

They Can't All Have ADHD: Law School Assessments in the Age of Extended Time

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ABSTRACT—Accommodations on final exams for law students with ADHD have drawn criticism from law school students and faculty alike for creating a perceived unfair advantage over students without a reported disability taking the same exams. Further, law school administrations have seen a strain on resources related to available room space and proctors. This has led to calls to change the format of assessments to make such accommodations unnecessary or moot.

This article begins by providing a general background on ADHD and its prevalence in the legal community, from prospective law students to practicing attorneys. It will describe the symptoms of ADHD and their impact on students in professional school, including possible explanations for why many students are not diagnosed until adulthood. Then, the article will provide an overview of the legal framework on disability accommodations as it relates to ADHD. The article will progress to addressing specific concerns raised by, in particular, extended time and separate room accommodations. It will discuss the impact of these accommodations and provide further suggestions for formatting law school assessments in a fair way that more realistically trains law students for practice.

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I. INTRODUCTION

Accommodation requests from law students with disabilities are on the rise.¹ Anecdotally, some schools are seeing requests from as high as thirty percent of the students from a given class.² Due to the high prevalence of the disorder among law students and legal professionals, this article will focus specifically on Attention Deficit/Hyperactivity Disorder (ADHD)³ and will address two accommodations particularly relevant to students with ADHD: receiving extended time⁴ on assessments and the ability to complete the assessment in a separate room from classmates.

¹ See Scott DeVito, *The Kids Are Definitely Not All Right: An Empirical Study Establishing a Statistically Significant Negative Relationship Between Receiving Accommodations in Law School and Passing the Bar Exam*, 102 OR. L. REV. 1, 19 (2023).

² This number is based on conversations the author has had with faculty from multiple law schools; see also *id.* at 19 (reporting that the maximum percentage of accommodated students across sixty public law schools surveyed was 25.51% in 2021).

³ For an overview of ADHD and Autism Spectrum Disorder and the difficulties they may cause specifically in the classroom, see generally Heidi E. Ramos-Zimmerman, *The Need to Revisit Legal Education in An Era of Increased Diagnoses of Attention-Deficit/Hyperactivity and Autism Spectrum Disorders*, 123 DICKINSON L. REV. 113, 113–65 (2018) (offering suggestions for classroom teaching). This article will focus more narrowly on ADHD due to its higher prevalence in the legal profession and greater relevance to assessment design versus classroom teaching.

⁴ Colloquially, one might hear this accommodation referred to as “extra time.” The standardized testing community has begun to use the phrase “extended time” instead of “extra

A. What is ADHD?

ADHD is a neurodevelopmental disorder, or a disorder characterized by developmental deficits that lead to “impairments of personal, social, academic, or occupational functioning.”⁵ ADHD affects an estimated 4.4% to 5.0% of adults worldwide.⁶ There are two broad categories of ADHD: *inattention* and *hyperactivity-impulsivity*.⁷ Individuals may have either or both types.⁸ While the effects of ADHD have been more widely studied in children than adults, a study of college students with ADHD suggests these students may have additional challenges beyond those faced by their peers with other learning disabilities.⁹ Both varieties of ADHD can cause symptoms that would give law students difficulties in and out of the classroom.¹⁰ Additionally, ADHD symptoms can cause low academic performance and limit individuals from attaining high education levels.¹¹

For instance, individuals with inattention-type ADHD may fail to pay close attention to details, face difficulty staying focused in lectures, and struggle with organization.¹² Difficulties with organization may manifest in a variety of ways that impact a student’s performance on a school assessment. Law school papers and exams, for instance, frequently test a student’s ability to organize complex issues into a logical sequence that is digestible for the reader. A student with ADHD may take longer to organize their answers while neurotypical students are spending more time on substance,¹³ leading to a lower final score for the ADHD student.

time.” Ruth Colker, *Test Validity: Faster is Not Necessarily Better*, 49 SETON HALL L. REV. 679, 692 n.50 (2019). The phrase “extended time” should be used to avoid the implication that extra time is somehow *undeserved* time.

⁵ AMERICAN PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 35 (5th ed., 2022) [hereinafter *DSM-V*].

⁶ Alisa R. Kosheleff et al., *Functional Impairments Associated with ADHD in Adulthood and the Impact of Pharmacological Treatment*, 27 J. OF ATTENTION DISORDERS, 669, 669 (2023).

⁷ *DSM-V*, *supra* note 5, at 68–69

⁸ *Id.*

⁹ See Kosheleff et al., *supra* note 6, at 673 (internal citation omitted) (“[C]ollege students with ADHD scored lower than college students with learning disabilities on measures of time management, concentration, identifying main ideas, and test strategies.”). Learning disorders and ADHD both fall under the umbrella of neurodevelopmental disorders. See Stephen Brian Sulkes, *Overview of Learning Disorders* (Apr. 2024), <https://www.merckmanuals.com/professional/pediatrics/learning-and-developmental-disorders/overview-of-learning-disorders> [https://perma.cc/C5UE-WCS3].

¹⁰ See, e.g., *DSM-V*, *supra* note 5, at 68–69 (stating that not following through on instructions or failing to finish schoolwork may be used to diagnose ADHD).

¹¹ *Id.* at 69–70; See generally Sampo Seppä et al., *Effects of Symptoms of Attention-Deficit/Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) on Academic Performance and Educational Attainment*, CHILD PSYCHIATRY HUM. DEV. (Sept. 2023).

¹² *DSM-V*, *supra* note 5, at 68.

¹³ In fact, some teachers have observed that students spend a longer amount of time reading the instructions, giving them a late start on answering an exam question. Alternatively, they

Separately, hyperactivity-impulsivity type ADHD broadly causes symptoms of restlessness that may create difficulties in the classroom and on out of class exams and assignments.¹⁴ Students with hyperactivity-impulsivity ADHD often have difficulty remaining seated in situations where this is expected of them.¹⁵ This could require the student to leave the classroom one or more times during a lecture, missing what the professor was covering during that time.¹⁶ Similarly, a student with ADHD may require more breaks than a neurotypical student during a timed exam.¹⁷ Absent an accommodation, these breaks would cut into the time a student could spend responding to the exam questions, putting that student at a disadvantage.

