs or Section 504 Plans that were used in secondary school. Most colleges provide modifications, if needed, more informally.⁵

2.6 Am I protected against discrimination if I go to a religious college?

Probably. Most religious colleges are subject to federal anti-discrimination laws. Title III of the ADA, which prohibits discrimination by public accommodations such as hotels, restaurants and schools, does not apply to private colleges operated by religious organizations. Nevertheless, such colleges are subject to Section 504 if they receive federal funding. Colleges operated by religious organizations that do not receive federal funding are not covered by either law.

However, most religiously affiliated colleges receive federal funding. For example, a college run by a Catholic religious order might receive federal research grants or participate in federal work-study financial aid programs. In this case, the college would need to comply with Section 504.

Further, employees of a religious college are protected by Title I of the ADA as long as the college employs 15 or more workers. For more information on employment issues, see Chapter 7.⁶

2.7 Do I need to meet my college's general eligibility requirements and admissions standards?

Yes. You must be qualified for admission to and participation in the college or specific program. While public primary and secondary schools receiving federal funding have an obligation to provide a "free appropriate public education" or FAPE to each qualified individual with a disability in their jurisdiction, colleges are under no obligation to provide any particular individual an education and they may set their own admissions standards.

While you can be excluded from a college for any number of reasons, the ADA and Section 504 only prevent exclusion based on a disability. If you are otherwise qualified for the program (including meeting legitimate physical standards) and can meet requirements with or without reasonable modifications, you cannot be discriminated against on the basis of your disability.

2.8 Does my college have to modify its programs for me because of my diabetes?

Yes, in some cases. While most modifications requested by students with diabetes are reasonable, not every modification you might request needs to be provided. This is particularly true where the modifications would alter academic standards or requirements or are seen as affecting the integrity of the academic program. For example, permission to have extended breaks between sections of an exam to check

blood glucose would likely be considered reasonable; being exempted from any course requirements probably would not be. Stated briefly, colleges do not have to “water-down” a program or lower what they expect of students. They are only required to make reasonable changes to give students an equal opportunity to fully meet expectations.

One of the most common contexts in which schools argue that providing modifications will lower standards is in the area of clinical training. Especially in health sciences—such as in nursing and medical schools—administrative agencies and the courts are apt to defer to professors, instructors, and school administrators in their judgments about what courses or clinical experiences are necessary. Therefore, in this area especially, you must be prepared to proactively demonstrate and thoroughly document why your requested modifications will not diminish standards.

For example, if your requested modification is permission to eat snacks and test blood glucose as needed during your hospital shift, but your clinical supervisor thinks that this means that you will not be working as hard as other students, you should provide documentation from your own treating doctor or nurse explaining that permission to take care of your diabetes will in no way impact your ability to be an excellent nurse or doctor. See Chapter 7 and the Appendix for more information on how to provide appropriate documentation.⁷

2.9 Can I be excluded from a program because my college does not think I will be able to find a job in the field upon graduation because of my diabetes?

Your college should not exclude you from any program because it fears you may have difficulty finding employment in the field upon graduation. It should not limit your options because of stereotypes or fears about potential future problems in employment, but only determine whether you can currently meet essential program requirements the college has established.

A college is allowed to tell you about any barriers to employment that you may encounter because of your diabetes. For example, a flight training college could inform you that, currently, individuals who use insulin are prohibited by the Federal Aviation Administration (FAA) from becoming commercial pilots. However, it should still permit you to attend if you want to become a private pilot, because, even if you use insulin, you can become a private pilot as long as you meet other medical criteria. Similarly, a truck driving school might inform you that interstate drivers who use insulin must be specially approved (under a Department of Transportation waiver process) before they are licensed.

For practical reasons, you should be aware of the requirements of your chosen field—there may not be a good reason to complete a program if you cannot meet these requirements. Even so, “blanket bans” that would totally exclude you from a field are rarely legal, and treatment options for those with diabetes are constantly improving, making it less likely that diabetes will affect your employment.

If you have questions about restrictions relating to employment in particular fields, including licensing for pilots, commercial driving, and maritime work, or standards for firefighters and law enforcement officers, please contact us by calling 1-800-DIABETES

or consulting our web site, www.diabetes.org/discrimination. See Chapter 7 for more information on internship, clinic, and employment issues.⁸

2.10 Does my college have a policy prohibiting discrimination on the basis of disability?

It should. Under Section 504 and Title II of the ADA, colleges must establish procedures to address complaints of discrimination based on disability. Depending on whether your college is covered by Section 504, ADA Title II, and/or ADA Title III, its precise obligations to establish and publicize procedures for addressing complaints of discrimination differ.

Colleges must be able to address situations arising in all aspects of campus life, not just classroom problems. For example, if a coach excludes you from a team upon learning you use insulin, your college should address this incident of discrimination just as the college would address a situation if you were kicked off of a team because of your race.

You can typically find your college's anti-discrimination policy on its website or published in the official bulletin. You may also obtain it through your registrar or academic dean. Additionally, if your college has a disability services office, it should be able to direct you to information on this policy. See Question 8.2 for more information on internal college grievance procedures.⁹

2.11 Am I protected against retaliation and harassment if I request modifications or I raise concerns about discrimination?

The ADA and Section 504 prohibit colleges from taking actions which intimidate, threaten, coerce, or discriminate against individuals who exercise their rights under anti-discrimination laws. Therefore, you cannot be penalized for asking for modifications or making a complaint, even if your college need not provide you with each and every modification you request.¹⁰

2.12 Can my college assist organizations that discriminate against people with diabetes?

Colleges subject to Section 504 and the ADA may not provide significant assistance to any agency, organization, or individual that illegally discriminates on the basis of disability. In fact, colleges have an affirmative obligation to make sure that the organizations they work with do not discriminate against their students.

For example, your college should not create or maintain an internship program with an organization or company that illegally discriminates if it knows of that discrimination.¹¹

2.13 What are my protections at military educational institutions and in programs like the Reserve Officer Training Corps (ROTC)?

Military educational institutions are subject to anti-discrimination laws just like other educational institutions, depending on whether their funding is federal, state, or private. Federal service academies, like the U.S. Military Academy at West Point, are subject to Section 504. State and private military colleges are subject to the ADA and, if they receive federal funds, Section 504. Although military educational institutions themselves are subject to anti-discrimination laws, current military regulations and federal anti-discrimination laws allow individuals to be excluded from appointment to or continued participation in the uniformed services because of diabetes (the specific regulations vary by service).

If you apply to or attend a program where all students are required to join the military as uniformed members as a condition of attendance, it is likely that you can be excluded on the basis of your diabetes, because meeting the physical qualifications for appointment to the armed forces is an essential program requirement. However, if not all students must eventually join the military as a condition of attendance, there is likely no legal justification to exclude you just because you cannot join the uniformed services. Of course, you still need to meet all legitimate physical fitness and medical requirements necessary for your participation in the educational program itself.

For example, you may be excluded from West Point, where all cadets are required to join the military upon graduation, but you should not be excluded from a portion of a ROTC program that does not require a future commitment to serve in the military.¹²

Notes to Chapter 2

¹ 2.1 The ADA is codified at 42 U.S.C. §§ 12101-12213. It provides protections in employment (Title I), in state and local government programs (Title II), and in places of public accommodation operated by private entities (Title III). Title II applies to state colleges and universities. 42 U.S.C. § 12131(1). Title III applies to private colleges except those run by religious entities. 42 U.S.C. § 12181(7)(J).

Section 504 is codified at 29 U.S.C. § 794. This statute served as the model for many of the provisions of the ADA and, so, the requirements imposed by the two statutes are similar. Because the ADA generally provides no greater rights to students with diabetes than Section 504, the more specific Section 504 implementing regulations are ordinarily followed when determining compliance.

What is different is that Section 504 applies only to colleges and universities run by the federal government or that receive federal financial assistance. Nearly all state colleges receive federal assistance through various federal education programs. Many private colleges also receive federal funds.

Many states also have laws that prohibit discrimination against individuals with disabilities, but these vary from state to state. Federal law takes precedence over state law. For example, if a state does not have any specific laws outlawing disability discrimination, colleges are still required to comply with applicable federal laws, including the ADA and Section 504.

² 2.2 The ADA defines “disability” to include “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102. This creates two requirements, first, that there be a physical or mental impairment, and second, that this impairment substantially limit a major life activity. The passage of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), Pub. L. 110-325, which became effective on January 1, 2009, has made it easier to demonstrate that diabetes is a disability.

Numerous courts have acknowledged that diabetes is a physical impairment. See, e.g., *Gonzales v. City of New Braunfels*, 176 F.3d 834, 837 (5th Cir. 1999) (describing diabetes as a “serious impairment”); *Fraser v. Goodale*, 342 F.3d 1032, 1038 (9th Cir. 2003). The question, then, is whether diabetes substantially limits a major life activity. Major life activities include both physical and mental activities which most people do on a daily basis, such as caring for oneself, seeing, hearing, and eating; as a result of the ADAAA, these activities now also include the functioning of major body systems such as the respiratory, circulatory, and endocrine systems. 42 U.S.C. § 12102(2)(A)-(B). Diabetes, by definition, significantly alters the way the body’s endocrine system functions. Therefore, most, if not all, students with diabetes should be able to prove they are covered on this basis. Diabetes can also substantially limit a number of other major life activities, particularly when it is not treated.

The ADAAA also changed existing law and now requires that “mitigating measures” such as the use of medications like insulin not be considered in determining whether a person has a disability. See Question 2.4 for further discussion of this issue.

Even if an individual does not have an actual disability, that person is protected by the ADA if the college regards him or her as having a disability. The college need not believe that diabetes substantially limits a major life activity; it is enough that the college was aware that the person has diabetes and took adverse action against him or her based on that condition. However, individuals who are only regarded as having a disability are not entitled to accommodations or modifications to programs or activities. Therefore, this strategy for proving disability is not very useful to students, unless the college is directly barring them from participating in programs or is treating them differently because of diabetes, e.g., prohibiting them from participating in athletics because they use insulin.

For more information on establishing that diabetes is a disability, see Brian Dimmick & Katie Hathaway, *Proving Diabetes is a Disability Under the New Americans with Disabilities Act: A Guide for Lawyers*, American Diabetes Association (2009), www.diabetes.org/assets/pdfs/know-your-rights-for-lawyers/employment/atty-proving-diabetes-is-a-disability-under-new-adaaa-sept2009.pdf. For additional information, see Georgetown University Law Center’s ArchiveADA, which provides convenient access to the general legislative history of the ADA and the ADAAA, www.law.georgetown.edu/archiveada.

³ **2.3** The goal of federal anti-discrimination laws is to level the playing field for students, not to give students with disabilities an advantage over their peers. See *Hamilton v. City Coll. of City Univ. of N.Y.*, 173 F. Supp. 2d 181,183 (S.D.N.Y. 2001) (college's manual provided that the objective of accommodations or modifications "is always to accommodate the student's learning differences, not to water down scholastic requirements").

The obligation of an educational institution to make academic adjustments does not require that "fundamental" or substantial modifications be made to accommodate students with disabilities, but only reasonable ones. See *Cnty. Coll. v. Davis*, 442 U.S. 397, 410 (1979) (hearing-impaired nursing student denied admission because accommodation would "result in a substantial modification to the existing program"). Further, there is no duty to assume "undue financial and administrative burdens." *Id.* at 412. Neither must a program be significantly refashioned. *Eva N. v. Brock*, 741 F. Supp. 626, 632 (E.D. Ky. 1990). This is especially true if the modifications might cause the institution to lose its accreditation. *Hartnett v. Fielding Graduate Inst.*, 400 F. Supp. 2d 570, 580 (S.D.N.Y. 2005), *aff'd in part and rev'd in part*, 2006 U.S. App. LEXIS 24128 (2d Cir. 2006).

Students must disclose their disability and their need for modifications in order to be entitled to such modifications. See, e.g., *Wynne v. Tufts Univ. Sch. of Med.*, 976 F.2d 791 (1st Cir. 1992) (indicating that to be liable under Section 504 school must know or be reasonably expected to know of student's disability); *Goldstein v. Harvard Univ.*, 77 Fed. Appx. 534 (2d Cir. 2003) (student failed to provide adequate notice to university that she suffered from a disability and, accordingly, ADA claim rejected); *Carten v. Kent State Univ.*, 78 Fed. Appx. 499 (6th Cir. 2003) (dismissing claim where student was dismissed from graduate program for poor academic performance; student did not establish either disability or that academic modifications were requested and, indeed, indicated none were required); *Wood v. President & Tr. of Spring Hill Coll.*, 978 F.2d 1214 (11th Cir. 1992) (claim of schizophrenic student asserting constructive dismissal from college rejected).

At least one court has held that colleges need not provide written accommodations plans. *Bevington v. Wright State Univ.*, 23 Fed. Appx. 444, 445 (6th Cir. 2001) (finding "neither the Rehabilitation Act nor the Americans with Disabilities Act require a written plan for post-secondary students").

⁴ **2.4** The ADAAA, which amended the ADA and Section 504, has made it clear that "mitigating measures" are not to be considered by colleges or the courts in determining if an individual is covered under these anti-discrimination laws. Nevertheless, students should be prepared to persuasively address this issue if it is erroneously raised.

The ADAAA reverses the Supreme Court's holding in *Sutton v. United Air Lines, Inc.* that "mitigating measures" such as eyeglasses or medication to control the impairment should be considered in determining the existence of a disability. 527 U.S. 471 (1999). The ADA now states:

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as –

- (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- (II) use of assistive technology;
- (III) reasonable accommodations or auxiliary aids or services; or
- (IV) learned behavior or adaptive neurological modifications.

42 U.S.C. § 12102(4)(E)(i). For individuals with diabetes, this means that the beneficial effects of insulin and oral medications in treating the disease may not be considered in determining the existence of a disability. Instead, the focus must be on the condition as it exists in its unmedicated state. See *Rohr v. Salt River Project Agric. Improvement and Power Dist.*, 555 F. 3d 850, 861 (9th Cir. 2009) ("Impairments are to be evaluated in their *unmitigated* state, so that, for example, diabetes will be assessed in terms of

its limitations on major life activities when the diabetic does *not* take insulin injections or medicine and does not require behavioral adaptations such as a strict diet.”) (emphasis in original). Likewise, the effects of any complications the individual experiences due to diabetes, such as vision loss or neuropathy, must be considered without regard to any medication or treatment employed, as well as any devices or technology the individual uses, such as a prosthesis or screen reader software.

⁵ **2.5** Postsecondary education is not included in the IDEA definition of a free appropriate public education that the state is required to provide. 20 U.S.C. § 1401(9)(C) (FAPE obligation extends to providing an appropriate preschool, elementary, and secondary education). States are under no obligation to provide IDEA services to children with disabilities who have graduated from high school with a regular diploma. 34 C.F.R. § 300.102(a)(3)(i).

⁶ **2.6** Title III of the ADA does not apply to “religious organizations or entities controlled by religious organizations, including places of worship.” 42 U.S.C. § 12187. Where such a college is a recipient of federal funding, however, Section 504 applies even if the college is operated by a religious organization. Because all state colleges and private non-religious colleges are subject to the ADA, determining whether a school receives federal funding is primarily important where that school is religious, because, if Section 504 does not apply, there may be no protection against discrimination at such a school.

For purposes of Section 504, “[a] Recipient [of federal financial assistance] means ... any private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.” 34 C.F.R. § 104.3(f). Section 504 regulations also provide that “Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of Federal personnel; or (3) Real and personal property or any interest in or use of such property[.]” 34 C.F.R. § 104.3(h).