Data suggests a high rate of practicing attorneys with ADHD. In 2016, the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs funded a large study addressing gaps in data on attorneys' mental health, with 12,825 licensed, employed attorneys completing surveys on drug and alcohol use and symptoms of various mental health disorders.¹⁸ When study participants were asked to self-report mental health concerns throughout their legal career, 12.5% reported ADHD.¹⁹ This figure is strikingly higher than the estimated 4.4% worldwide prevalence,²⁰ so it is no surprise that law schools have high rates of students with ADHD.

B. *ADHD in Adult Law Students*

To receive an ADHD diagnosis, an individual must have experienced symptoms prior to age twelve.²¹ However, this does not mean that only children under twelve can or should receive a diagnosis. Law students who

may be skimming through the instructions without fully planning out their answer. This can cause them to answer exam questions incorrectly. Myra Taylor & Stephen Houghton, *Examination-Related Anxiety in Students Diagnosed with AD/HD and the Case for an Allocation of Extra Time: Perspectives of Teachers, Mothers and Students*, 13 *EMOTIONAL AND BEHAV. DIFFICULTIES*, 111, 116–17 (2008).

¹⁴ See *DSM-V*, *supra* note 5, at 69.

¹⁵ *Id.*

¹⁶ *Id.* (including inappropriately leaving the classroom as a symptom of ADHD for diagnostic purposes).

¹⁷ See *id.* (explaining that individuals with ADHD may often leave their seat in a classroom, office or workplace or may otherwise feel restless).

¹⁸ Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 *J. ADDICTION MED.* 46, 46–47 (2016) [hereinafter *2016 ABA Study*].

¹⁹ *Id.* at 50.

²⁰ See Kosheleff et al., *supra* note 6, at 669.

²¹ *DSM-V*, *supra* note 5, at 68–69.

seek accommodations for their ADHD may not have ever received a diagnosis before enrolling for a number of reasons, discussed below.

First, the style of work in law school generally requires more self-pacing and time management than previous levels of schooling.²² Many students with ADHD struggle with time management,²³ but the structure of their educational experiences prior to law school often makes this less impactful. For example, imagine a college course that requires smaller papers with due dates staggered throughout the semester or smaller exams and quizzes based on set units of material. If a student with (or without) ADHD failed to manage their time well leading up to the due date of a ten-page paper, they could theoretically write the entire paper the night before it was due, with the only consequence of their procrastination being a loss of sleep for that night.

Law school first-year doctrinal courses, though, mainly base their final grade off of one exam at the end of the semester.²⁴ Success on this exam requires a consistent level of preparation throughout the semester; while there is some room for students to finish any outline or study guides at the last minute, it is logistically impossible to fit an entire semester's worth of legal reading into the night before the exam.²⁵ Students may not realize that their old methods have failed them until sitting for—and receiving grades from—their first semester of law school finals; they will not have had an opportunity to receive interim feedback.²⁶

Apart from the structure of assessments, undergraduate students generally have more freedom to choose their courses of study than law students do.²⁷ Law schools usually do not require students to select a “major” like they did during their undergraduate studies.²⁸ Contrary to some beliefs, individuals with ADHD are not altogether unable to focus on a task.²⁹ Rather, they can become intensely focused, at times in an inappropriate manner, on

²² Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897, 902–04 (2013).

²³ L. Eugene Arnold et al., *Long-Term Outcomes of ADHD: Academic Achievement and Performance*, 24 J. OF ATTENTION DISORDERS 73, 73 (2020).

²⁴ Gabriel Kuris, *How to Survive and Thrive Your First Year of Law School*, U.S. NEWS & WORLD REP. (July 29, 2024, 8:57 AM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/how-to-survive-your-first-year-of-law-school> [https://perma.cc/M3EC-WD9A].

²⁵ See *id.*; *The Ultimate Guide to Undergrad vs. Law School: All the Differences You Need to Know*, NEW ENGLAND L. BOS.: BLOG, <https://www.nesl.edu/blog/detail/the-ultimate-guide-to-undergrad-vs.-law-school-all-the-differences-you-need-to-know#:~:text=Law%20school%20typically%20has%20a,are%20up%20to%20snuff%20too> [https://perma.cc/BQ75-EWLN].

²⁶ NEW ENGLAND L. BOS.: BLOG, *supra* note 25.

²⁷ Kuris, *supra* note 24 (explaining that undergraduate students are encouraged to “explore new intellectual passions”).

²⁸ *Id.*

²⁹ See Royce Flippin, *Hyperfocus: The ADHD Phenomenon of Hyper Fixation*, <https://www.additudemag.com/understanding-adhd-hyperfocus> [https://perma.cc/W4KD-PDYH].

topics in which they are interested.³⁰ By choosing their own majors in college, if students with ADHD picked a topic relevant to their own interests, they may have not necessarily minded doing the reading and putting in the work consistently. On the other hand, a student who went to law school intent on becoming a mergers and acquisitions lawyer, for example, may find it difficult to focus on a criminal procedure class. Thus, they would not experience hyperfocus and receive the same unintended benefit they may have gotten in college. To be sure, law students may self-select into certain concentrations or certificate programs that require them to pick from a smaller pool of courses than their classmates.³¹ However, this is generally optional and not available to first-year law students, some of whom may be realizing for the first time that they are unable to handle the coursework the same way their peers do.

Finally, some law students may have failed to receive a diagnosis for reasons completely unrelated to their educational structure. Minority groups face a variety of obstacles that may prevent a childhood diagnosis of ADHD. Part III will discuss these concerns more thoroughly.