Where some specific program within a college receives federal funding, Section 504 applies not only to that program but to the entire school. See James Lockhart, Annotation, *Who Is Recipient of, and What Constitutes Program or Activity Receiving, Federal Financial Assistance for Purposes of § 504 of Rehabilitation Act (29 U.S.C.A. § 794), Which Prohibits Any Program or Activity Receiving Financial Assistance from Discriminating on Basis of Disability*, 160 A.L.R. Fed. 297. Federal funding may be received directly or indirectly. Examples of direct funding include grants for research, technology, school improvement, or other purposes. Some examples of federal programs include the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant. 34 C.F.R. § 673.1.

Colleges become subject to anti-discrimination laws by participating in federal student financial aid programs. The Fifth Circuit has held that a state college that participated in the Federal Work Study and Pell Grant programs was subject to Section 504. *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448 (5th Cir. 2005). The Supreme Court also held that, in the context of Title IX, which bans discrimination based on sex in education, a school was not exempt from its anti-discrimination obligations just because federal funds were granted only to students and not directly to the college. *Grove City Coll. v. Bell*, 465 U.S. 555, 569-570 (1984). Even if Section 504 does not apply, it is important to examine a private college’s policies and handbooks. They may include non-discrimination policies that a student can seek to enforce through other avenues.

Religious entities are not exempt from the employment requirements of Title I of the ADA if they have 15 or more employees and are engaged in interstate commerce. 42 U.S.C. § 12111(5)(A). However, religious organizations may give preference in employment on the basis of religion. 42 U.S.C. § 12113(d).

⁷ **2.8** The obligation of an educational institution to make academic adjustments does not require that “fundamental” or substantial modifications be made to accommodate students with disabilities, but only reasonable ones. See *Cmty. Coll. v. Davis*, 442 U.S. 397, 410 (1979) (hearing-impaired nursing student denied admission because accommodation would “result in a substantial modification to the existing program”). Further, there is no duty to assume “undue financial and administrative burdens.” *Id.* at 412.

Neither must a program be significantly refashioned, *Eva N. v. Brock*, 741 F. Supp. 626, 632 (E.D. Ky. 1990).

Courts generally defer to the academic determinations of colleges. *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1047 (9th Cir. 1999) (“a majority of circuits have extended judicial deference to an educational institution’s academic decisions in ADA and Rehabilitation Act cases”). However, if institutions have failed to adequately consider the individual circumstances of each student, courts are more likely to second-guess the determination. For example, one court found that, “[b]ecause the issue of reasonableness depends on the individual circumstances of each case, this determination requires a fact-specific, individualized analysis of the disabled individual’s circumstances and the accommodations that might allow him to meet the program’s standards.” *Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999) (finding the college failed in its duty to properly consider student’s disability and request for modification).

Given this reality, once a final decision based on individualized assessment has been made, students will likely find it difficult to prevail against a college’s determinations unless they can demonstrate the existence of a flaw in the process used by the institution to evaluate appropriate modifications. At the very beginning of discussions with the college, students should proactively and voluntarily demonstrate why a requested modification will not diminish academic standards.

⁸ **2.9** Section 504 and the ADA attempt to balance the rights of colleges to uphold academic standards with the rights of students to be free from discrimination. On the one hand, colleges must “ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are non-handicapped students with similar interests and abilities.” 34 C.F.R. § 104.47(b); 45 C.F.R. § 84.47(b). On the other hand, colleges are permitted to exclude any student who cannot meet “[a]cademic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement.” 34 C.F.R. § 104.44(a); 45 C.F.R. § 84.44(a).

The Supreme Court has found that Section 504 “[does not forbid] professional schools from imposing physical qualifications for admissions to their clinical training programs.” *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 400 (1979). In this case, an individual with a serious hearing disability sought admission to a nursing program but was refused admission because the Executive Director of the North Carolina Board of Nursing determined that the applicant’s disability made it unsafe for her both to participate in the normal clinical training program and practice as a nurse. *Id.* at 401. This case establishes that colleges have significant discretion in designing curriculums that will prepare their students for later professions and occupations.

Colleges can establish more rigorous standards than are required for professional licensure. *Doherty v. S. Coll. of Optometry*, 862 F.2d 570, 574-76 (6th Cir. 1988) (court permitted college to require optometry student to show proficiency in the use of diagnostic instruments not required to practice as an optometrist). Therefore, it is probably not enough to claim that requirements are not essential because they are not necessary for professional employment.

The reverse is not true: if a student is able to meet all the requirements of a program but is excluded because of a perception that he or she will be unable to work in a certain field in the future, the college’s decision is not entitled to such deference. In a case where a student diagnosed with insulin dependent diabetes was forced to disenroll from the United States Merchant Marine Academy (USMMA), USMMA argued that, because the Navy excludes persons with insulin dependent diabetes, and all USMMA students must “apply for appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve... or any other Reserve unit of an armed force of the United States” and serve in either the armed forces or the Merchant Marines upon graduation, the student was no longer qualified to remain at the USMMA. *Lane v. Pena*, 867 F. Supp. 1050, 1057 (D.D.C. 1994), *aff’d in part and rev’d in part on other grounds*, *Lane v. Pena*, 518 U.S. 187 (1996). However, the plaintiff argued that only application to the armed services, not actual service, was required, and he was eligible to serve in the Merchant Marines, thereby fulfilling his post-graduation service obligation. The court sided with the plaintiff, finding that enlisting in the armed services was not required in order for him to continue to be qualified for the USMMA: “The Court further finds that the agency’s...interpretation...does not support the Defendants’ contention that the[y were] obliged...to

separate Lane from the USMMA for failure to meet physical requirements for commissioning in the naval reserve.” *Id.* at 1058-59.

⁹ **2.10** Nearly all colleges, including private and religious schools, are covered under Section 504. These colleges must post notices stating that they do not discriminate with respect to “admission or access to, or treatment or employment in [their] program or activity,” they must fully identify their Section 504 coordinator, and they must establish procedures for handling complaints filed by students and employees. 34 C.F.R. § 104.7-8. It does not require colleges to establish specific grievance procedures for applicants for admission or employment.

ADA Title II requires each state college that employs 50 or more people to post notices stating that the ADA applies to its programs, services, and activities, to identify its ADA coordinator, and to establish grievance procedures for applicants, students, and employees. 28 C.F.R. § 35.106-107.

While institutions covered by Section 504 and ADA Title II have an obligation to inform all students of their rights, “[n]either Section 504 nor the ADA requires postsecondary educational institutions to have *written* policies and procedures describing how they will provide services for students with disabilities.” See Bonnie Poitras Tucker & Bruce A. Goldstein, *Legal Rights of Persons with Disabilities: An Analysis of Federal Law*, Ch. 9, I (1991 & 2009 supp.).

¹⁰ **2.11** Section 504 regulations adopt and incorporate the procedural provisions of Title VI of the Civil Rights Act of 1964. 34 C.F.R. § 104.61. Title VI regulations prohibit a recipient of federal funds from retaliating against persons for the purpose of interfering with any right or privilege secured by the regulations. 34 C.F.R. § 100.7(e). The ADA contains similar retaliation prohibitions in both Title II (28 C.F.R. § 35.134) and Title III (28 C.F.R. § 36.206).

While there are no published cases involving diabetes in the postsecondary context, several cases involving students with other disabilities establish that students may be protected from harassing behavior. In *Rothman v. Emory University*, when a plaintiff with a seizure disorder began law school, the Dean of Students repeatedly summoned him to her office and urged him to seek psychological counseling. 828 F. Supp. 537, 539 (N.D. Ill. 1993). Finally, after he had graduated in good standing and was applying to the Illinois Bar, the school sent a letter to the bar examiners stating that he was “openly hostile” to students and faculty, that he had received counseling because of this, and that his hostility was due to his “chronic epilepsy.” *Id.* at 540. The court found that this course of behavior could violate both Section 504 and the ADA. *Id.* at 541.

In *Amir v. St. Louis University*, the 8th Circuit found evidence of retaliation against a medical student with learning disabilities and behavioral difficulties. 184 F.3d 1017, 1027 (8th Cir. 1999). After filing a grievance against the school, he was permitted to retake a clinical rotation that he had previously been unable to complete due to mental health difficulties. *Id.* at 1023. However, the grievance had made the supervisor angry, and, soon after, she changed the grading policy, giving her more discretion, discretion she used to fail the plaintiff and no other student. *Id.* at 1026.

Finally, in *Dearmont v. Texas A & M University*, a student with learning disabilities asked for modifications. The court found that, while some were grudgingly granted, “[b]y the time Dearmont [was diagnosed]...the faculty had formed an opinion from the effects of his disability that Dearmont was a marginal student at best, and they refused to make a reasonable accommodation to his handicap. When required by outside pressure, they went through the motions of accommodation, while stepping up the pressure directly and indirectly. The actual accommodations were more than offset by the concomitant harassment.” 2 NDLR (LRP) 10, at *13-14 (S.D. Tex. 1991).

¹¹ **2.12** Section 504 regulations require that a recipient, “in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap . . . aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity[.]” 34 C.F.R. § 104.4(b)(v). Further, a college that “assists any agency, organization, or person in providing employment opportunities to any of

its students shall assure itself that such employment opportunities, as a whole, are made available in a manner [that does not discriminate against students with disabilities].” 34 C.F.R. § 104.46(b).

Thus, colleges have the responsibility to ensure that they do not assist other organizations that discriminate against their students. For example, the Office of Civil Rights determined that a college had violated Section 504 and the ADA by failing to provide academic adjustments to a student completing a social work internship. *San Jose State University (CA)*, 4 NDLR (LRP) 358 (July 30, 1993).

¹² **2.13** Section 504 of the Rehabilitation Act forbids disability discrimination in programs or activities receiving federal financial assistance. 29 U.S.C. § 794(a). Implementing regulations for education are found at 34 C.F.R. § 104.1-61. Federal regulations specifically apply the Rehabilitation Act to military departments. 32 C.F.R. § 56.1-10. Therefore, Section 504 applies to military educational programs themselves.

However, not all *individuals* who participate in such programs are covered. This is the case for individuals who, as a condition of participation in such a program, must serve in the military. Section 504’s prohibitions on discrimination in employment does not apply to “uniformed members of the military departments.” 29 C.F.R. § 1614.103(d)(1).

In one case involving a civilian student at a federal service academy, the Supreme Court affirmed a judgment in favor of the student. *Lane v. Pena*, 867 F. Supp. 1050 (D.D.C. 1994), *aff’d in part and rev’d in part on other grounds*, *Lane v. Pena*, 518 U.S. 187 (1996). Here, the student was dismissed from the United States Merchant Marine Academy (USMMA) when he developed type 1 diabetes. While the academy argued that he was disqualified because he could not meet the medical standards for admission to the military, the court found that, because actual appointment to the armed services was not a requirement for continued participation in the USMMA, he could not be excluded on the basis of his diagnosis alone. *Id.* at 1058-59. See Question 2.9 for further discussion.

3. What Are My Rights in the Admissions Process?

Colleges are generally prohibited from inquiring about disabilities during the admissions process. Because of this prohibition, it is usually best not to disclose your diabetes until you have been extended a written offer of admission. (There will be plenty of time after admission to make sure that you get the modifications you need, if any.) In certain limited circumstances, you may consider voluntarily disclosing your diabetes before an admissions decision is made.

3.1 Can a college ask me about diabetes during the admission process?

No. Colleges are generally prohibited from making preadmission inquiries about disabilities. There is a narrow exception when colleges seek to increase participation by people with disabilities in their programs. In this case, they must make it clear that all information is being requested on a strictly voluntary basis and only for this purpose.

Colleges may inquire as to whether applicants can meet the essential requirements of their programs as long as these inquiries are not likely to reveal disabilities. For example, a technical training program could ask if you can lift 20 pounds, a requirement necessary for completion of key assignments. It could not legally ask if you have any chronic health conditions.¹

3.2 What are the advantages and disadvantages of voluntarily disclosing my diabetes prior to an admissions decision?

In many situations it may be best to wait to disclose this information until after a written offer of admission and financial aid has been made. If you are concerned that a particular college will make a decision based on stereotypes or fears, you can avoid this by simply waiting to disclose your diabetes until after the admissions and financial aid decisions have been made. For example, if you are applying to a police academy and you know that several local police departments discriminate against people with diabetes, it may be best to wait to disclose your diabetes until after admission.

In other situations, disclosing diabetes may be appropriate if it will give a college insight into your true potential. For example, if your grades suffered significantly around the time of your diagnosis with diabetes, providing an explanation for this period of atypical academic performance may be very useful. Similarly, if you have won a scholarship based on overcoming the challenges of diabetes, or have performed volunteer work related to diabetes, this could enhance your chances of admission by demonstrating the valuable life experiences and skills you will bring to your prospective college's community. Each college may use this information differently.

3.3 Can my high school disclose my diabetes to the colleges to which I am applying?

Your high school should not disclose your disability—including the existence of any IEP or Section 504 Plan—to colleges without your permission. Before authorizing release of your transcript to colleges to which you apply, ensure that your transcript does not have any indication of modifications or other such disability-related information. If there is any such information, discuss this with the appropriate officials at your high school. As an applicant, you are better served by making your own choice as to if, how, and when to disclose your diabetes. If you choose to reveal your diabetes to a college, it may be useful for your high school to share documentation with your college so you can more easily get modifications.²

3.4 If I do not let colleges know about my diabetes when I am applying for admission, how can I ensure that my needs will be met when I start school?

If you are concerned about how you will manage your diabetes at a particular college, you should consider investigating the school more fully once an offer of admission has been made. In this period, you can examine anti-discrimination policies and contact the disability services office, health clinic, dining services, and other offices. You can also speak with current students who can give you an accurate picture of what life with diabetes will be like on campus.

3.5 Can my college ask about disabilities after I have been admitted but prior to matriculation?

Yes. Although colleges cannot make preadmission inquiries, they may make confidential inquiries as to whether incoming students may need modifications. Your response is strictly voluntary, and the purpose of this inquiry must only be to assist you in getting appropriate modifications. Once admitted, the college will be seeking to provide you with assistance to succeed.³

3.6 Should I disclose my diabetes after admission?

While you are under no obligation to disclose your diabetes (or any other disability), there are several advantages to doing so. Most importantly, if you do not disclose your diabetes, you are not entitled to any modifications. Even if you do not think you need modifications, it is important to recognize that the need for them can arise unexpectedly and you are not generally entitled to retroactive modifications. For example, if you receive a poor grade in a class and think that it was related to hypoglycemia during an exam, but you did not tell any college official about your medical condition at the time, you will probably have to accept the grade.

Promptly disclosing your diabetes can lead to a better working relationship with the administration and your professors, enabling you to more easily get appropriate modifications. Additionally, if you provide written disclosure, proof of this disclosure will provide a stronger evidentiary record if a formal complaint or litigation becomes necessary. Finally, you do not need to disclose your diabetes to be protected from

certain types of discrimination. For example, if your wellness center has published a policy prohibiting all students with diabetes from participating in certain activities, whether or not you have officially disclosed your diabetes is irrelevant.