II. GOVERNING LEGAL FRAMEWORK

Prior to the passage of the Americans with Disabilities Act (ADA), students with disabilities had only limited protection, with higher education students receiving even less protection than children.³² Section 504 of the Rehabilitation Act (Section 504), enacted in 1973, did provide some level of protection; programs receiving federal funding were prohibited from discrimination on the basis of disability.³³ However, the federal government did not provide funding to states for compliance with Section 504, nor did Section 504 lay out specific criteria for properly educating students with disabilities.³⁴

The Individuals with Disabilities Education Act (IDEA), originally the Education for All Handicapped Children Act, was signed in 1975.³⁵ Because

³⁰ *Id.* The phenomenon “hyperfocus” while not exclusive to individuals with ADHD, refers to extreme fixation, to the point where the hyperfocused individual “become[s] so engrossed they block out the world around them” and is thought to result from abnormally low levels of the neurotransmitter dopamine, which aids in focus on less interesting tasks.

³¹ See NEW ENGLAND L. BOS. BLOG, *supra* note 25.

³² See Haley Moss, *Extra Time Is a Virtue: How Standardized Testing Accommodations After College Throw Students with Disabilities Under the Bus*, 13 ALB. GOV'T L. REV. 201, 209 (2019–2020).

³³ Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794 (2018).

³⁴ Tara Roslin, Note, *Vitriolic Verification: Accommodations, Overbroad Medical Record Requests, and Procedural Ableism in Higher Education*, 47 AM. J. L. & MED. 109, 114 (2021).

³⁵ See 20 U.S.C. § 1400 (2018).

the IDEA controls accessibility in preschool, elementary schools, and secondary schools,³⁶ a larger discussion of the Act is outside the scope of this article. Note, however, that the IDEA governs Individualized Education Programs, or “IEPs,” which relate to a child with a disability’s academic goals and supplementary services used to achieve these goals.³⁷ Depending on the stage of schooling at which a student with ADHD first sought accommodations, they may have a history of IEPs to provide in their accompanying documentation while making accommodation requests in law school.³⁸

Congress originally passed the ADA in 1990 to combat discrimination faced by individuals with disabilities in a variety of contexts, including employment, public accommodations, and education.³⁹ As defined in the ADA, “disability” means “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment. . . .”⁴⁰ Relevant to this article, “major life activities” include “[l]earning, reading, concentrating, thinking, communicating, and working,” and the impairment need only limit one major life activity to be considered a disability.⁴¹

The ADA Amendments Act of 2008 (ADAAA) was enacted to clarify and expand protection under the ADA following a host of judicial decisions that strayed from the original Congressional intent behind the ADA.⁴² Receiving bipartisan support, the ADAAA broadened the definitions of disability and major life activities. The ADAAA also clarified that the “ADA covers people who use ‘mitigating measures,’ such as medication[] . . . to treat their conditions or adapt to their disability.”⁴³ Thus, the goal in passing the ADAAA was to refocus the ADA onto “the question[s] of whether the discrimination occurred, *not whether the person with a disability is eligible in the first place.*”⁴⁴ In other words, Congress intended the ADA to provide broad protections and passed the ADAAA when the courts failed to do so.

³⁶ Roslin, *supra* note 34 at 114; 20 U.S.C. § 1419 (discussing preschool grants).

³⁷ See 20 U.S.C. § 1414(d) (2018); Moss, *supra* note 32, at 209–10.

³⁸ Moss, *supra* note 32, at 209. (“[A] testing organization may consider a student’s entire history of accommodations in school and on examinations, beginning in early childhood.”).

³⁹ 42 U.S.C. § 12101(b) (2018).

⁴⁰ § 12102(1).

⁴¹ § 12102(2)(A)–(4)(C).

⁴² Off. of the Press Sec’y, *President Bush Signs S. 3406 Into Law*, WHITE HOUSE (Sept. 25, 2008) <https://georgewbush-whitehouse.archives.gov/news/releases/2008/09/20080925-8.html> [<https://perma.cc/7WYN-TVYW>]; see Roslin, *supra* note 34 at 115–16; see also 154 CONG. REC. S9626-01 (daily ed. Sept. 26, 2008).

⁴³ 154 CONG. REC. S9626-01 (daily ed. Sept. 26, 2008) (statement of Sen. Reid).

⁴⁴ *Id.* (emphasis added).

Titles II and III of the ADAAA impact prospective and current law students, along with graduates who plan to sit for the bar exam.⁴⁵ Title II of the ADAAA prohibits disability discrimination by public entities, including state and local governments and their instrumentalities.⁴⁶ Relatedly, Title III captures private entities by prohibiting discrimination in the use of “public accommodations,” which include “undergraduate, or postgraduate private school[s], or other place[s] of education,” if such entities have an impact on commerce.⁴⁷ Further, “[a]ny person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes . . .,” a definition that captures testing companies, must provide accommodations for individuals with disabilities.⁴⁸

After the 2008 ADAAA revisions, updated regulations impacting testing accommodations went into place on March 15, 2011.⁴⁹ Following its 2008 Notice of Proposed Rulemaking for the updated regulations, the Department of Justice (DOJ) declined to include specific language regarding exams and courses in Title II.⁵⁰ Rather, the DOJ stated that the Title III regulation should serve as a guide for determining discriminatory conduct by public entities providing testing.⁵¹ Despite this response, the regulations and Technical Assistance Manual state that “[p]ublic entities are *not* subject to [T]itle III of the ADAAA, which covers only private entities.”⁵² Thus, there has been some confusion over whether bar exams, which are administered by boards in a given state, must follow the guidelines of Title III.⁵³ Nonetheless, the original commentary accompanying the ADA regulations specifically contemplated bar examinations as being subject to Title III.⁵⁴

⁴⁵ Once in practice, lawyers with disabilities may rely on Title I of the ADA to provide them with reasonable accommodations in the workplace. *See* 42 U.S.C. § 12112 (2018). Title II and III are discussed in more detail here because they relate specifically to schooling and testing.

⁴⁶ §§ 12131–12132. Thus, public law schools fall under the auspices of Title II.

⁴⁷ § 12181(7)(J). Title III captures private law schools.

⁴⁸ § 12189.

⁴⁹ *See* Robert A. Burgoyne & Caroline M. Mew, *New Regulations Under Titles II and III of the ADA: What Has Changed Relative to the Administration of Licensing Exams?*, 80 THE BAR EXAMINER 42, 43 (2011).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 44 (emphasis added) (citing U.S. DEP’T OF JUST., TITLE II TECHNICAL ASSISTANCE MANUAL §1.3000 (1992)).