Notes to Chapter 3

¹ **3.1** Direct questions such as “do you have a disability?” are clearly not permitted. 34 C.F.R. § 104.42(b)(4). More subtle questions, such as asking what prescription medications an applicant takes or why such medications were prescribed, may also be prohibited because they can often reveal a disability. In the context of diabetes, a college would violate both the ADA and Section 504 by asking whether an applicant has diabetes or if the applicant uses insulin. No disability-related inquiries are permitted at any stage before an offer of admission has been extended. Therefore, in addition to initial application forms, medical, housing, or activities questionnaires sent to applicants before an admissions decision has been made must not include questions that would tend to reveal a disability. *E.g.*, *W. Ga. Coll. (GA)*, Case No. 04-94-2192 (OCR 1995) (nursing program unlawfully required completion of preadmission health form); *Loma Linda Univ. (CA)*, Case No. 09-97-2012, 11 NDLR (LRP) 367 (OCR 1997) (committee impermissibly discussed applicant’s hearing impairment during interview; permissible only when applicant initiates discussion). While a college may ask whether an individual can meet essential requirements of its programs, it must ensure that its questions are not designed to reveal disabilities. OCR provides guidance in distinguishing permissible and impermissible questions:

Examples of impermissible preadmission inquiries include: *Are you in good health? Have you been hospitalized for a medical condition in the past five years?* Institutions of postsecondary education may inquire about an applicant’s ability to meet essential program requirements provided that such inquiries are not designed to reveal disability status. For example, if physical lifting is an essential requirement for a degree program in physical therapy, an acceptable question that could be asked is, *With or without reasonable accommodation, can you lift 25 pounds?* After admission, in response to a student’s request for academic adjustments, reasonable modifications or auxiliary aids and services, institutions of postsecondary education may ask for documentation regarding disability status.

Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators, Question 2, www.ed.gov/about/offices/list/ocr/transitionguide.html. There is a narrow exception to this general prohibition when a college seeks to increase participation by people with disabilities in its programs. 34 C.F.R. § 104.42(c). It must make clear to applicants that all information is being requested on a strictly voluntary basis and only for this purpose.

² **3.3** High schools should not disclose this information. OCR has stated that “information about a student’s disability, including whether that student received special education or related services due to having a disability, is not information about a student’s academic credentials and achievements. Therefore, transcripts may not provide information on a student’s disability.” OCR Dear Colleague Letter of October 17, 2008, by Stephanie J. Monroe, Assistant Secretary for Civil Rights, www.ed.gov/about/offices/list/ocr/letters/colleague-20081017.pdf.

Some high school students with diabetes receive services through an Individual Education Plan (IEP) under the Individuals with Disabilities Education Act (IDEA). Amendments to the IDEA adopted in 2004 created a new requirement that for each child whose eligibility for special education terminates due to graduation with a regular diploma, the local education agency “shall provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.” 20 U.S.C. § 1414(c)(5)(ii); 34 C.F.R. § 300.305(e)(3). This document is known as a “Summary of Performance” or “SOP.” This SOP should not be shared by the high school with any college without the explicit permission of the student.

³ **3.5** Colleges may have legitimate reasons to ask students if they have a need for any special services before classes begin. For example, accessible housing can be most easily provided with advance notice. The college should not make these legitimate inquiries until an admissions decision has been made. See, *e.g.*, *Univ. of Tenn. at Martin*, 14 NDLR (LRP) 72 (OCR 1998) (finding violation of Section 504 and ADA when college required students to complete an application for a program for students with learning disabilities concurrently with the regular application).

4. How Can I Work with my Disability Services Office?

Most colleges have a disability services office that coordinates assistance for students with disabilities. By establishing a good working relationship with this office from the beginning, you can make sure that your college experience is as smooth as possible. People in this office can become some of your strongest allies as you navigate your way through college and beyond. This section describes what you can and cannot expect when you work with this office.

4.1 Who should I first approach for assistance?

You should contact your college's disability services office. While the precise name varies from college to college, this office generally coordinates modifications for students. Information about this office should be posted on the college's website, published in the official bulletin, or available from the registrar or academic dean. Registering with this office should normally be the first step you take in putting your college on notice of your diabetes. Where an office is not specifically established, there will be an individual who handles these matters, such as the dean of students.

Once registered, you can receive services through the office, and the office can assist you in working with other officials throughout the college. For example, it can help you contact the athletic department or residential life office if you encounter problems with an athletic instructor or with your housing situation.

Some colleges—or even disability services offices—may only be accustomed to providing modifications to students with learning disabilities, mobility impairments, and vision impairments, or who are deaf and hard of hearing. They may be unfamiliar with other types of disabilities or not understand that the ADA and Section 504 apply to all programs the college offers, not just academic programs. If you encounter faculty members, coaches, or administration officials who are unaware of the protections of the ADA and Section 504, you may need to educate them about their anti-discrimination obligations and diabetes.

4.2 When should I contact my disability services office?

If you do not presently need modifications, you are not required to register with the disability services office at any particular time. However, even if you do not initially need modifications, having disability documentation on record can be helpful if you ever do need modifications. For example, if you start experiencing severe hypoglycemia for the first time during finals, rescheduling an exam may be easier if you have already registered with your disability services office. Requests should be made as far in advance as possible; last-minute requests may be unsuccessful.

4.3 Can I still get modifications if I miss a deadline to register for disability services?

Many disability services offices establish deadlines for students to register or to request modifications. For example, a disability services office may have a policy requiring all students to submit requests for modifications within two weeks of the beginning of each semester. When possible, you should follow these policies. If you know you need a modification in advance but you fail to comply with college policies concerning the provision of modifications, you may not have much recourse.

However, you should be permitted to request modifications without penalty if you do not know of your need for modifications (or you find you need additional modifications) until after a deadline has passed. For example, if you are diagnosed with diabetes at the end of the semester, you should not be penalized since you could not have made a request before an earlier deadline.¹

4.4 What documentation should I provide to my college in order to receive modifications?

It is your responsibility to provide appropriate documentation to support your need or possible need for modifications. Just what will be required depends on the college. Typically, a college will want documentation from an appropriate expert that is recent and sufficiently comprehensive. Many colleges require that you provide a letter from your doctor that includes the following general elements:

- 1. A diagnosis of your diabetes along with its symptoms;*
- 2. An explanation of how your diabetes is a disability; and*
- 3. A request for specific modifications along with a clear rationale for why these modifications are appropriate.*

Each college has its own forms and exact procedures for providing documentation. Often, there are separate requirements for learning disabilities, mobility disabilities, physical disabilities, and chronic health disabilities. Typically, diabetes will be classified as a physical disability or chronic health disability. Sample medical documentation for both type 1 and type 2 diabetes are included in the Appendix at the end of this guide.²

4.5 How should my college decide what modifications are appropriate?

Once you request a modification and provide appropriate documentation, disability services staff should meet with you to discuss your needs. Through this “interactive process,” adequate modifications can usually be obtained.

This process requires individualized assessment and communication with you so modifications can be tailored to your specific needs, since not all students with diabetes need the same things. For example, a college sophomore with type 1 diabetes may need scheduling modifications for his exams. A student with type 2 diabetes returning to college after many decades in the workforce may need different modifications in her clinical classes for her neuropathy and retinopathy.

The best way to get the modifications you need is to be thoroughly prepared when you first meet with your disability services office. You should clearly explain why your requested modifications are connected to your diabetes and why they are necessary. If you have not done this from the outset, you will find yourself in a much weaker position if disagreements arise. As long as an adequate “interactive process” has taken place, administrative agencies and courts are unlikely to second guess the determinations of your college. However, if your college refuses to discuss your needs with you in good faith, you may want to consider making a formal complaint. For more information on making a complaint, see Chapter 8.

4.6 How do colleges typically implement accommodations?

At many colleges, disability services offices provide students with an “accommodations letter” to give to each of their professors at the beginning of the semester. These notify your professors that your disability has been verified by campus administration and that you need certain modifications. Typically, you keep a copy, you give a copy to each professor who needs to grant you modifications, and your disability services office keeps a copy. Giving your professors this letter can be an excellent opportunity for you to discuss with your professors any concerns you or they may have about how diabetes will impact your class participation, if any. An example of such a letter is included in the Appendix.

4.7 Does my college need to provide me with a written Section 504 Plan?

No. Unlike primary and secondary schools, which often provide written Section 504 Plans, colleges typically do not provide written Section 504 Plans. You just need to receive appropriate modifications.

However, many colleges choose to provide students with written documentation explaining precisely which modifications have been granted. One way colleges do this is by providing students with “accommodation letters” as discussed in Question 4.6. These are letters from the disability services office that state your disability and state that you have been found to qualify for certain modifications. They are generally not as detailed or extensive as a 504 Plan or IEP.

If your college does not provide you with written documentation automatically, or you are unclear about what your college has agreed to provide, you should request detailed written confirmation. This type of written record provides clarity about what modifications will be provided and facilitates the resolution of disputes should they arise.³

4.8 Should I request modifications directly from my professors?

While many modifications can be easily provided by professors, such as permission to bring snacks into class, extensions on assignments, and excusal for absences, even for simple modifications it is often best to work through your disability services office. This can prevent any later confusion regarding what modifications were agreed upon and provide you with valuable protections if disputes arise.

For example, you might have an oral agreement with your professor that you are allowed to bring snacks into class and test your blood glucose. If, during a proctored exam, your proctor tries to prevent you from using these modifications, the dispute can be more quickly resolved in your favor if your disability services office knows about these modifications.

Nevertheless, once you have registered with your disability services office, you may also choose to speak directly with your professors. In fact, many disability services offices ask you to personally inform your professors of the fact that you are registered and that you are entitled to certain modifications (you need not disclose detailed medical information to your professors).

4.9 Does my college have to give me the same modifications I received in high school?

No. Your college is under no obligation to provide you with the modifications that you received in high school, whether or not they were included in a Section 504 Plan or IEP. See Questions 2.3 and 2.5 for further information. As a practical matter, you may find it useful to provide documentation of these prior modifications. Unfortunately, some college officials may suspect that students seek modifications not because they need them, but so they can obtain an unfair advantage. By demonstrating your continued history of modifications, you can more easily establish the validity of your requests.

4.10 If I did not get modifications in high school, can I get them in college?

Yes. In some cases, your diabetes will not have interfered with your academic performance prior to college. Other times, your high school may have informally provided you with what you needed, without calling these changes “modifications.” Sometimes, you may be confronted with a new situation where you need a modification for the first time, e.g., permission to eat during a three-hour exam. Finally, you may be diagnosed with diabetes during college.

While you need to be diagnosed with a specific disability in order to receive modifications, you do not need to have any prior history of disability or modifications. However, in these cases, you should take special care to obtain medical documentation and to justify your need for each requested modification.

4.11 Should my parents request modifications on my behalf?

You should speak with your parents about what role they will play now that you are assuming more responsibility for your diabetes care, as well as becoming more independent in all areas of your life. To the greatest extent possible, you, rather than your parents, should take the lead in communicating with your college. In fact, many college officials would prefer to deal with the student rather than parents, and may even be hostile to requests made by the parent rather than the student.

4.12 What rules apply to the release or exchange of medical and educational information?

Laws such as the ADA, Section 504, the Health Insurance Portability and Accountability Act (HIPAA), and the Family Education Rights and Privacy Act (FERPA) restrict your college's ability to share information about you with other parties, including your parents.

The ADA and Section 504 place strict limits on what information disability services offices can share with other administration officials and professors. Generally, only the information necessary to demonstrate your need for modifications should be provided. For example, a disability services office can inform a professor that you have registered and qualified for particular modifications. However, it should not show your professor your confidential medical records. For an illustration, see the sample accommodations letter in the Appendix.

FERPA ensures that college students (and parents of students younger than 18) have access to their educational records, including college medical records, and protects their privacy rights by limiting access to these records without consent. FERPA strictly limits the circumstances in which your parents may access your records, although colleges may release information to your parents if you are listed as a dependent for tax purposes.

HIPAA protects medical information from unauthorized disclosure. HIPAA specifically does not cover most FERPA information.⁴

4.13 How can I make sure that my family can communicate with my college in case of an emergency?

Although you should take the lead in advocating for your rights at college, you should also consider taking steps with your family to ensure that they can communicate with your college in case of a medical emergency. For example, you may want to ensure that they can speak with the student health clinic in case of a medical crisis. It is best to establish an up-front method for sharing necessary information, rather than assuming that an exception to privacy laws would apply. You may want to consider signing a Power of Attorney or other release that will enable your parents, spouse, or other family members to have access to your medical records and make medical decisions if you are unable to do so.

Notes to Chapter 4

¹ **4.3** At any point that students become aware that they need modifications, students should be permitted to ask for them, even if this comes at the end of the semester or if a student has not registered with the disability services office. *Smith v. Univ. of the State of N.Y.*, 11 NDLR (LRP) 234 (W.D.N.Y. 1997) (student with clinical depression who asked academic dean for modifications late in the semester was not barred from right to receive modifications, even though he had not registered with disability services office). It is important to note that any modifications must still be reasonable and supported by appropriate documentation.

However, if students know about their need for modifications but do not request them and fail to follow appropriate procedures, it will be much more difficult for students to establish their right to modifications. *Temple Univ. (PA)*, Case No. 03-99-2049, 19 NDLR (LRP) 32 (OCR 1999) (university had no duty to provide modifications to student who failed to follow established procedures).

² **4.4** The most appropriate expert in the case of diabetes is an endocrinologist, but other medical professionals, such as a general practice doctor or nurse practitioner, may also have appropriate expertise. Documentation from a high school Section 504 coordinator will probably be insufficient. See *Cal. State Univ.—Long Beach*, Complaint No. 09-92-211-1 (OCR 1992) (discussing need for documentation from a professional).

Documentation must be “fairly recent.” There is no precise definition for what “fairly recent” means. Typically, colleges set their own guidelines. The “fairly recent” requirement is most important in the context of learning disabilities. A diagnosis of diabetes is unlikely to change, unless your diabetes has progressed such that you require additional modifications for neuropathy, retinopathy, or other complications. It must be “sufficiently comprehensive” in that it must identify the testing mechanisms, testing procedures, and findings. In the case of diabetes, there should be little difficulty in establishing a diagnosis of diabetes and that it is a disability under the ADA/Section 504. See Questions 2.2 and 2.4 for more information.

It is important that doctors clearly connect the disability with the need for specific modifications. Doctors should clearly explain how disability impacts a particular student’s ability to perform a certain task. For example, an individual with diabetes may need a short break during an exam to test her blood glucose. In this case, a doctor may need to explain the impact of hypoglycemia and hyperglycemia on cognitive functioning and how these conditions can largely be avoided through constant blood glucose monitoring. See *Pell v. Tr. of Columbia Univ.*, 11 NDLR (LRP) 332 (S.D.N.Y. 1998) (providing only a diagnosis of dyslexia insufficient to exempt student from foreign language requirement).

Different schools will require that documentation be submitted in different forms. Students should check with their disability services office to determine if there are any particular requirements or preferred formats for documentation. See, e.g., Bryn Mawr College, *Guidelines for Providing Accommodations*, www.brynmawr.edu/access_services/students/student_guidelines.html (private college receiving federal funding); University of Alabama, *Documentation Requirements University of Alabama Office of Disability Services Mobility, Systemic, or Chronic Illness-related Disabilities*, ods.ua.edu/documentation/phy.htm (state university receiving federal funding); Georgetown University, *Requesting Accommodations*, guarc.georgetown.edu/disability/accommodations/request/111795.html (private religious university receiving federal funding).

³ **4.7** No. See *Bevington v. Wright State Univ.*, 23 Fed. Appx. 444, 445 (6th Cir. 2001) (finding “neither the Rehabilitation Act nor the Americans with Disabilities Act require a written plan for post-secondary students.”).

⁴ **4.12** FERPA is codified at 20 U.S.C. § 1232g and its regulations can be found at 34 C.F.R. Part 99. The regulations of the privacy provisions of HIPAA, Public Law 104-191 (1996), can be found at 45 C.F.R. Parts 160, 162, and 164. For information on FERPA, see the following guidance: Department of Education, *Disclosure of Information from Education Records to Parents of Postsecondary Students*, www2.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html; Department of Education, *Frequently Asked Questions About FERPA*, www.ed.gov/policy/gen/guid/fpco/faq.html.

A college should not refuse to release medical records by claiming they are protected by HIPAA. In most circumstances, students should be given access to medical records created by their college without regard to HIPAA. While HIPAA covers most medical records, it specifically exempts “educational records” (which can include medical records) covered by FERPA. 45 C.F.R. § 160.103 (exception at paragraph (2)(i) and (2)(ii) defining “protected health information”); 65 FR 82483 (2000). See Department of Education, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*, www.ed.gov/policy/gen/guid/fpco/doc/ferpa-hippa-guidance.pdf.

In addition, there may be institutional policies and state regulations and laws which impact educational and medical privacy. While HIPAA and FERPA provide the minimum privacy protections, these laws may provide more protections.

5. What Academic Modifications Might I Expect?

Modifications may be required to allow you to access your college's academic programs. Many modifications typically requested by students with diabetes should be granted as a matter of course, such as permission to eat and perform diabetes care in class or extended breaks between sections of exams to check blood glucose.

In certain circumstances, you may need more substantial modifications such as changes in attendance policies or extensions for completion of course work and exams. You should expect that these types of requests will be subject to more scrutiny by your college. In these cases, it is particularly important for you to clearly explain the medical need for these modifications, backed up with documentation from your health care professional.

This chapter discusses some of the specific modifications you may consider requesting. While every modification you receive is subject to case-by-case analysis in conversation with your college, this chapter highlights relevant considerations for each modification.

5.1 Can I reschedule my exams if my blood glucose level is out of target range?

This is likely a reasonable modification. As a person with diabetes, you know that carefully monitoring your blood glucose, eating a balanced diet, exercising, and maintaining a regular schedule is essential so you can perform at your best. However, despite your best efforts, you know that it is not always possible to avoid hypoglycemia and hyperglycemia. External factors such as other illnesses, environmental factors, and hormonal fluctuations can have a significant impact on blood glucose control. No matter your treatment plan or diligence in following it, there simply may be some times that your blood glucose is out of target range. Further, there is clear medical evidence that both hypoglycemia and hyperglycemia can affect cognitive abilities.

If you are forced to take a test when suffering from hyperglycemia or hypoglycemia, this test might measure your disability rather than accurately measure your mastery of the material or your aptitude, and thus violate the ADA and Section 504. Therefore, a reasonable modification might be to agree in advance with your disability services office that you may postpone and reschedule your exam if your blood glucose is out of a specified range on exam day.

Your college may ask you to use its existing policy that permits all students to postpone or reschedule exams based on emergencies. You can typically find the policy on the general college's website or published in the official bulletin, or you can obtain it from the registrar, academic dean, or disability services office. It may already account for students who have severe illnesses, injuries, or family emergencies. In many cases, using this policy will be all that is required. If you use this policy, you should document the fact that you are using this policy as a reasonable modification for your diabetes.

In other circumstances, your college's existing policy may not adequately meet your needs. In this case, you will need to justify why, in your particular situation, your college must make a modification to its otherwise valid general policy.¹

5.2 Can I be prohibited from keeping my diabetes supplies with me or engaging in self-care, including testing my blood glucose, injecting insulin, and eating?

It is unlikely that your college will raise any objection to you taking care of your diabetes wherever and whenever you need to. In the event that you run into problems, the best way to solve the issue is to simply explain the need for these small modifications and why they are completely safe. You should also immediately contact your disability services office if you encounter any resistance.

You may need to remind college officials that blood glucose testing is extremely safe. The risk of infection by blood-borne pathogens is sometimes raised as an excuse to prohibit classroom blood glucose testing. In reality, with proper cleaning and disposal of medical supplies, this risk is negligible. Additionally, some administrators and employers mistakenly believe that the Occupational Safety and Health Act prohibits individuals from testing their blood glucose or injecting insulin. However, this law only applies to employees performing procedures on others—it does not apply to students or employees who test themselves.

Sometimes students, professors, or staff may express discomfort at seeing you perform diabetes care. While it may be helpful to explain the safety of your actions, other people's discomfort is simply not a legal reason for a college to restrict your ability to take care of yourself.

The only time where prohibiting self-care might be legitimate would be in certain sensitive environments. For example, it might be prohibited in a surgical operating room but not an entire hospital, or in a food preparation area but not the entire dining hall.²

5.3 Am I entitled to breaks during exams to take care of my diabetes?

This is often a reasonable modification. With detailed justification and the establishment of clear parameters, this modification should be routinely granted. It is important that you receive permission for breaks well before the exam so that you do not encounter problems with professors or proctors. You should be prepared to address any concerns about the integrity or fairness of the exam that college officials may have. Your request should address the following issues:

- Scheduling—you should determine if you will need extra breaks and what type you will need. Here are some possible types of breaks:
 - Extra or extended breaks between sections of an exam—for example, the exam may be divided into several portions and you may only work on one section at a time, like the SAT. Here, the most appropriate modification would be a break or an extended break between sections.

- Breaks during an exam that does not have separate sections—for example, you may request permission for two ten-minute breaks during a three-hour test, increasing your total time in the exam room, but not your total testing time.
- Breaks as needed—for example, you may not plan to take any breaks, but you may need them should you experience hypoglycemia.
- Location—in some cases, if you will be receiving scheduling modifications, you may need to take your exam in a separate location so that it can be properly monitored and timed. Disability services offices often coordinate alternative testing centers for this purpose.
- Permission to use the bathroom, as sometimes there are exam integrity concerns if students leave the testing area without authorization.

5.4 Am I entitled to extra time to complete exams?

Not necessarily. In determining appropriate modifications, the focus should be on ensuring you can take the time you need to prevent or treat significant blood glucose fluctuations so that you are at your best while working on exams. A distinction must be drawn between extra time to perform diabetes care and extra time to work on exams themselves. Thus, extra time should be routinely granted for diabetes care (often in the form of breaks as discussed above) but not necessarily to complete exams themselves.

While it may be reasonable for students with certain disabilities to receive extra time to complete exams, it may be less reasonable for students with diabetes to receive this modification. For example, a student with dyslexia who has a reduced reading speed might reasonably receive 50% more time to complete exams. This would not be an appropriate modification for most individuals with diabetes, although receiving an extra ten minute break to perform diabetes care might be.

In rare cases, your diabetes, alone or in combination with other disabilities, might impact your ability to take an exam to such a degree that extended time to complete it may be appropriate. In this case, it is essential that you provide extremely specific and detailed medical documentation from your health care professional justifying your precise need for this modification.

5.5 What should I do on exam day if problems arise?

There are several steps you can take to protect yourself on exam day. You may confront two different issues. First, your college may make a mistake in the administration of your exam or deny you the modifications it had previously agreed to. Second, you may experience hypoglycemia or hyperglycemia or other diabetes-related complications that affect your ability to take your exam. Because these problems can arise at any time, you should take the following precautions each time you take an exam:

- Arrive early so you will have time to address any problems that may arise;
- Bring all of your documentation, including a copy of your accommodations letter and any correspondence with your professor, disability services office, and other college offices;
- Bring the direct phone number for the appropriate college officials so that you can immediately contact them if any problems occur; and
- Document any diabetes-related symptoms that you experience during your exam.

If your proctor questions your modifications or seeks to change them, you should immediately explain to your proctor your entitlement to these modifications and contact the disability services office and other appropriate college officials. Many colleges have an on-call official to handle exam day problems. Your college has a legal obligation to provide you with the modifications that it has itself agreed to.

If you think you are experiencing hyperglycemia or hypoglycemia and choose not to complete the exam, you should immediately inform your college that you cannot finish it due to your serious medical condition. Because providing objective proof that you were suffering from diabetes-related complications is critical, you should record your blood glucose levels and other symptoms. As soon as possible, contact your doctor to obtain written confirmation of your medical condition. In some circumstances, it may be possible to retake your exam if you experience such a medical emergency.³

5.6 Can I miss class due to my diabetes?

While regular class attendance is usually an important course requirement, it may be reasonable to ask for certain changes to class attendance policies. You should be aware that you are still responsible for completing all class work and participating fully in your classes. For example, it may be reasonable to occasionally miss class if you can document that you were suffering from hypoglycemia during the class period.

In many cases, your college will have an attendance policy that permits all students to be absent based on medical needs or personal emergencies. This policy may also provide guidance on how you can get class notes or make up work for classes you had to miss. If there is such a policy, you should follow it. You must ensure that you comply with all notification and documentation requirements. It is likely that this policy will be sufficient to meet your needs. Additionally, if you find yourself using this policy because of your diabetes, you should make sure to contact your disability services office to document these absences as related to your disability. If any questions or problems arise, this can help you establish the legitimacy of your absences.

In some cases, you may need additional modifications that go beyond the general college attendance policy. For example, while your college may have a flexible overall attendance policy, one of your professors might have a policy of reducing all students' grades if they miss more than a certain number of class periods for any reason. In this case, you may be entitled to obtain a modification to this policy by working with your disability services office.

5.7 Can I be sanctioned for poor academic performance, even though my diabetes impacted my performance?

Yes, unless the modifications you requested were unreasonably denied. Diabetes does not excuse you from meeting your college's academic standards, and unless your college has failed to provide appropriate modifications after you requested them, academic sanctions and other measures can be applied to you. However, academic sanctions should be applied equally to all students, both those with disabilities and those without disabilities. If your college only applies academic sanctions to students with disabilities, it may be engaging in discriminatory action.

5.8 Can I get my grades changed if I did poorly due to undiagnosed diabetes?

Generally, no. It is your responsibility to disclose your diabetes and to request modifications. Although your poor performance may be related to your disability, your college does not need to make retroactive modifications on the basis of your undisclosed disability. Nevertheless, it does need to give you equal access to the same policies for reconsideration as it does to other students. For example, if you fail a course because of undiagnosed diabetes, it should give you the same opportunity as other students to retake the course if it routinely provides this opportunity to all students.

Additionally, even if your college does not change your grades, if you subsequently disclose your diabetes and ask for modifications, your college should consider your request just as it considers all modifications requests for modifications.⁴

5.9 Can I withdraw from a course or take a leave of absence due to diabetes?

In certain cases, this may be an appropriate course of action. As with most modifications concerning attendance and academic performance, you should first determine what your college's general policy is—it may already have a medical leave policy that would meet your needs. You should also make sure to inform your disability services office that the leave you are taking is related to your disability.

You should be aware that if you take a leave of absence or reduce your course load, this may impact your health care coverage. For more information on health care, see Question 6.1.

Notes to Chapter 5

¹ **5.1** The implementing regulations for Section 504 explicitly emphasize that colleges must ensure that they do not test a student's disability but, rather, a student's mastery of the material: "In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure)." 34 C.F.R. § 104.44(c).

Many medical studies confirm that hypoglycemia and hyperglycemia impact cognitive functioning. However, the impact is individualized and varied. See, e.g., Linda A. Gonder-Frederick et al., *Cognitive Function Is Disrupted by Both Hypo- and Hyperglycemia in School-Aged Children with Type 1 Diabetes: A Field Study*, *Diabetes Care* 32:1001 (2009) (showing evidence of impaired problem-solving ability); Nicola N. Zammitt et al., *Delayed Recovery of Cognitive Functioning Following Hypoglycemia in Adults with Type 1 Diabetes: Effect on Impaired Awareness of Hypoglycemia*, *Diabetes* 57:732 (2008) (showing evidence of significant cognitive impact even after blood glucose levels have returned to normal); Daniel J. Cox et al., *Relationships Between Hyperglycemia and Cognitive Performance Among Adults With Type 1 and Type 2 Diabetes*, *Diabetes Care* 28:71 (2005); Daniel J. Cox et al., *Disruptive Effects of Acute Hypoglycemia on Speed of Cognitive and Motor Performance*, *Diabetes Care* 16:1391 (1993).

If you need to reschedule your exam, you should provide clear justification for this modification. For example, saying that you need your exam postponed because of your diabetes, with nothing more, may not be sufficient. See *Goldstein v. Harvard Univ.*, 77 Fed. Appx. 534, 535 (2d Cir. 2003) (student failed to show adequate justification for accommodation of rescheduling mandatory exam outside of "asthma season"). In contrast, if you can show that your blood glucose is at a particular level at the time of the exam, and that, at this level, cognitive functioning is impaired, your request for postponement may be more reasonable.

² **5.2** In the K-12 context, OCR has repeatedly held that schools must not ban students from testing their blood glucose wherever and whenever they need to without individualized assessment. See, e.g., *Huntsville City (AL) Sch. Dist.*, Complaint No. 04-96-1096, 25 IDELR 70 (OCR 1996) (district made exception for student with diabetes after student's physician verified that it was medically necessary for her to have her glucose meter with her at all times); *Santa Maria-Bonita (CA) Sch. Dist.*, Complaint No. 09-97-1449, 30 IDELR 547 (OCR 1998) (sixth grader and eighth grader permitted to possess testing kit, including sharps, in classroom and perform regular testing as needed and at designated times in classroom). In the college context, there is even less justification for preventing students from testing anytime, anywhere.

For a detailed discussion of the safety of blood glucose testing, see Victoria Thomas, *The Occupational Safety and Health Act and Bloodborne Pathogens Standard: Application to Diabetes Care Tasks at School and in Employment*, American Diabetes Association 2008, www.diabetes.org/assets/pdfs/your-rights-for-lawyers/education/atty-osh-in-school-and-employ-june2008.pdf.

³ **5.5** Colleges may be liable under the ADA and Section 504 if students are not allowed to use the modifications which they have already requested and which their college has already agreed to provide. See, e.g., *San Jose City Coll. (CA)*, Case No. 09-97-2093, 12 NDLR (LRP) 193 (OCR 1997) (faulting college for allowing professor to deny agreed upon testing accommodations); *Bates Coll. (ME)*, Case No. 01-96-2053 (OCR 1997) (faulting college for failing to provide faculty with adequate notice of needs of students with disabilities).

⁴ **5.8** Under the ADA and Section 504, modifications cannot usually be requested after the fact. *Montgomery Coll. (MD)*, Case No. 03-99-2059, 19 NDLR (LRP) 90 (OCR 1999) (finding ADA not retroactive); *Univ. of N.M.*, Case No. 08-98-2070, 15 NDLR (LRP) 157 (OCR 1998) (finding for university, in light of student's failure to request modifications until after dismissal).

Nevertheless, even though retroactive modifications need not be granted, students are not barred from requesting future modifications. Colleges have an obligation to consider subsequent requests for modifications. See, e.g., *Dearmont v. Tex. A & M Univ.*, 2 NDLR (LRP) 10, at *13-14 (S.D. Tex. 1991) ("[b]y the time Dearmont [was diagnosed]...the faculty had formed an opinion from the effects of his disability that Dearmont was a marginal student at best, and they refused to make a reasonable accommodation to his handicap. When required by outside pressure, they went through the motions of accommodation, while stepping up the pressure directly and indirectly. The actual accommodations were more than offset by the concomitant harassment.").