⁵³ LAURA ROTHSTEIN & JULIA IRZYK, DISABILITIES AND THE LAW § 5:7 (Laws. Coop. Publ’g, 4th ed. 2024).

⁵⁴ *See* Examinations and Courses, 56 Fed. Reg. 35572, 35573 (July 26, 1991).

A. Standardized Test Accommodations

1. Accommodations and the LSAT

Students aware of their ADHD diagnosis may choose to seek accommodations on the Law School Admissions Test (LSAT). The Law School Admission Council (LSAC) provides the LSAT, a standardized test that law schools use as a proxy for anticipated law school performance, which consists of several multiple-choice sections and a writing sample.⁵⁵ Absent an accommodation requiring the student to receive extended time, test-takers receive thirty-five minutes to complete each section.⁵⁶ Law schools place differing weight on the importance of an applicant's LSAT score, but this score is generally considered a main factor in an admissions and scholarship decision.⁵⁷ Therefore, pressure to perform well runs high.⁵⁸

a. Consent Decree and Best Practices Report

In 2012, the Department of Fair Employment and Housing (DFEH) filed a class action lawsuit against the LSAC in state court for alleged failures to accommodate disabled test-takers, thus violating the ADA.⁵⁹ At the time, the LSAC engaged in the problematic practice of “flagging” LSAT exam scores of individuals who received extended time accommodations.⁶⁰ In other words, if a test-taker received extended time on the LSAT, the LSAC reported this on the individual's score report included with their law school applications.⁶¹ Flagging, the DFEH alleged, both “failed to ensure that the LSAT measured aptitude, rather than disability,” and “unlawfully coerced and discouraged potential applicants from seeking reasonable accommodations or punished those who received accommodations.”⁶²

However, flagging was not the only allegedly discriminatory policy. The DFEH also alleged that LSAC required excessive documentation to show disabilities, denied reasonable accommodations, and “unlawfully considered mitigation measures” in making a disability determination, either by requiring

⁵⁵ *Types of LSAT Questions*, LSAC, <https://www.lsac.org/lSAT/prepare/types-lsat-questions> [<https://perma.cc/27CA-BZHZ>].

⁵⁶ *Id.*

⁵⁷ See Colker, *supra* note 4, at 706–08.

⁵⁸ Logan Maurer, *Conquering LSAT Stress: Proven Strategies for Test Day*, BLUEPRINT (Jan 27, 2024), https://blog.blueprintprep.com/lSAT/conquering-lsat-stress-proven-strategies-for-test-day/#:~:text=LSAT%20stress%20often%20stems%20from,trouble%20concentrating%2C%20or%20unexplained%20anxiety%3F_ [<https://perma.cc/7WN2-V25G>].

⁵⁹ Dep't. of Fair Emp. and Hous. v. Law Sch. Admission Council Inc., 896 F. Supp. 2d 849, 852 (N.D. Cal. 2012).

⁶⁰ See *id.* at 853.

⁶¹ *Id.*

⁶² *Id.* at 854.

applicants to take prescribed medications while being evaluated for accommodations or to explain why they did not take these medications.⁶³ After its motions to dismiss DFEH's claims failed,⁶⁴ LSAC entered a consent decree (hereinafter "Consent Decree") in 2014, with DFEH as plaintiff, several students as plaintiffs-intervenors, and the United States as a plaintiff-intervenor.⁶⁵ Under the Consent Decree, LSAC agreed to (1) pay a large civil penalty to named plaintiffs and a nationwide victims' compensation fund, (2) automatically grant most accommodation requests if the candidate had previously received those accommodations for another standardized test at the post-secondary level, (3) end flagging of score reports for extended time tests, and (4) establish an expert panel and implement additional best practices for reviewing accommodation requests.⁶⁶

Following the entry of the Consent Decree, a panel of five experts released a best practices report for ten issues surrounding disability accommodations for the LSAT.⁶⁷ The recommendations focused on improving diversification, training, and qualification of evaluators.⁶⁸ The panel also recommended a specific process for reviewers to make an accommodation decision.⁶⁹ Previously, LSAC required that "criteria and guidelines provided to individuals who substantively evaluate accommodation requests should be kept general and flexible."⁷⁰ The Best

⁶³ *Id.* at 854. One might imagine the prejudice that an accommodated student could have faced, or at least what they would fear they would face, because of the extended time "flags" on their admissions report. Consider, for instance, two students who were both borderline for an acceptance spot at a given law school, which had space to admit only one of them. Perhaps the admissions officer saw two otherwise identical files and decided that the student who didn't receive extended time was better suited for law school. For clarity's sake, this article does not purport to blame the LSAC for the stigma surrounding these accommodations, but it is not difficult to see how the policy may have impacted students.

⁶⁴ *Id.* at 877.

⁶⁵ Consent Decree at 1, Dep't of Fair Emp. and Hous., 896 F. Supp. 2d 849 (No. CV 12-1830-EMC), https://archive.ada.gov/dfeh_v_lsac/lsac_consentdecree.htm [<https://perma.cc/3FV9-D77D>].

⁶⁶ Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Law School Admission Council Agrees to Systemic Reform and \$7.73 Million Payment to Settle Justice Department's Nationwide Disability Discrimination Lawsuit (May 20, 2014), <https://www.justice.gov/opa/pr/law-school-admission-council-agrees-systemic-reforms-and-773-million-payment-settle-justice> [<https://perma.cc/EM4K-PRXZ>].

⁶⁷ RUTH COLKER ET AL., FINAL REPORT OF THE "BEST PRACTICES" PANEL (2015), https://archive.ada.gov/lsac_best_practices_report.pdf [<https://perma.cc/GM3R-8VM5>].

⁶⁸ *See id.* at 29–30.

⁶⁹ *Id.* at 12–18.

⁷⁰ *Id.* at 10.

Practices Report, however, recommended that the LSAC defer to previous documentation from qualified professionals to determine if candidates had a disability before determining the appropriate accommodation.⁷¹ ⁷² If the candidate had a record of disability after the age of 13, then the candidate need only certify that they continue to have a disability to be considered as having one.⁷³ The documentation was deemed sufficient, but not necessary, to proving that the candidate had a disability, and the documentation necessary “should not demand extensive analysis.”⁷⁴

Moreover, the panel also recommended certain minimum standards for evaluators to use in determining appropriateness of a requested accommodation.⁷⁵ For candidates with an ADHD diagnosis, the panel recommended a minimum of 50% additional time on the LSAT,⁷⁶ equating to 52.5 minutes per section instead of 35 minutes.⁷⁷ Candidates may be granted 100% extended time or more, subject to additional documentation requests.⁷⁸ Candidates could also request off-the-clock breaks as alternatives to extended time.⁷⁹ Lastly, the panel recommended that LSAC obtain outside consultants to review any full or partial accommodation denials, and it should also provide a more streamlined process for appeals from candidates who had been denied accommodations.⁸⁰ A United States magistrate judge upheld the majority of the Consent Decree, other than some mainly administrative points, over LSAC’s objections.⁸¹ This ruling required LSAC to

⁷¹ *Id.* at 12–13.

⁷² Note that the College Board, which administers the SAT and ACT tests for college admissions, has had a policy since 2017 to automatically sign off on extra-time requests for anyone who can document an IEP or other school-based accommodation. *See* Mitch Prinstein, *The Truth About Getting Extended Time on the SAT*, PSYCH. TODAY (June 26, 2019), <https://www.psychologytoday.com/us/articles/201906/the-truth-about-getting-extra-time-the-sat> (on file with author). In the time since the Consent Decree, such documentation of accommodations for a college standardized test should then make LSAT accommodations more automatic.

⁷³ Colker, *supra* note 67, at 12–13.

⁷⁴ *Id.* at 14–15 (quoting 29 C.F.R. § 1630.2(k)(2)).

⁷⁵ *Id.* at 15–18.

⁷⁶ *Id.* at 17.

⁷⁷ *See* Moss, *supra* note 32 at 219 (explaining that candidates have thirty-five minutes to complete each section of the LSAT under normal time conditions).

⁷⁸ *See* Colker, *supra* note 67, at 18 (“For example, for individuals with visual impairments who routinely are granted 100% extra time, 150% extra time shall be allowed on the analytical reasoning section of the LSAT exam because of its reliance on visuospatial abilities.”) For a more in-depth discussion of the documentation requirement, *see id.* at 18–20.

⁷⁹ *Id.* at 17. In other words, a student might ask to get up and walk around to clear their head during a given section instead of having more time in which to remain seated.

⁸⁰ *Id.* at 21, 25.

⁸¹ Y. Peter Kang, *LSAT Test-Taking Changes in Disability Suit Backed by Judge*, LAW 360 (Aug. 10, 2015, 7:49 PM), <https://www.law360.com/articles/689076> (on file with author).

presumptively approve requests for 50 percent extra time if the requesting candidate had proper documentation of their disability.⁸²

b. Performance of Accommodated Test-Takers

After making the recommended changes to its accommodation practices, LSAC published a report titled “Accommodated Test-Taker Trends and Performance for the June 2012 Through February 2017 LSAT Administrations.”⁸³ The study included 505,329 non-accommodated test-takers and 5,694 accommodated test-takers.⁸⁴ The amount of requested and approved accommodations both more than doubled over the five-year testing period.⁸⁵ By the last three years of the study, ADHD was “the most common disability category for approved accommodations.”⁸⁶ Thirty-three percent of the 7,709 total approved accommodations during the five-year period went to test takers with ADHD.⁸⁷

The LSAC report separates test-takers into a Non-accommodated group and an Accommodated group.⁸⁸ The Accommodated group is further split into accommodated test-takers receiving extended time—87.2% of accommodated test-takers—and accommodated test-takers using standard time—12.8% of accommodated test-takers.⁸⁹ The study revealed that for eighteen out of the twenty LSAT administrations, the Accommodated/Extended time group had higher average scores than the Non-accommodated group, with the Accommodated/Standard time group having higher averages than the Non-accommodated group for twelve of the twenty administrations.⁹⁰

⁸² *Id.*

⁸³ LAURA A. LAUTH ET AL., TECHNICAL REPORT TR 17-03; ACCOMMODATED TEST-TAKER TRENDS AND PERFORMANCE FOR THE JUNE 2012 THROUGH FEBRUARY 2017 LSAT ADMINISTRATIONS 1 (Law School Admissions Council 2017) (stating that the changes to LSAC’s accommodation policies began with the June 2014 LSAT administration).

⁸⁴ *Id.* at 4. The data sample also included 2015 individuals who were approved for accommodations but who did not, ultimately, take the test. *Id.*

⁸⁵ *Id.* at 1–2. The number of requested accommodations increased from 1581 in 2012–2013 to 3789 in 2016–2017. The number of approved accommodation requests increased from 729 in 2012–2013 to 3000 in 2016–2017. *Id.*

⁸⁶ *Id.* at 8.

⁸⁷ *Id.*

⁸⁸ *Id.* at 1.

⁸⁹ LAUTH ET AL., *supra* note 83, at 3, 6.

⁹⁰ *Id.* at 18.

The study also measured score gains for second-time takers, including only test-takers who did not cancel their first set of LSAT scores.⁹¹ The study provided data for Accommodated/Extended time test-takers who tested twice under the same conditions and Non-accommodated test-takers who tested a second time under Accommodated/Extended time conditions.⁹² Repeat Accommodated/Extended time test-takers improved their score by an average of 2.74 scaled points.⁹³ Students who switched from Non-accommodated to Extended time conditions, however, improved their scores by an average of 7.57 scaled score points.⁹⁴ The LSAC study was descriptive in nature and did not discuss potential rationales or consequences of that data. Part III of this article will address these in a discussion of fairness concerns.