6. What Modifications Are Available for Other Programs and Services (Housing, Meal Plan, Health Clinic, Athletics, Etc.)?

Although colleges are primarily educational institutions, they have an obligation not to discriminate in all of their activities and programs. Just as you have a right to attend class without being discriminated against, you also have a right to participate in athletics and live in campus housing on an equal basis. This chapter discusses aspects of non-academic campus life.

6.1 Does my college need to provide me with health care for my diabetes?

Colleges have no obligation to provide health care to their students, and therefore do not have to train staff to assist in administering medications or providing other health services to students. While your high school may have been required to provide a nurse and/or trained diabetes personnel, your college does not have this same obligation (and it is unlikely that you would need this assistance in any event). Many colleges do have health clinics and these should be available to you just as they are to other students regardless of your diabetes.

6.2 Can I require my college to train individuals to administer glucagon or to make other provisions for emergency medical treatment?

K-12 schools are generally required by federal law to ensure that there are trained personnel available to give students glucagon (and provide other health services). Colleges do not have the same obligation to plan in this way for emergency care. You must therefore ensure that you make provisions for any emergency situations which may arise. Of course, emergency and other care must be provided to you to the same extent as it is afforded to other students.

You should ask a roommate, friend, resident advisor, teammate, or coach to learn how to administer glucagon. Quite often you may know another student with diabetes who would be available to assist you if needed. Your college should not actively stand in the way of allowing other staff and students to voluntarily help you.

The American Diabetes Association provides a free online training video available at web.diabetes.org/video/glucagon.wmv. Two major manufacturers provide training information. Eli Lilly provides information on its Emergency Glucagon Kit at www.lillyglucagon.com. Novo Nordisk provides information on its Glucagen® HypoKit® at www.novonordisk.com/diabetes/public/hypokit/glucagenhypokit/default.asp. For more information on glucagon training materials, call 1-800-DIABETES.

6.3 How can I make sure my health care needs are met?

Whether or not your college has a health care clinic, you need to make sure that all your health care needs are met. You should carefully understand what health care services you will need and what health insurance coverage you currently have or what insurance coverage is available to you.

You should do the following before you leave for college:

- Make an appointment with your diabetes health care professional
- Schedule follow-up visits ahead of time so you can be seen during semester breaks
- Be sure to have prescriptions filled
- Ask for a copy of important medical records

You should ask the student health clinic the following:

- When the clinic is open
- Whether there is a diabetes specialist on staff
- What to do in case of emergency

If you currently have health insurance, you should find out the following about your health insurance plan:

- How long you can expect to have coverage through this plan and under what conditions (for example, if it is dependent upon maintaining full-time student status)
- Whether your policy covers emergency services
- Whether your policy covers out-of-state check-ups
- Whether there is a waiting period for any services
- Whether there are pre-existing condition limitations

If you do not have health insurance, you should find out your coverage options, including:

- Whether there is a student health insurance plan available at your college
- Whether there are pre-existing condition limitations on any plan you are considering
- If you are turned down for a private health insurance plan, whether there is any state or high-risk plan available to you

Federal health care reform enacted in March 2010 will significantly increase the ability of individuals with diabetes to obtain health insurance. One of the most important changes, which already is effective, is a requirement that unmarried children may stay on their parents' plans until they turn 26, regardless of whether or not they are students. Other provisions, including the eventual elimination of pre-existing condition exclusions, will be implemented in the coming months and years.

The American Diabetes Association has extensive resources on insurance options for people with diabetes. For more information, call 1-800-DIABETES or go to www.diabetes.org.¹

6.4 Can I get modifications in campus housing?

Maybe. The type of housing available varies greatly from college to college. What may be reasonable at one college may not be reasonable at another college. You should contact your college's housing or residential life office to find out what types of living situations are available and what the college's policy is regarding special requests and/or policies for students with disabilities. You might seek a placement where you:

- Have access to a clean and private space to perform diabetes self-care
- Have access to a kitchen or kitchenette
- Can have a refrigerator in your room
- Are close to a cafeteria
- Are close to the health clinic
- Are close to your classes
- Live with a friend who can help you in an emergency
- Are close to shuttle buses or other campus transportation, if applicable

Depending on the variety and flexibility of campus housing, you may be able to obtain these modifications. While some may be easy to establish as reasonable, e.g., living in a dorm with your own bathroom if many of the dorms on campus provide this, others may be more difficult to establish as reasonable, e.g., being excused from residency requirements if all students are required to live on campus. For some modifications, you may go through the normal housing preference or lottery procedure, e.g., if you just need permission to have a refrigerator in your room. However, in other situations, e.g., if you want to live with a particular friend who can help you in an emergency, you may need to go through a separate process outside of the normal procedure.²

6.5 Can I join a fraternity or sorority?

Your diabetes should not be an obstacle to joining. Many students with diabetes have positive experiences as members of fraternities and sororities. However, some students with diabetes have experienced discrimination by these organizations. Certain fraternities and sororities may not be covered by the ADA or Section 504 and therefore they may not have the typical anti-discrimination obligations. This is because Title III of the ADA exempts private clubs not open to the public. For example, a sorority house located off-campus that receives no federal funds and does not permit members of the general campus population to participate in activities would likely be exempt.

However, many are probably covered. For example, on-campus fraternity and sorority houses owned or operated by their host university are clearly covered by the ADA (unless it is a religious college). Off-campus fraternities and sororities open to the general public may also be covered by the ADA. If they receive federal funding in any way, they are covered by Section 504. Finally, they still may be bound to a code of conduct with the associated college, and you can consider making a complaint through the college. You may also make an internal complaint against the organization.³

6.6 Do I need modifications to the campus meal plan?

Maybe. Often, you will not need any special modifications to the general campus meal plan. This is especially true if your college provides flexible dining options. Other times, your college may provide special meal plans for students, whether for religious, ethical, or medical reasons. In this case, you should have access to these plans if you can demonstrate that they are necessary to meet your dietary needs.

If you feel that the general meal plan does not provide you with a healthy diet for your diabetes, you should speak with your campus dining service. Many dining services employ a nutritionist who manages these issues. You may also want to coordinate this with your disability services office.

Colleges are not generally required to provide nutritional information. However, your dining service may be able to provide this information to you upon request. Additionally, many colleges allow students to purchase food at restaurants through their meal plans. Many restaurants choose to make their nutrition information available, and others are required to do so by state and local laws and regulations. The 2010 federal health care reform legislation will eventually require restaurants with 20 or more locations to provide nutritional information.

Good nutritional information and tools for managing and monitoring your diet are now easily available and accessible. A comprehensive online reference is the American Diabetes Association's "My Food Advisor," which permits you to find nutritional information on a wide variety of foods: tracker.diabetes.org/myfoodadvisor.html. There are also several applications for mobile phones that allow you to easily track your diet.

Finally, with the advent of the pump and other treatments for diabetes, considerable flexibility exists in meal arrangements and timing. For all these reasons, formal modifications may be less necessary than previously.

6.7 Can I play intercollegiate sports?

There are many successful athletes with diabetes at the college and professional level. While there are no reported cases on diabetes in particular, students should not be excluded from intercollegiate athletics arbitrarily due to inappropriate consideration of their disabilities. Of course, competitive athletic teams may choose the most talented athletes available, and colleges and courts are highly unlikely to second guess a coach's decision based on athletic ability, without evidence that the student's disability was the actual reason for the decision.

Sometimes school athletic officials object to a student's participation in athletics because of safety or liability concerns related specifically to the student's disability. Such decisions cannot be made arbitrarily or on the basis of stereotypes and fears. For example, your physical education department should not exclude you from high intensity sports just because you have a diagnosis of diabetes. However, if a college makes a decision through a deliberative process involving expert medical evidence and individualized assessment, the college's determination will likely be given significant deference.⁴

6.8 Can I participate in study-abroad programs?

Yes. Many students with diabetes successfully study abroad. Recent cases regarding students seeking to participate in study-abroad programs suggest that Section 504 and the ADA apply to U.S. institutions that provide educational opportunities abroad. Mobility International USA, www.miusa.org, provides extensive practical and legal information for students with disabilities seeking to travel abroad, including its *Rights and Responsibilities: A Guide to National and International Disability Related Laws for International Exchange Organizations and Participants* (2d ed. 2005), www.miusa.org/publications/books/altformats/RR%20book.pdf.

Notes to Chapter 6

¹ **6.3** *Preparing Students with Diabetes for Life at College* provides useful suggestions for students and parents as they create a practical diabetes medical management plan for college. David C. Mellinger, *Preparing Students with Diabetes for Life at College*, *Diabetes Care* 26:2675 (2003), <http://care.diabetesjournals.org/content/26/9/2675.full>. For resources on health insurance options, see www.diabetes.org/living-with-diabetes/treatment-and-care/health-insurance-options.

² **6.4** The Department of Education's regulations implementing Section 504 explicitly clarify that colleges may not discriminate in any part of their curriculum or program:

No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

34 C.F.R. § 104.43(a). Some colleges are more proactive than others in meeting this anti-discrimination obligation. For example, the University of Connecticut has a detailed policy for students who need modifications in housing and dining services based on their disability. While colleges will vary widely in their policies, UConn provides an example of how a college can work to accommodate the non-academic needs of their students. Center for Students with Disabilities, University of Connecticut, *Student Handbook: Accommodations and Services for Students with Disabilities, Residential Accommodations and Information*, www.csd.uconn.edu/handbook_5m.html.

Finally, a college will violate Section 504 and the ADA where it excludes a student from housing, dining, or other programs for fear of a student's disability. See *Coleman v. Zatechka*, 4 NDLR (LPR) 52 (D. Neb. 1993) (violation of Section 504 and ADA when college refused to assign a roommate to a person with cerebral palsy because it believed other students would be uncomfortable).

³ **6.5** The Department of Justice has provided criteria for determining the applicability of the ADA to fraternities and sororities. For these guidelines, see the Department of Justice Letter, http://www.justice.gov/crt/foia/readingroom/frequent_requests/ada_coreletter/cltr129.txt, sent to Senator Trent Lott on May 2, 1994 by Deval Patrick, Assistant Attorney General. See also Adam J. Eckstein & Daniel J. McCarthy, *Does the Americans with Disabilities Act Apply to Fraternity Houses?*, 106 *Fraternal Law* 1 (2008).

⁴ **6.7** Decisions to exclude a student from physical education or athletics because of safety concerns must not be based on subjective fears but on objective and justifiable medical evidence. Compare *Rancho Santiago Cmty. Coll.* (student improperly barred from enrolling in physical education course because instructor was "afraid she would get hurt"), 3 NDLR (LRP) 52 (OCR 1992) with *Knapp v. Nw. Univ.*, 101 F.3d 473 (7th Cir. 1996) (basketball scholarship winner properly prevented from playing because of heart condition college perceived as dangerous based on substantial medical evidence).

7. What Can I Expect in Internships, Clinics, and Work?

In clinics, internships, and paid jobs, whether on or off campus, you should know your rights under the Americans with Disabilities Act and Section 504. While the ways that these laws protect you are somewhat different than in the classroom context, as long as you are qualified for your position, you cannot be discriminated against because of your diabetes or be denied reasonable modifications or accommodations. This chapter focuses principally on your college's responsibility to ensure that you are not subject to discrimination in these settings.

7.1 What are some examples of discrimination student workers with diabetes may face?

The following scenarios demonstrate some of the ways in which a student with diabetes may be subject to discrimination:

- A nursing student in a clinical course needs to be able to take a short break and test her blood glucose. She is told by her supervisor that she cannot do this because it would be unfair to other students.
- A student teacher at an elementary school is constantly harassed and insulted by his co-workers whenever he tests his blood glucose. One day, he is late to class because he woke up with severe hypoglycemia and had to take time to raise his blood glucose before driving. He is terminated from the program.
- A student is offered a job with her campus public safety department. Upon finding out that she has an A1C level of 8.2 in her pre-employment physical, the college rescinds its job offer.

7.2 What rights do I have in clinical programs and internships?

Colleges must provide equal access to qualified students with disabilities in all of their programs. Therefore, just as colleges cannot discriminate against people with disabilities in housing and athletics, they also cannot discriminate against students with disabilities who participate in college-sponsored practical training courses and programs. Students have the right to participate equally in these programs, and colleges, under certain circumstances, must provide reasonable modifications. However, colleges need not permit students to participate in these programs if they present a safety risk or if modifications will result in an undue burden or fundamental alteration of the program.

Examples of students in such programs include: an undergraduate placed with a local social service provider completing an internship for academic credit; a nursing student doing clinical rotations; and a law student representing low-income clients in a law school clinic.

Further, your college has an obligation to ensure that it does not assist outside programs and activities that discriminate against qualified individuals with disabilities.

For example, your college should not provide assistance to a law enforcement agency that refuses to offer internships to individuals with diabetes. In some cases, your college may need to help you get the reasonable modifications you need to be able to fulfill the requirements of a position.¹

7.3 What rights do I have as an employee of my college?

In addition to being a student, you may also be an employee of your college. You can be both a student and an employee at the same time. For example, you may take classes full-time but also get paid to work at the dining hall or do research for a professor. There are several laws that may protect you as an employee. You must be paid for your work in order to be considered an employee, as volunteers are not considered employees.

Title I of the ADA (if the college employs 15 or more people) and Section 504 (if the college receives federal funding) prohibit colleges from taking any adverse employment action against applicants and employees because of their disability. This means that colleges cannot discriminate in hiring, firing, discipline, pay, promotion, job training, fringe benefits, or in any other term or condition of employment. They also must provide reasonable accommodations if requested. Colleges are also prohibited from retaliating against employees for asserting their rights.

Colleges need not hire or retain employees who are unqualified to perform their jobs or who present a safety risk. Further, they do not need to provide accommodations that will result in undue hardship, defined as requiring significant difficulty or expense.

Further, the Family and Medical Leave Act (FMLA) may provide job protection for some employees. This law provides for up to 12 weeks of unpaid leave, which can be taken on an intermittent basis, such as for doctor's appointments or for a few hours at a time. However, this law only protects employees who have worked for at least 1250 hours for 12 consecutive months. Therefore, it does not apply to most students who work part-time during school. For more information on the FMLA, go to the Department of Labor's website at www.dol.gov/whd/fmla/index.htm.²

7.4 What rights do I have in off-campus jobs or in jobs I take after graduation?

The same protections apply in off-campus jobs as on-campus jobs. Title I of the ADA (if the employer employs 15 or more people) and Section 504 (if the employer receives federal funding) prohibit employers from taking any adverse employment action against employees and applicants because of their disability. The FMLA may also apply.

For employment outside of the control of your college, the American Diabetes Association has created extensive materials on employment discrimination for both employees and their attorneys. For more information call 1-800-DIABETES or go to www.diabetes.org/living-with-diabetes/know-your-rights/discrimination/employment-discrimination.

7.5 What types of modifications and accommodations might I be entitled to?

Reasonable modifications and accommodations are adjustments that permit qualified applicants, program participants, and employees to participate in the application process or perform essential functions of the position. In the internship and clinical context, these are technically known as “modifications.” In the context of paid work, these are known as “accommodations.”