2. Accommodations and the Bar Exam

The process for seeking accommodations on a state bar exam is often onerous and intrusive. Take, for example, the process that examinees of the New York Bar Exam must undertake to request accommodations.⁹⁵ The Board of Bar Examiners (the Board) provides a relevant handbook, stating, “The purpose of test accommodations is to provide equal access to the bar examination. . . . [W]ithout[] fundamentally altering the nature of the examination [or] imposing an undue administrative or financial burden on the Board.”⁹⁶ The handbook also informs the reader that the examinee has the burden of proving that they have a disability under the ADA.⁹⁷ It goes on

⁹¹ See *id.* at 19–20.

⁹² *Id.*

⁹³ *Id.* at 20. Per a previous study, non-accommodated repeat takers typically saw a 2.8-point score gain, on average. LAUTH ET AL., TECHNICAL REPORT TR 14-01; THE PERFORMANCE OF REPEAT TEST TAKERS ON THE LAW SCHOOL ADMISSION TEST: 2006–2007 THROUGH 2012–2013 TESTING YEARS (Law School Admission Council 2014).

⁹⁴ LAUTH ET AL., *supra* note 83 at 20. The 2017 study did not provide exact figures for repeat test takers who tested twice under accommodated/standard time or switched from non-accommodated to accommodated/standard time, but it stated that those groups displayed “similar score gains to those who tested twice under accommodated/extra-time testing conditions.” LAUTH ET AL., *supra* note 83, at 20.

⁹⁵ New York is one of the largest jurisdictions of bar examinees, with over one-fifth of all examinees for the July 2023 administration of the bar exam taking the exam in New York. See *Bar Exam Results by Jurisdiction: July 2023 Bar Exam*, NAT’L CONF. OF BAR EXAM’RS (Apr. 4, 2024, 10:42 AM), <https://www.ncbex.org/statistics-research/bar-exam-results-jurisdiction>. New York also provides a Test Accommodation Handbook, most recently revised in October 2022, to the public; prospective examinees do not need to make an account before viewing the accommodations guidelines. Further, the Handbook includes specific guidelines for those with ADHD. See N. Y. STATE BD. OF L. EXAM’RS, TEST ACCOMMODATIONS HANDBOOK: INSTRUCTIONS, FORMS, AND DOCUMENTATION GUIDELINES (N.Y. State Bd. of L. Exam’rs ed., 2022) [hereinafter *NY Handbook*] [<https://perma.cc/C8S2-SGZC>].

⁹⁶ *NY Handbook*, *supra* note 95, at 5.

⁹⁷ *Id.*

to provide specific guidelines for ADHD, which, broadly, must be “recent medical documentation of [the] disability that is comprehensive.”⁹⁸ The examinee must provide additional documentation supporting chronic ADHD symptoms beginning in childhood, even if the examinee was not diagnosed until adulthood. This could include academic transcripts and even childhood report cards,⁹⁹ which examinees might not have readily available to provide to reviewers.

A student’s history of prior standardized test accommodations can support the student’s application for accommodations on the bar exam.¹⁰⁰ In fact, the New York guidelines require applicants to provide either a record of prior accommodations or an explanation from a qualified professional about why accommodations are now needed but were not previously sought.¹⁰¹ It follows that if barriers to receiving accommodations on the LSAT decrease, a student’s likelihood of receiving accommodations on the bar exam of a state like New York would increase due to a record of past accommodations. Because New York is the largest jurisdiction for bar-takers,¹⁰² increased availability for accommodations there could have a profound impact on law school graduates with ADHD. Hopefully, then, the updates to the LSAT’s accommodations practices will have cascading effects on the state bar exams,¹⁰³ making it easier for examinees with ADHD to receive needed accommodations.¹⁰⁴

⁹⁸ *Id.* at 15.

⁹⁹ *Id.* at 17.

¹⁰⁰ See Denise Elliot, *The Historical Diagnosis Criterion Should Not Apply: Reasonable Accommodations in Standardized Testing for Individuals with a Later Diagnosis of ADHD*, 30 J. L. & POL’Y 121, 146–47 (2021).

¹⁰¹ NY *Handbook*, *supra* note 95, at 18–19.

¹⁰² *Bar Exam Results by Jurisdiction*, *supra* note 95.

¹⁰³ Theoretically, once the documentation process for the LSAT becomes less onerous, more bar exam takers with ADHD will be able to rely on their documentation from the LSAT, thus providing additional support for their bar exam accommodation requests.

¹⁰⁴ This article does not make recommendations to the state bar examiners about their accommodation practices. Some concerns relating to documentation will naturally be similar to concerns surrounding law school accommodations. For further discussions surrounding bar accommodations requests, see Neha Sampat & Esme Grant, *Research Project: Bar Examination Accommodations for ADHD Graduates*, 19 J. OF GENDER, SOC. POL’Y & THE L. 1211 (2011); Elliot, *supra* note 100 (both arguing that requiring a childhood history of symptoms is problematic); but see John D. Ranseen, *Reviewing ADHD Accommodations Requests for the Bar Exam: What Has and Has Not Changed Over 20 Years* (85 THE BAR EXAMINER 2016) <https://thebarexaminer.ncbex.org/article/june-2016/reviewing-adhd-accommodations-requests-for-the-bar-exam-what-has-and-has-not-changed-over-20-years-2> [<https://perma.cc/R29U-DLP8>] (arguing that “there can be no reasonable rationale for providing accommodations to” a law school graduate who completed law school without accommodations).

III. LAW SCHOOL ACCOMMODATIONS: CONCERNS AND RESPONSES

Law students with ADHD typically receive exam accommodations in the form of extended time, separate testing rooms, or both.¹⁰⁵ Although students may seek different accommodations options, such as taking the exam in the same room as their peers but receiving stop-time breaks, extended time and separate testing space are two of the most common accommodations provided.¹⁰⁶ Therefore, Part III and IV will focus on those two accommodations. Similarly, this article focuses on courses with assessments in the form of final examinations rather than a final paper or other long-term assignment because most courses use final examinations as the primary assessment mechanism.¹⁰⁷ However, the article touches upon those alternate formats.