In plain English, these are changes that help people with diabetes compete for a wide range of positions, excel in their work, and get fair treatment. Most people with diabetes only need minor changes that can be provided at little or no cost. Some changes that you might request include:

- Breaks to test blood glucose levels, eat a snack, take medication, or use the bathroom
- A place to rest until blood glucose levels become normal
- The ability to keep diabetes supplies and food nearby
- If requested, a private area to test blood glucose or administer insulin
- A modified schedule or a standard shift as opposed to a swing shift
- For individuals with diabetic neuropathy (a nerve disorder caused by diabetes), permission to use a chair or stool
- For individuals with diabetic retinopathy (a vision disorder caused by diabetes), large screen computer monitors or other assistive devices
- Modifications to attendance policies

For more information on reasonable modifications and accommodations, go to: www.diabetes.org/living-with-diabetes/know-your-rights/discrimination/employment-discrimination/reasonable-accommodations-in-the-workplace.

7.6 What if my internship or job supervisor is afraid I cannot work safely?

You should not be subject to discrimination based on stereotypes or fears. For example, it would be discrimination if your supervisor, upon finding out you use insulin, prohibits you from driving a college vehicle because of fear that you will pass out from hypoglycemia, even though you have never had a severe episode of hypoglycemia. However, if your supervisor has objective, factual evidence that indicates you may not be able to do your job safely, your supervisor may further investigate your qualifications to work. For example, if, while driving for your job, you have had several incidents of hypoglycemia which have required the assistance of others, you might not be qualified for your position.

Your supervisor also needs to explore possible reasonable accommodations that will permit you to do your job safely. For example, if your supervisor prohibits all people from taking breaks during their shift or having food and drink at their desk, and this puts you at risk of hypoglycemia, your supervisor may be required to grant you the reasonable accommodations of breaks to check your blood glucose and permission to eat and drink at your desk in order to eliminate this risk.³

Notes to Chapter 7

¹ **7.2** Section 504 regulations provide that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance. 34 C.F.R. § 104.4(4). Recipients, in providing any aid, benefit, or service, may not, directly or through contractual relationships, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or service. 34 C.F.R. § 104.4(b)(1)(v). See, e.g., *Darian v. Univ. of Mass. Boston*, 980 F. Supp. 77 (D. Mass. 1997) (court considering adequacy of reasonable modifications provided to a nursing student doing clinical rotations, ultimately holding that further modifications would result in a substantial modification of program); *Pushkin v. Regents of Univ. of Colo.*, 658 F.2d 1372 (10th Cir. 1981) (holding medical school illegally discriminated against an individual with multiple sclerosis by denying him admission to its psychiatric residency program because university officials felt patients would be disturbed by interacting with Dr. Pushkin based on his physical appearance).

Further, postsecondary institutions must ensure that other educational programs or activities not wholly operated by the recipient, yet benefiting its students, provide an equal opportunity for participation of qualified individuals with a disability. 34 C.F.R. § 104.43(b). State-run colleges have similar obligations under Title II of the ADA. 28 C.F.R. § 35.130(b)(1)(v). Postsecondary institutions may be obligated to make modifications to ensure nondiscrimination, even through contractual relations. For example, in *San Jose State Univ. (CA)*, OCR found that the college had violated both Section 504 and the ADA when it failed to provide modifications to a student in an internship. 4 NDLR (LRP) 358 (OCR 1993). In this case, a student with a learning disability was placed at a county social services agency and his supervisor assigned him to a workstation he was unable to use. *Id.* at 10. Although the student requested modifications, his college was unresponsive, and, because of this failure to provide modifications, he was unable to complete the internship and received no credit. *Id.* at 12.

² **7.3** Student workers who have been hired by and are paid by their college should be considered employees. See, e.g., *Cuddelback v. Fla. Bd. of Educ.*, 381 F.3d 1230, 1234-35 (11th Cir. 2004) (paid researcher also completing course requirements was an employee under analogous Title VII standard). In *Cuddelback*, the Eleventh Circuit analyzed whether the graduate student assistant was an employee using the “economic realities,” finding that the student qualified as an employee under this balancing test. See also *Clackamas Gastroenterology Assoc., P.C., v. Wells*, 538 U.S. 440 (2003) (stating factors for determining if an individual is an “employee”); *McInerney v. Rensselaer Polytechnic Inst.*, 35 NDLR (LRP) 218 (2d Cir. 2007) (Ph.D. candidate who was also paid researcher not required to exhaust administrative remedies under ADA Title I because had claims under Title III); *But see Pollack v. Rice Univ.*, 1982 U.S. Dist. LEXIS 12633 (S.D. Tex.), *aff’d mem.* 690 F.2d 903 (5th Cir. 1982) (paid services incidental to scholastic program). See James Rapp, Education Law § 6.05[8][c] (collecting cases on coverage of employees under Title VII).

When a student is not financially compensated for his or her labor, courts generally hold that the student is not an “employee.” *Jacob-Mua v. Veneman*, 289 F.3d 517 (8th Cir. 2002) (student not employee because no compensation).

Where individuals are paid, but not by the agency with which they are placed to perform work required by an academic program, they may not have an employment claim against that agency because they may not be viewed as its employee. See *O’Connor v. Davis*, 126 F. 3d 112 (2d Cir. 1997) (Title VII claims for sexual harassment against hospital, where psychiatry intern worked and was paid by college through the Federal Work Study Program, were dismissed because intern was not an employee of hospital.) However, even if students do not have a claim against their placement site, they may have a possible claim against their college if their college provides support to the agency. For more information on this, see Question 7.2.

³ 7.6 There are two ways that you may be excluded based on safety concerns. First, your supervisor may establish that you pose a “direct threat.” Second, your supervisor may establish uniform safety standards applicable to all individuals and establish that these qualify as a “business necessity” (employment) or that modifying these standards would represent a “fundamental alteration” (program or activity). In all cases, these defenses must be based on objective individualized evidence, not generalized stereotypes about people who have a diagnosis of diabetes.

There is no published case law on safety considerations for students with diabetes. However, several cases involving students with other disabilities establish that colleges may use objective criteria to individually assess whether a student may safely participate in a program. In *Se. Cmty. Coll. v. Davis*, the Supreme Court determined that the plaintiff, a deaf nursing student, was not otherwise qualified for the nursing program because “nothing less than close, individual attention by a nursing instructor would be sufficient to ensure patient safety if [she] took part in the clinical phase of the nursing program.” 442 U.S. 397, 409 (1979). Similarly, in *Doe v. N.Y. Univ.*, the Second Circuit found that a medical school did not need to readmit a student with a history of mental illness to its program, since the school had demonstrated a significant “risk that her mental disturbances [will] recur, resulting in behavior harmful to herself and others.” 666 F.2d 761, 777 (2d Cir. 1981).

Conversely, in *Pushkin v. Regents of the University of Colorado*, the Tenth Circuit held that a medical school illegally discriminated against an individual with multiple sclerosis by denying him admission to its psychiatric residency program. 658 F.2d 1372 (10th Cir. 1981). In this case, university officials felt that patients would be disturbed by interacting with Dr. Pushkin based on his physical appearance, because he would, in the words of the admissions committee chairman, “elicit[] strong feelings in people. Whether it’s pity, whether it’s concern, whether it’s ‘My God, I’m glad it’s not me,’ it stirs up a lot of things and it seems very clear that many things would be stirred up in his patients with that problem.” *Id.* at 1388. The court found that the university’s reasons for rejecting Dr. Pushkin were “based on misconceptions or unfounded factual conclusions, and that reasons articulated for the rejection other than the handicap encompass[ed] unjustified consideration of the handicap itself.” *Id.* at 1387.

In the employment context, safety issues concerning applicants and employees with diabetes are frequently litigated under Title I of the ADA. Individuals who are engaged in paid employment may directly draw on this law. Students in internships and clinics may consider making arguments by analogy to this distinct area of the law. The Equal Employment Opportunity Commission has issued useful guidance on workplace safety issues – see, for instance:

Questions and Answers about Health Care Workers and the Americans with Disabilities Act, www.eeoc.gov/facts/health_care_workers.html.

Questions and Answers About Diabetes in the Workplace and the Americans with Disabilities Act, www.eeoc.gov/facts/diabetes.html.

Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA), www.eeoc.gov/policy/docs/guidance-inquiries.html.

8. How Are Disagreements Resolved?

You should make every reasonable effort to reach a consensus regarding any dispute you may have with your college. If a consensus cannot be reached, a number of methods are available to resolve disagreements. The available options may differ depending on which law gives rise to the right being asserted; this chapter discusses the options available under the federal laws that protect individuals with diabetes.

8.1 How are anti-discrimination laws enforced?

A number of options are available to you if you believe you have been discriminated against. Some of the options that may be available and should be considered include:

- Mediation (an informal process where the parties, often with the help of a neutral third party, attempt to negotiate a solution)
- Internal college grievance procedures
- Complaints to federal or state enforcement agencies
- Lawsuits in federal or state court

8.2 What grievance procedures may be available at my college?

Public and private colleges must provide notice of their compliance with Section 504, designate a coordinator, and implement grievance procedures for students, employees, and others. Under Section 504, specific grievance procedures must be established for students and employees but not for applicants, although schools are not permitted to discriminate against applicants. State-run and private colleges must also comply with the ADA. While there are some technical differences, many colleges choose to use one policy to meet the requirements of both Section 504 and the ADA.

For educational matters, a small number of private religious colleges that receive no federal funding are not covered by either Section 504 or the ADA. Nevertheless, they may have anti-discrimination policies and grievance policies that may be pursued. For employment matters, private religious colleges that employ 15 or more people are still subject to the employment provisions of Title I of the ADA. For further information regarding the applicability of the ADA and Section 504 to colleges, see Questions 2.6 and 7.3.¹

8.3 Which federal agencies investigate disability law complaints involving colleges?

The U.S. Department of Education Office for Civil Rights (OCR) investigates and enforces complaints of discrimination related to college programs and services under Section 504 (if the school's federal funding comes through the Department of Education, as it normally will). The Department of Justice has jurisdiction over such

complaints of discrimination under the ADA. In practice, OCR will investigate all complaints against public colleges and private colleges covered by Section 504. The Department of Justice will investigate complaints against non-religious private colleges that receive no federal funding.

The Equal Employment Opportunity Commission (EEOC) investigates complaints of discrimination under the ADA by employees and applicants against employers.

8.4 How is a federal complaint filed?

A Department of Education OCR complaint may be filed by mail, by fax, online, or in person at an OCR office. While no special form is required, the complaint must be in writing and should state what the person is complaining about, who has been discriminated against, when the discrimination occurred, be signed and dated, and provide contact information. According to OCR, oral allegations, anonymous correspondence, courtesy copies of correspondence or complaints filed with other agencies, and inquiries that seek advice or information but do not seek action or intervention from OCR are not considered complaints and will not trigger an investigation.

- Information on filing complaints with OCR is available at www.ed.gov/about/offices/list/ocr/know.html. Complaints must be filed within 180 days of the alleged discrimination.
- Information on filing complaints with the Department of Justice is available at www.ada.gov. Complaints must be filed within 180 days of the alleged discrimination.
- Information on filing complaints with the EEOC is available at <http://www.eeoc.gov/employees/charge.cfm>. Complaints must be filed within 180 days (or 300 days if there is a state or local fair employment practices agency) of the alleged discrimination.

8.5 When should litigation be considered?

Filing a lawsuit should be viewed as a last resort for education discrimination complaints, partly because of the time required for a lawsuit to be resolved and partly due to the deference often granted to colleges in academic decisions. Efforts to educate and negotiate with your college should be pursued whenever possible. While there are several informal and administrative remedies you can pursue, you may also proceed directly to court.

For employment discrimination, you must file an administrative complaint through the EEOC or state or local fair employment practices agency before proceeding to court. If you do not file an administrative complaint, you will lose your right to go to court.²

Notes to Chapter 8

¹ **8.2** Both public and private colleges have several obligations under Section 504. To receive funds, they are required to give written assurance that their programs and activities will be operated in compliance with Section 504. 34 C.F.R. § 104.5. They must also disseminate their policies prohibiting discrimination. For recipients that employ 15 or more persons, the regulations require that they “take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of [disability] in violation of section 504.” 34 C.F.R. § 104.8(a). If a recipient employs fewer than 15 employees, the Department of Education may nevertheless require compliance with the above notice and designation requirements. 34 C.F.R. § 104.9. Colleges are also required to appoint a Section 504 coordinator and develop grievance procedures for current students. 34 C.F.R. § 104.7(a). The above notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). 34 C.F.R. § 104.8(a). However, “procedures need not be established with respect to complaints...from applicants for admission to postsecondary educational institutions.” 34 C.F.R. § 104.7(b).

State-run colleges are covered under Title II of the ADA. Under Title II, a “public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of [the ADA] and its applicability to the services, programs, or activities of the public entity.” 28 C.F.R. § 35.106. It must do this “in such a manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them.” *Id.* Public entities that employ 50 or more persons must “adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited” by the ADA. 28 C.F.R. § 35.107(b). They must also “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities” and provide notice of this coordinator. 28 C.F.R. § 35.107(a).

Private non-religious colleges are covered under Title III of the ADA. Under Title III, individuals usually enforce their rights through private lawsuits rather than administrative procedures. *See generally* 28 C.F.R. Part 36, Subpart E. The Department of Justice will also receive complaints and may undertake investigations and compliance reviews. 28 C.F.R. § 36.502.

² **8.5** In education cases, Section 504 and both Title II and Title III of the ADA do not require that you pursue mediation, grievance procedures, a state hearing, or even a complaint with the Office for Civil Rights or Department of Justice before filing litigation. For education claims, the time within which a judicial claim must be filed can vary. This is because federal law frequently adopts the most analogous state statute of limitations and, therefore, the precise limitation applicable may differ from jurisdiction to jurisdiction. Some movement is being made to provide greater consistency. Federal law now provides a uniform limitations of four years for “civil actions arising under an Act of Congress enacted after” December 1, 1990, where a limitations is not otherwise prescribed. 28 U.S.C. § 1658. It is very important to determine the time within which judicial review must be sought.

Administrative exhaustion is required in employment cases. In this context, the ADA adopts Title VII exhaustion requirements and limitations. 42 U.S.C. § 12117(a) (“The...procedures set forth in section[] ...2000e-5...of this title shall be the procedures this subchapter provides”). An employee must file an administrative “charge of discrimination” within 180 days (or 300 days in states with a state or local fair employment practices agency). 42 U.S.C. § 12117(a), *adopting* 42 U.S.C. § 2000-5(e)(1). After the administrative investigation is complete, the individual will receive a Notice of Right to Sue, and must then file a lawsuit within 90 days under federal law.

9. How Can I Get the Modifications I Need on Standardized Tests and Licensing Exams?

Standardized testing agencies and licensing agencies are prohibited from discriminating against otherwise qualified individuals with disabilities. They must provide reasonable modifications to such individuals. Students taking a variety of exams—including the SAT, ACT, GRE, and LSAT—may request reasonable modifications in the administration of these exams. Similarly, individuals taking nursing, medical, law, and other professional licensing exams may make such requests.

Even if you have never before sought modifications, you may need to request simple modifications. For example, you may use an insulin pump and never have had an issue with your college. However, a bar exam may have a strict prohibition on all electronic devices. In this case, you would need to request advance authorization in order to enter the testing site with your insulin pump.

9.1 What laws protect test takers?

The same laws that protect college students also protect test-takers with disabilities:

- The Americans with Disabilities Act (ADA)
- Section 504 of the Rehabilitation Act (Section 504)

The ADA applies to testing and licensing agencies, except that it does not apply to those operated by religious institutions. Title II applies to state-run agencies such as the New York State Board of Law Examiners. Title III applies to private agencies such as the College Board, which administers the SAT and AP exams.

Section 504 applies to all agencies that receive federal funds. Unlike colleges, which typically receive federal funds, testing agencies may very well receive no such funds.

Many states also have laws that prohibit discrimination against individuals with disabilities, but these vary from state to state. Federal law takes precedence over state laws which provide weaker protections against discrimination. For example, if a state does not have any specific laws outlawing disability discrimination, agencies are still required to comply with applicable federal laws, including the ADA and Section 504.¹

9.2 Will score reports indicate that I used modifications?

It depends on the test and type of modifications. For most tests used for undergraduate admissions, the use of modifications is not indicated in any way. This means that when a college or scholarship agency receives a score report from the PSAT, SAT, AP, and ACT, it has no way of knowing if any modifications were used. If you are taking another exam for undergraduate admissions, you should investigate whether the score report will indicate the use of modifications.

However, for other types of exams, some score reports may indicate or “flag” that the test was taken under “non-standard conditions.” Policies for standardized tests designed for graduate admissions such as the MCAT, LSAT, and GRE, or licensing exams such as medical and nursing boards and bar exams, vary widely.

On some exams, whether or not the score report notes “nonstandard conditions” depends on the types of modifications used. For example, if you receive extra time to work on an exam, your report might receive a “non-standard” notation. However, if you only receive authorization to use an insulin pump (modifying a policy banning electronic devices) or to have an extended break between sections to eat and check your blood glucose (modifying the schedule, but not the amount of time to complete the exam) your score report may not receive this notation. It is essential that you investigate these policies well in advance, inquiring directly with the agency if you have any questions.

Even if your score report notes that you received modifications, colleges and graduate schools must not discriminate against you on the basis that you have taken an exam under non-standard conditions.²

9.3 What types of modifications should be requested?

Students with diabetes generally need two types of modifications: permission to have diabetes care supplies with them in the testing area and modifications to the testing schedule.

Testing agencies have very strict requirements on what may be brought into the testing room. You should ensure that you receive authorization for the following:

- Access to your blood glucose testing supplies
- Access to snacks and drinks to treat hypoglycemia or hyperglycemia
- Access to your insulin pump and/or continuous blood glucose meter (some testing centers ban all electronic devices unless advance permission is obtained)

Testing agencies also have strict limits on how and when breaks must be taken. While it may not be reasonable for students with diabetes to receive more time to complete a test, e.g., double time, it may be reasonable for students to receive additional, extended, or as-needed breaks in order to treat their diabetes, including testing blood glucose, injecting insulin, eating, drinking, and using the restroom. For more information on breaks, see Question 5.3. You should be aware that, in some situations, you may be assigned to a separate room, depending on the modifications you receive.

9.4 When should I ask for modifications?

Because the process of obtaining modifications can take several months, it is essential to check the requirements well in advance and to take into account both agency deadlines and deadlines for applications and scholarships. If possible, you should make requests well in advance in case any complications arise. For example, if you want to be considered for the National Merit Scholar Program, you need to take the PSAT in the beginning of your junior year of high school. This means you should begin the request

process in the spring of sophomore year. If you plan to take a state bar exam, you should request modifications as soon as it is possible to register.

In some situations, it may be advisable to schedule your exam on an earlier administration date in case there is a problem in your modifications being granted. If you do this—even if the testing agency is clearly at fault in making an error or delaying a decision on your modifications—you will still be able to take the exam on a later date, enabling you to meet all of your application deadlines for colleges, graduate schools, other programs, and scholarships.

9.5 What documentation should I provide in order to receive modifications?

You must provide documentation which justifies the need for reasonable modifications. The documentation must come from an appropriate expert, be fairly recent, and sufficiently comprehensive. While the requirements may differ in form from test to test, documentation should include the following general elements:

- 1. A diagnosis of your diabetes along with its symptoms;*
- 2. An explanation of how your diabetes is a disability; and*
- 3. A request for specific modifications along with a clear rationale for why these modifications are appropriate.*

Each agency has its own procedures for providing required documentation. Often, there are separate requirements and/or forms for different types of disabilities. Typically, diabetes will be classified as a physical disability or chronic health disability. Sample medical documentation for both type 1 and type 2 diabetes are included in the Appendix at the end of this guide.

9.6 What should I do on exam day?

There are several steps you can take to avoid problems and protect yourself on the day of your exam. You may confront two different issues. First, your agency may make a mistake in the administration of your exam or deny you the modifications it had previously agreed to. Second, you may experience hypoglycemia or hyperglycemia or other diabetes-related complications that affect your ability to take your exam.

Because these problems can, unfortunately, arise at any time, you should take the following precautions each time you take an exam:

- Arrive early so you will have time to address any problems that may arise;
- Bring all of your documentation, including a copy of your accommodations letter, medical documentation, and any correspondence with the agency;
- Bring the direct phone number for the appropriate agency office so that you can immediately contact it if any problems occur; and
- Document any diabetes-related symptoms that you experience during your exam.

If your proctor questions your modifications or seeks to change them, you should immediately explain to your proctor your entitlement to these modifications and contact

the department of the agency that granted the modifications or other appropriate office. Many testing agencies have an on-call official to handle exam-day problems. Your agency has a legal obligation to provide you with the modifications that it has itself agreed to.

If you think you are experiencing hyperglycemia or hypoglycemia and choose not to complete the test, ensure that you record your blood glucose levels and other symptoms. As soon as possible, contact your doctor to obtain written confirmation of your medical condition. In some cases, you may be able to retake an exam if it is due to illness. Presenting objective evidence of your illness can be helpful, as it will permit you to differentiate your condition from inexcusable reasons like avoidable lack of preparation or sleep.

9.7 Must I have received modifications in school in order to receive modification on standardized tests and licensing exams?

No. However, you must justify your needs for any modifications. You must provide proper medical documentation, ensure that requests are timely, and explain why each requested modification is necessary. While it is true that you must be diagnosed with a specific disability to receive modifications, there is no requirement that you demonstrate a prior history of disability or modifications. As per federal regulations, private testing agencies must take into account modifications you have received under the IDEA and Section 504.³

9.8 How are disputes resolved?

Often, agencies have an internal review process. You may also make a complaint with the Department of Justice or file a complaint directly in court under the ADA or state and local law. For more information on resolving disputes, see Chapter 8.

9.9 What are some of the major standardized tests and licensing exams and where can I find their procedures?

Below is a representative sample of some of the most commonly taken exams and information on the sponsoring agency, along with contact information.

Undergraduate (Title III of the ADA):

- College Board Services for Students with Disabilities (PSAT, SAT, and AP):
 - (609) 771-7137
 - www.collegeboard.com/ssd/student/index.html (general information)
 - professionals.collegeboard.com/testing/ssd/accommodations/breaks (guidance on breaks)
- ACT Services for Students with Disabilities:
 - (319) 337-1000
 - <http://www.act.org/aap/disab>
- International Baccalaureate:
 - (212) 696-4464 (Services for Students with Disabilities)
 - www.ibo.org/programmes/pd/special

Graduate (Title III of the ADA):

- ETS (including GRE, TOEFL, and PRAXIS)
 - (866) 387-8602
 - www.ets.org (go to “resources for test takers with disabilities”)
- Law School Admission Council (LSAT)
 - (215) 968-1001
 - www.lsac.org/JD/LSAT/accommodated-testing.asp (general information)
 - www.ada.gov/lisac.htm (settlement agreement between Department of Justice and LSAC regarding documentation requirements for examinees with physical disabilities)
- Association of American Medical Colleges (MCAT)
 - accommodations@aamc.org
 - www.aamc.org/students/applying/mcat/accommodations

State Licensing Agencies (Title II of the ADA) – examples include:

- State Bar of California
 - <http://admissions.calbar.ca.gov/Examinations/CaliforniaBarExam.aspx>
- New York State Board of Law Examiners
 - www.nybarexam.org/ADA/ADA.htm (general information)
- California Board of Registered Nursing
 - www.rn.ca.gov/applicants/lic-exam.shtml (general examination information)
 - www.rn.ca.gov/pdfs/applicants/exam-app.pdf (application package, including ADA requests)

Private Licensing Exam Agency (Title III of the ADA):

- Pearson VUE (administers NCLEX nursing examination, required by many state boards of nursing)
 - www.vue.com/nclex

Notes to Chapter 9

¹ **9.1** Regulations implementing the Americans with Disabilities Act clarify that tests must measure aptitude and achievement, not disability. The regulations implementing Title III of the ADA, in the context of private testing agencies, such as the SAT or MCAT, provide that:

(1) Any private entity offering an examination covered by this section must assure that –

(i) The examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills[.]

28 C.F.R § 36.309(b)(1)(i). While the regulations implementing Title II of the ADA—which apply to state licensing exams—have no similar explicit language, the Final Rule clarifies that, in the Department of Justice's opinion, such language was not explicitly needed:

Several commenters suggested that this part should include the section of the proposed Title III regulation that implemented section 309 of the Act, which requires that courses and examinations related to applications, licensing, certification, or credentialing be provided in an accessible place and manner or that alternative accessible arrangements be made. The Department has not adopted this suggestion. The requirements of this part, including the general prohibitions of discrimination in this section, the program access requirements of subpart D, and the communications requirements of subpart E, apply to courses and examinations provided by public entities. The Department considers these requirements to be sufficient to ensure that courses and examinations administered by public entities meet the requirements of section 309. For example, a public entity offering an examination must ensure that modifications of policies, practices, or procedures or the provision of auxiliary aids and services furnish the individual with a disability an equal opportunity to demonstrate his or her knowledge or ability. Also, any examination specially designed for individuals with disabilities must be offered as often and in as timely a manner as are other examinations.

Nondiscrimination on the Basis of Disability in State and Local Government, 56 Fed. Reg. 35694 (July 26, 1991) (analysis of § 35.130, General Prohibitions Against Discrimination).

² **9.2** While most tests for undergraduate admissions no longer flag tests, others may continue to be flagged. See College Board, *Frequently Asked Questions about the College Board's Decision To Drop Flagging From Standardized Tests* (July 2002), www.collegeboard.com/prod_downloads/about/news_info/SATFlagFAQ72402B.pdf. Even if a score report is flagged by the agency administering the test, entities making admissions and licensing decisions may not give different weight to scores achieved on tests taken under nonstandard conditions. *Compare SUNY Health Sci. Ctr. at Brooklyn (NY)*, 5 NDLR (LRP) 77 (Aug. 18, 1993) (finding violation of Section 504 when members of admissions committee admitted devaluing or weighing differently Medical College Admissions Test (MCAT) score reports that were flagged because of nonstandard administration) *with Med. Coll. of Pa. (PA)*, Case No. 03-92-2014 (OCR 1994) (finding no violation where no evidence college inappropriately considered information about nonstandard admissions).

³ **9.7** Private agencies must consider IEPs and Section 504 Plans: "When considering requests for modifications, accommodations, or auxiliary aids or services, the entity [must assure that] considerable weight [is given] to documentation of past modifications, accommodations, or auxiliary aids or services received in similar testing situations, as well as such modifications, accommodations, or related aids and services provided in response to an Individualized Education Program (IEP) provided under the Individuals with Disabilities Education Act or a plan describing services provided pursuant to section 504 of the Rehabilitation Act of 1973[.]" 28 C.F.R § 36.309(b)(1)(v).

Appendix

Sample Request for Accommodations Letter

This form may be used as a template to request accommodations from your college or testing agency, as discussed in Questions 4.4 and 9.5. It is important to specifically state you are asking for accommodations under the ADA and/or Section 504 and to explain that diabetes substantially limits your endocrine system functioning. Like all forms in this section, it must be adjusted and customized to your particular needs and circumstances. *Note: either “accommodations” or “modifications” are appropriate terms.*

Date

Name and Title of Professional

Office of Disability Services

Name of College

Address

Dear [Mr. Smith],

I am an incoming first-year student to the College of Liberal Arts at State University. I am writing to request accommodations for my diabetes under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Due to my disability, I require simple accommodations in order to participate in my academic program.

I have provided you with documentation of my disability and my need for accommodations. As the enclosed documentation indicates, I have diabetes. Diabetes is a disease that affects the way the body uses food. It occurs when the pancreas fails to produce insulin or does not produce insulin that the body can use. My diabetes, substantially limits the functioning of my endocrine system. Although diabetes cannot be cured, it can be managed. [I also have the following complications from my diabetes: neuropathy, retinopathy, etc.] I manage my diabetes by carefully monitoring my blood glucose levels throughout the day, adhering to a regular meal schedule, adjusting my [oral medication and/or insulin] according to my food intake and activity level, and balancing all these factors with any unexpected factors such as illness in order to keep my blood glucose levels where they need to be. This balancing act can be difficult, but the accommodations that I require are simple. They can be provided at no cost to [name of college], and should cause no disruption or impact academic standards.

My [endocrinologist Dr. Julia Garcia] has documented my need for specific reasonable accommodations. Please find [His/her letter] enclosed. These are the reasonable accommodations I formally request: [list each accommodation AND rationale for each, for example:

- *Permission to reschedule my exam if, at the time of the exam, my blood glucose is out of target range because either high or low blood glucose impairs my cognitive functioning;*
- *Permission to use a stool during my lab class because of my peripheral neuropathy which impacts my ability to stand for extended periods;*
- *Permission to take an extra break during my clinical rotations so that I can eat and drink in order to prevent hypoglycemia.]*

It is my belief that these reasonable accommodations will allow me to be an excellent student at [name of college]. I would like to have an initial meeting with you to discuss these accommodations at your earliest convenience or within the next two weeks.

Sincerely,

[Your Signature]

[Your Name]

Sample Medical Documentation for Type 1 Diabetes

You may provide this form to your health care professional to help him or her document your disability and need for reasonable accommodations, as discussed in Questions 4.4 and 9.5. This documentation should be on your health care professional's letterhead. As with all forms, this must be adjusted to your particular needs. *Note: either "accommodations" or "modifications" are appropriate terms.*



CITY HOSPITAL
DIVISION OF ENDOCRINOLOGY AND DIABETES
DR. JULIA GARCIA



Date

Name and Title of Professional

Office of Disability Services

Name of College

Address

Dear [*Mr. Smith*]:

My patient Jane Doe has been diagnosed with type 1 diabetes mellitus, a lifelong disease that substantially limits endocrine function. Specifically, Ms. Doe's body does not produce insulin. Insulin is necessary to convert glucose, which comes from food, into energy that the body can use. Because Ms. Doe has diabetes, she uses [*insulin through self-administration of injections via an insulin pen/insulin syringe multiple times a day/an insulin pump*] to manage her diabetes. Without these measures, Ms. Doe would [*die within days or weeks/experience increased urination, weight loss, kidney failure, diminished vision, and other complications*].

Ms. Doe must carefully monitor her blood glucose level to determine whether there is too much or too little glucose in her blood, and she must take action to correct for any high or low blood glucose levels. High blood glucose, or hyperglycemia, can cause Ms. Doe to experience tiredness, weakness, and other symptoms. Low blood glucose, or hypoglycemia, can cause Ms. Doe to feel shaky, confused, have difficulty speaking, and experience other symptoms.

It is my medical opinion that Ms. Doe must [*list accommodations needed*] because [*explain the need for each accommodation, e.g., permission to reschedule an exam if experiencing hyperglycemia or hypoglycemia because both can affect cognitive performance, permission to use a stool because this relieves her neuropathy, permission to take a break to eat during clinical rotations because this prevents hypoglycemia, etc.*]. With these accommodations, Ms. Doe can fully and safely participate in her academic program and meet all other program requirements.

Please do not hesitate to contact me at (555) 555-1212 if you have any questions.