A. Fairness

Broadly speaking, critics of extended time and separate room accommodations argue that giving these accommodations is unfair to other law students.¹⁰⁸ Critics of extended time have generally been more vocal than critics of other accommodations.¹⁰⁹ Different exam formats all seem to carry a different answer for why a student receiving extended time would have an unfair advantage. Open-universe exams? More time to look up different possible answers. Closed-universe exams with a strict word limit? Accommodated students can spend longer restructuring and editing their work to provide more substantive answers, or so the concern goes.¹¹⁰

¹⁰⁵ See Ali A. Aalaci, *The Americans with Disabilities Act and Law School Accommodations: Test Modifications Despite Anonymity*, 40 SUFFOLK U.L. REV. 419, 429–31 (2007).

¹⁰⁶ Southeast ADA Center, *Advice for Law School Applicants with Disabilities* (last visited Aug. 16, 2024), <https://adasoutheast.org/advice-for-law-school-applicants-with-disabilities> [https://perma.cc/BXT7-JCM4].

¹⁰⁷ NEW ENGLAND L. BOS.: BLOG, *supra* note 25.

¹⁰⁸ See Aalaci, *supra* note 105 at 431; see also Elliot Hamlet, “Over-accommodation” in *Higher Education: An ADA Sanctioned Injustice Exposed*, 12 CARDOZO PUB. L. POL’Y & ETHICS J., 491, 503 (2014) (“The injustice arises when” students with ADHD who use stimulant medications “are then lawfully awarded a modification of the external environment by their academic institution, under the ADA.”)

¹⁰⁹ See Colker, *supra* note 4, at 690. As Colker explains, there is a myriad of both literature and media coverage on the issue of extended time. This is likely due to non-disabled students’ perception that they would benefit from extended time more than they would benefit from an accommodation for a physical disability. For instance, a non-disabled student would probably not perceive an advantage of receiving an exam in braille like a blind classmate might. On the other hand, many non-disabled students could imagine that their performance would improve with additional time, regardless of evidence informing that belief.

¹¹⁰ This is a common complaint expressed by law students and faculty, to which a quick perusal of the Law School subreddit can attest. See e.g., @BiblioBlonde, *Extra Time on Exams...I’m Just Going to Say it, I Think it’s Unfair. Change My Mind.*, REDDIT, https://www.reddit.com/r/LawSchool/comments/cgxets/extra_time_on_examsim_just_going_to_say_it_i/ [https://perma.cc/426X-JHXJ].

Additionally, some critics worry about an increased likelihood of academic dishonesty. If students are sitting alone in a room, some ask, what stops them from using banned sources, such as the internet or a supplement to their textbook? In this author's view, the increased risk of cheating is negligible. For one thing, current exam software offers the option to block students from all other sources on their computer, even a word document outline.¹¹¹ More importantly, we must have some trust in our students. The legal profession has high ethical standards, of which even first-year law students are vaguely aware. Just because a student is alone in a room does not mean that they will subvert the exam rules. By that same token, we should never let anyone take an exam in a room where a proctor cannot see their screen at all times; a non-accommodated student could just as easily sit in the back row of a full exam room and use the internet or other banned virtual source as someone in a separate room could.

Proponents of extended time accommodations explain that this time is necessary to "level the playing field."¹¹² Students with ADHD often struggle with organization of their written work.¹¹³ With many law school written exams dealing with multiple issues in one large fact pattern, a neurodevelopmental disorder impacting organization skills can be a major disadvantage. On an exam with a fixed amount of time, if a neurodiverse student must spend more time deciding how to best organize their answers than a neurotypical student would, this necessarily means that the neurodiverse student will have relatively less time to substantively address the law. Furthermore, students may need an extended amount of time to process the exam instructions themselves.¹¹⁴

To the author's knowledge, no studies have been published that compare results of law students with and without ADHD, specifically, on law school exams taken under any condition. This is an understandable gap in the literature for a number of reasons, not the least of which is student privacy. Data does exist, though, for related standardized tests. As seen in Part II, the Accommodated/Extended time LSAT takers generally had higher averages than the Non-accommodated group.¹¹⁵ Furthermore, on a reading comprehension test provided to groups of college students, those with ADHD performed roughly the same as "typical" students at items attempted

¹¹¹ See e.g., ExamSoft, *Unparalleled Exam Security* (last visited Aug. 16, 2024), <https://examsoft.com/benefits/exam-security/> [https://perma.cc/7ZMS-Q575]. This is not intended to be an endorsement or criticism of any exam software.

¹¹² Moss, *supra* note 32, at 216.

¹¹³ See *DSM-V*, *supra* note 5, at 68.

¹¹⁴ See *id.*

¹¹⁵ See Lauth et al., *supra* note 83.

and correct under standard and extended time conditions.¹¹⁶ Further, both groups performed better with extended time than under standard time conditions.¹¹⁷ This finding calls into question whether extended time is really an appropriate accommodation; ideally, accommodations should put the disabled group on the same footing as the non-disabled group, rather than causing both groups to improve.¹¹⁸ Nonetheless, this study also posits that the small group of college students studied there may not represent the general ADHD population, or perhaps the reading comprehension test provided was inadequate to elicit the deficits that may be seen on longer, more strenuous exams.¹¹⁹

Critiquing a similar study by Lewandowski, et al.,¹²⁰ Colker analyzed reading comprehension test results from a group of students with learning disabilities (LD group) and without them (non-LD group).¹²¹ When students were given the same amount of time to complete a test and all questions—both completed and non-completed—were scored, the LD group performed between fifteen and nineteen percent worse than the non-LD group across various time intervals.¹²² However, when students were scored based only on the percentage of questions completed during a given time interval, the LD group scored only a few percentage points lower than the non-LD group.¹²³ In other words, the LD group was not much worse at actually understanding what they were reading; rather, they needed more time to read than the non-LD group.

Therefore, a larger score increase on the LSAT by the Accommodated/Extended time test takers after newly receiving extended time does not trouble this author. The data could merely indicate that these test takers were guessing or skipping more questions under the previous non-accommodated conditions than their peers without disabilities. Only after providing accommodations did the LSAT begin to truly test their abilities rather than their reading speed. We can follow similar logic for law school final exams. The non-disabled students may, in fact, not even benefit as much from extended time on an exam because they will not have to compete with

¹¹⁶ Laura A. Miller, Lawrence J. Lewandowski, and Kevin M. Antshel, *Effects of Extended Time for College Students*, 19 J. OF ATTENTION DISORDERS 678, 683 (2015).