Sincerely,

[*Signature*]

[*Julia Garcia, MD*]

CITY HOSPITAL . 123 MAIN STREET . ANYTOWN, NY 10000 . 555-555-1212 . FAX: 555-555-1213

Sample Medical Documentation for Type 2 Diabetes

You may provide this form to your health care professional to help him or her document your disability and need for reasonable accommodations, as discussed in Questions 4.4 and 9.5. This documentation should be on your health care professional's letterhead. As with all forms, this must be adjusted to your particular needs. *Note: either "accommodations" or "modifications" are appropriate terms.*



CITY HOSPITAL
DIVISION OF ENDOCRINOLOGY AND DIABETES
DR. JULIA GARCIA



Date

Name and Title of Professional
Office of Disability Services
Name of College
Address

Dear *[Mr. Smith]*:

My patient Jane Doe has been diagnosed with type 2 diabetes mellitus, a lifelong disease that substantially limits endocrine function. Specifically, Ms. Doe's body is not able to effectively use the insulin it produces. Insulin is necessary to convert glucose, which comes from food, into energy that the body can use. Because Ms. Doe has diabetes, she uses *[diet and exercise/oral medication/insulin through self-administration of injections multiple times a day via an insulin pen/insulin syringe/insulin pump]* to manage her diabetes. Without these measures, Ms. Doe would *[experience increased urination, weight loss, kidney failure, diminished vision, and other complications]*.

Ms. Doe must carefully monitor her blood glucose level to determine whether there is too much or too little glucose in her blood, and she must take action to correct for any high or low blood glucose levels. High blood glucose, or hyperglycemia, can cause Ms. Doe to experience tiredness, weakness, and other symptoms. Low blood glucose, or hypoglycemia, can cause Ms. Doe to feel shaky, confused, have difficulty speaking, and experience other symptoms.

It is my medical opinion that Ms. Doe must *[list accommodations needed]* because *[explain the need for each accommodation, e.g., permission to reschedule an exam if experiencing hyperglycemia or hypoglycemia because both can affect cognitive performance, permission to use a stool because this relieves her neuropathy, permission to take a break to eat during clinical rotations because this prevents hypoglycemia, etc.]*. With these accommodations, Ms. Doe can fully and safely participate in her academic program and meet all program requirements.

Please do not hesitate to contact me at (555) 555-1212 if you have any questions.

Sincerely,

[Signature]
[Julia Garcia, MD]

CITY HOSPITAL . 123 MAIN STREET . ANYTOWN, NY 10000 . 555-555-1212 . FAX: 555-555-1213

Sample Accommodations Letter from College

This is an example of a typical accommodations letter that your college may provide to you for each of your classes. It is modeled on typical language from other colleges. As you will see, you may receive a general form letter that is more geared to individuals with learning disabilities than with chronic health conditions like diabetes. More than likely, your accommodations will be listed in the "other" category.

STATE UNIVERSITY
OFFICE OF DISABILITY SERVICES

Student: _____
Professor: _____

Date: _____
Course: _____

_____ has authorized the Office of Disability Services to inform you that s/he has been diagnosed with a medical condition for which State University has determined academic accommodation is appropriate. The reason for providing you with this information is so that you will understand the need the student may have for certain accommodations in your class. Documentation of the student's diagnosed condition is on file in this office. If you have any questions or need assistance regarding these accommodations, please contact the Office of Disability Services at (555) 555-1212 or ods@stateuniversity.edu.

Type of Disability/Medical Condition: _____

Accommodation(s):

Extended Time Testing:

_____ time and a half
_____ double time
_____ other: _____

Distraction reduced testing environment: _____

Use of computer for essay exams: _____

Extensions for assignments: _____

This student's condition warrants possible extension for written assignments. The student is responsible for providing reasonable notice to the professor that s/he is experiencing difficulty with submitting the assignment on time. The student has been instructed to discuss this possible accommodation with the professor. Also, the student has been told that this accommodation may be denied if it compromises the curricular goals of the course.

Other accommodations: _____

The student must return the white copy of this form to the Office of Disability Services in order to implement the accommodation(s). The professor retains the yellow copy for his/her files. The student retains the pink copy.

Office of Disability Services Administrator's Signature

Date

Student's Signature

Date

Professor's Signature

Date

Diabetes Basics for Students and Postsecondary Institution Officials

What is diabetes?

Diabetes is a disorder of the endocrine system which affects nearly 26 million Americans and is characterized by high blood glucose (sugar) levels resulting from defects in insulin secretion, insulin action or both. Individuals have diabetes if:

- they have classic symptoms including increased thirst and urination, weight loss, or blurry vision with a random blood glucose level of 200 mg/dl or greater;
- they have a fasting blood glucose level of 126 mg/dl or higher; or
- their blood glucose level rises to 200 mg/dl or higher two hours after a standard 75 gram oral glucose dose.

How does diabetes affect the endocrine system?

The endocrine system is a series of glands that produce and secrete hormones, which are released into the bloodstream and regulate many of the body's functions. The pancreas, one of the major glands of the endocrine system, is an organ responsible for making (in specialized cells called beta cells) and secreting insulin, a hormone that is used to regulate the level of glucose in the blood. In diabetes, the pancreas is unable to produce sufficient insulin, preventing the body from properly regulating glucose and converting it into energy.

Insulin has two major roles in regulating sugar metabolism in the body. When an individual is fasting, the liver must produce glucose to meet the needs of the brain and other organs that depend upon glucose for energy. Small amounts of insulin released by the pancreas's islet cells regulate the amount of glucose the liver produces, keeping the blood glucose levels in a narrow range. After eating, the digestive system, including the liver, changes sugars, starches, and other foods into glucose. The blood then carries this glucose to cells throughout the body. There, with the help of insulin, glucose enters the cells and is changed into quick energy for the cells to use or store for future needs. This process of turning food into energy is crucial, because the body depends on this energy for every action, from pumping blood and thinking to running and jumping. In people without diabetes, blood glucose levels go up and down throughout the day in response to food and the needs of the body. This is a finely tuned system that keeps blood glucose levels within the normal, healthy range.

In diabetes, something fundamental goes wrong with this process of turning food into energy. In a compromised endocrine system, the liver is not regulated by insulin, and, instead, produces large amounts of excess glucose, well beyond the body's needs. After eating, food is changed into glucose readily enough, but insulin is not present or cannot be used properly, resulting in even higher levels of glucose accumulating in blood and tissues, which has many harmful consequences.

What are the main types of diabetes?

There are three main types of diabetes, all of which substantially limit endocrine system function: type 1 diabetes, type 2 diabetes, and gestational diabetes:

In type 1 diabetes, the endocrine beta cells of the pancreas are destroyed and the pancreas cannot make insulin or makes only a tiny amount. Type 1 develops when the body's immune system destroys beta cells in the pancreas, the only cells in the body that make insulin. Thus, the body is no longer able to produce significant amounts of insulin, and a person with type 1

diabetes must receive insulin from an outside source (typically through injections or use of an insulin pump) in order to survive.

In individuals with type 1 diabetes, this profound limitation in endocrine system function, if untreated with insulin, causes death within a matter of days. Within a matter of hours, glucose will build up in the blood, accompanied by fat breakdown toxins called “ketoacids.” Elevated blood glucose levels will cause increased urination and result in dehydration. The person will become fatigued and, as ketoacids increase, will experience loss of appetite, followed by nausea and vomiting. This condition is called “diabetic ketoacidosis” (DKA). DKA can progress from nausea and vomiting to coma, shock, and death if left untreated.

Type 2 diabetes is a relentlessly progressive disease. In type 2 diabetes, the endocrine system retains the ability to make insulin, but cannot make enough to meet the body’s needs. It is generally believed that in people with type 2 diabetes the body’s cells cannot recognize insulin or use it as effectively as in people without diabetes (a condition known as insulin resistance). This causes the body to need more insulin to process the same amount of glucose. While the pancreas of a healthy individual is able to meet this increased demand for insulin, the pancreas of a person with diabetes cannot, resulting in a relative insulin deficiency and hyperglycemia (elevated blood sugar), causing short-term and long-term consequences.

Severe hyperglycemia is an immediate concern. An individual with type 2 diabetes can have a blood glucose level as high as 600-2,000 mg/dl (five to twenty times the normal blood glucose level, which is between 70 and 140 mg/dl). As a result of these high blood glucose levels, the person will exhibit excessive thirst and frequent urination because of the overflow of glucose into the urine. Left untreated, this increased urination will lead to severe dehydration. Although DKA is extremely rare in people with type 2 diabetes, they are susceptible to extreme dehydration, leading to another life-threatening condition called hyperosmolar hyperglycemic syndrome (HHS). HHS develops over days or weeks, but leads to confusion, hypotension (low blood pressure), shock, and eventually, to coma and death. HHS is fatal in as many as 50% of those who develop it.

Gestational diabetes develops during pregnancy (usually during the second or third trimesters) as a result of the endocrine system’s inability to produce sufficient insulin to respond to insulin resistance, which is a natural part of pregnancy. The pancreas works overtime to produce insulin, but the insulin produced does not adequately lower blood glucose levels, causing potentially severe complications for both the mother and the baby. Diabetes during the first trimester of pregnancy can cause major birth defects, and diabetes during the second and third trimesters can result in excessively large babies, which poses a risk to the mother and the child. Although gestational diabetes often disappears upon birth, 5% to 10% of women are immediately diagnosed with diabetes after pregnancy and women who have had gestational diabetes have a 40% to 60% chance of developing diabetes in the next 5-10 years.¹

What is hypoglycemia?

Hypoglycemia, also called “low blood glucose” or “low blood sugar,” refers to abnormally low blood glucose levels. Individuals who take insulin or certain oral medications, including sulfonylureas, are at risk for hypoglycemia. Hypoglycemia is typically caused by administering too much insulin, skipping or delaying meals or snacks, eating too little food, or exercising too long or too intensely. However, even with conscientious management, all individuals who take certain medications can unexpectedly experience hypoglycemia.

¹ Centers for Disease Control and Prevention: *National Diabetes Fact Sheet, 2011*, http://www.cdc.gov/diabetes/pubs/pdf/ndfs_2011.pdf.

Treating hypoglycemia at the first warning sign is essential in preventing more serious manifestations, such as confusion, loss of consciousness, and seizures. Early symptoms include shakiness, dizziness, hunger, headache, lightheadedness, moodiness, pallor, and confusion. As glucose levels fall further, loss of consciousness and seizures may result.

To treat hypoglycemia, people with diabetes should take rapidly absorbable sugar orally in the form of fruit juice, regular (not diet) soda, glucose tablets, or glucose gel. If they are unable to treat themselves, they may need to have someone inject them with the medication glucagon, which elevates glucose levels. Glucagon is injected like insulin and is available in an emergency kit by prescription. If an individual passes out and glucagon is not available, 911 must be called.

What is hyperglycemia?

Hyperglycemia, also called “high blood glucose” or “high blood sugar,” refers to abnormally high blood glucose levels. It occurs when the body gets too little insulin, food that is not covered by insulin, or too little exercise; it may also be caused by stress, menses, injury or an illness such as a cold. The most common symptoms of hyperglycemia are thirst, frequent urination, fatigue, and blurry vision. Medical studies also confirm that hyperglycemia can impact cognitive functioning. As noted above, in individuals with type 1 diabetes, untreated hyperglycemia can lead to DKA, and HHS in individuals with type 2 diabetes. While mild hyperglycemia can be self-treated by drinking extra water or diet drinks or administering supplemental insulin, both DKA and HHS are life-threatening conditions requiring immediate medical attention.

What are some of the long-term complications of diabetes?

High blood glucose levels cause a number of very serious long-term complications. Some of the more important long-term complications include:²

- *Heart disease and stroke:* adults with diabetes have heart disease death rates about 2 to 4 times higher than adults without diabetes. The risk for stroke is 2 to 4 times higher among people with diabetes.
- *Blindness and eye problems:* diabetes is the leading cause of new cases of blindness among adults aged 20–74 years.
- *Kidney disease:* diabetes is the leading cause of kidney failure, accounting for 44% of all new cases of kidney failure in 2008.
- *Nervous system disease:* about 60% to 70% of people with diabetes have mild to severe forms of nervous system damage.
- *Amputations:* more than 60% of nontraumatic lower-limb amputations occur in people with diabetes.
- *Depression:* people with diabetes are twice as likely to have depression, which can complicate diabetes management, than people without diabetes. In addition, depression is associated with a 60% increased risk of developing type 2 diabetes.

² *Id.*

Special Concerns about the Use of Alcohol

Alcohol can react dangerously with diabetes medications that lower blood glucose, including insulin and certain oral medications. Alcohol can cause hypoglycemia shortly after drinking and continuing for up to 8-12 hours after drinking. The symptoms of too much alcohol and hypoglycemia can be similar—sleepiness, dizziness, and disorientation. You do not want anyone to confuse hypoglycemia for drunkenness, because they might not give you the proper assistance and treatment.

Further, glucagon shots do not help severe low blood glucose caused by drinking. Glucagon shots treat severe low blood glucose reactions caused by too much insulin. Glucagon works by getting your liver to release more glucose into your blood. But alcohol stops this process. So you need to avoid letting a low blood glucose level become severe. If you pass out, you will need glucose injected into your bloodstream by a paramedic or other emergency health professional. You cannot rely on your friends like you otherwise might.

So, if drinking alcohol, it is best to limit the amount and check blood glucose before drinking and eat either before or while drinking. Blood glucose should be checked before going to bed to make sure it is at a safe level—between 100 and 140 mg/dL. If blood glucose is low, eat something to raise it.

Postsecondary Resources List

American Diabetes Association (www.diabetes.org/discrimination)

The Association is dedicated to eliminating discrimination against people with diabetes. The Association does not recommend specific attorneys, but is able to provide general information and assistance. Call 1-800-DIABETES for more information.

Association on Higher Education and Disability (www.ahead.org)

Many postsecondary institutions look to AHEAD for technical assistance to develop their disability policies.

Association of American Medical Colleges

(www.aamc.org/students/applying/mcat/accommodations)

The AAMC administers the MCAT.

College Board (www.collegeboard.com/ssd/student)

The College Board administers the PSAT, SAT, and AP exams.

Educational Testing Services (www.ets.org)

ETS administers the GRE, TOEFL, PRAXIS and other graduate-level standardized tests.

Equal Employment Opportunity Commission (www.eeoc.gov)

The EEOC is the federal agency responsible for enforcing the nation's laws prohibiting employment discrimination.

Law School Admissions Council (www.lsac.org/JD/LSAT/accommodated-testing.asp)

The LSAC administers the LSAT.

Mobility International USA (www.miusa.org)

Mobility International provides information for students participating in international exchange and study-abroad programs. It seeks to empower people with disabilities around the world.

National Collaborative on Workforce and Disability for Youth (www.ncwd-youth.info)

Funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), NCWD/Youth works to ensure that transition age youth are provided full access to high quality services in integrated settings to gain education, employment and independent living.

U.S. Dept. of Education/Office of Civil Rights (www.ed.gov/about/offices/list/ocr)

OCR is a division of the U.S. Department of Education responsible for resolving complaints of discrimination against educational institutions under Section 504 and the Americans with Disabilities Act.

Virginia Commonwealth University (www.going-to-college.org)

Virginia Commonwealth University, Rehabilitation Research and Training Center on Workplace Supports and Job Retention has developed a comprehensive interactive website for students with all types of disabilities who are transitioning to postsecondary education.