¹¹⁷ *Id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ Lawrence Lewandowski et al., *Effects of Extended Time Allotments on Reading Comprehension Performance of College Students with and Without Learning Disabilities*, 31 J. PSYCHOEDUCATIONAL ASSESSMENT 326 (2013); Miller et al., *supra* note 116, focuses more narrowly on college students with ADHD but uses the same reading comprehension test as Lewandowski et al.

¹²¹ Colker, *supra* note 4, at 698–702.

¹²² *Id.* at 701.

¹²³ *Id.* at 699.

processing and executive function problems while penning their substantive answers.

These criticisms also fail to address the difficulties students with ADHD may have faced throughout the semester, many of which take a substantial amount of time in addition to mental energy. First, consider the amount of time a student must spend even obtaining accommodations. In post-secondary education, it is the student's responsibility to prove that they have a disability,¹²⁴ which will also require significant documentation in the law school context.¹²⁵ The student must work to ensure that they have the appropriate documentation to send to the school's accessibility offices. In some cases, a school's accessibility office makes the documentation criteria public, but in others, students may not even know what documentation they need to gather until making initial contact with the appropriate administrator.¹²⁶ Furthermore, the students with ADHD may have had a more difficult time preparing for the exam than their non-ADHD classmates. As mentioned, these students likely had more difficulty paying attention in class or remaining in the classroom throughout the entirety of a lecture,¹²⁷ which could put them at a disadvantage when it comes to the quality of their written notes. While a rubber-stamp grant of time and a half might not be the best option for exam accommodations, a failure even to consider extended time could hurt those students for whom there is a legitimate need.

B. *False Diagnoses*

Some critics of ADHD accommodations fear that more affluent students may seek out an ADHD diagnosis to receive testing accommodations or stimulant medication, despite not actually having the disorder.¹²⁸ In a 2011 article, Sansone and Sansone analyzed several studies from the early 2000s, designed to determine whether students could successfully feign ADHD symptoms.¹²⁹ Generally, these studies found that students were especially able to feign having ADHD when the diagnosis was mainly based on a

¹²⁴ See Moss, *supra* note 32, at 215.

¹²⁵ See *id.*

¹²⁶ Many thanks to my research assistant, Harliann Hendrix (JD expected May 2025), who reviewed public websites of the top 50 US News-ranked law schools of 2024 to determine public availability of documentation requirements and availability to students of a law school specific accessibility office instead of a central campus office. For a report of these findings as of July 31, 2023, see Appendix I.

¹²⁷ See *DSM-V*, *supra* note 5.

¹²⁸ See Randy A. Sansone & Lori A. Sansone, *Faking Attention Deficit Hyperactivity Disorder*, 8 INNOVATIONS IN CLINICAL NEUROSCIENCE 10, 10–13 (2011).

¹²⁹ *Id.* at 11.

checklist of symptoms.¹⁵⁰ However, one study noted that “prepared malingerers” were mostly unable to fake positive scores on the Integrated Visual and Auditory Continuous Performance Test, a measure of ADHD assessment, despite faking positive scores on symptoms checklists.¹⁵¹ This suggests that a false diagnosis would be more difficult to achieve when not solely based on a checklist.

Although concerns about students receiving a false diagnosis are not new,¹⁵² they have been even more prevalent following the publicity of Operation Varsity Blues, a college admissions scandal in which affluent families used an outside consultant to falsify documentation such as test scores to improve their children’s chances of college acceptance.¹⁵³ Court documents suggest that parents were connected with a specific psychologist to provide documentation necessary to receive accommodations on standardized tests, where proctors were then bribed to change answers or allow someone else to take the test.¹⁵⁴ Law school applicants or students lured by the idea that accommodations provide a GPA boost may similarly be able to find a medical professional to diagnose them based on looser testing practices.¹⁵⁵ However, studies have shown mixed results surrounding the benefit of accommodations to non-disabled students.¹⁵⁶

For example, Lovett et al. studied the impact of separate room accommodations on groups of college students with and without ADHD and compared it with an earlier study by Lewandowski et al.¹⁵⁷ Lovett et al. did

¹⁵⁰ *Id.*

¹⁵¹ *Id.* (citing Colleen A. Quinn, *Detection of Malingering in Assessment of Adult ADHD*, 18 ARCHIVES OF CLINICAL NEUROPSYCHOLOGY 379–395 (2003)).

¹⁵² See Benjamin J. Lovett, *Extended Time Testing Accommodations for Students With Disabilities: Answers to Five Fundamental Questions*, 80 REV. OF EDUC. RSCH. 611, 612 (2010) (identifying two articles from 2004 claiming that “high-ability affluent students” received “dubious disability diagnoses”).

¹⁵³ See Prinstein, *supra* note 72.

¹⁵⁴ Ryan W. Miller, *‘A gut punch’: How the college admissions scandal hurt families with disabled students*, USA TODAY (March 17, 2019, 2:14 p.m. ET) <https://www.usatoday.com/story/news/education/2019/03/16/college-admissions-scandal-how-disabled-students-sat-act-test-accommodations/3164324002/> (last visited Dec. 22, 2023). See also *United States v. Abdelaziz*, 68 F.4th 1, 56 (1st Cir. 2023) (describing a recorded phone call from a parent who “discussed...a scheme to have his daughter fake a learning disability in order to secure extended time on a standardized test and to bribe a proctor to correct her answers”).

¹⁵⁵ I am not merely suggesting that affluent students can simply bribe psychiatrists to give them an ADHD diagnosis. Rather, more affluent students will be more able to shop around for a doctor, so to speak. Just as physically injured patients may want to seek a second opinion to determine if surgery is necessary, students seeking disability accommodations, both for legitimate and illegitimate purposes, may seek a second opinion on an ADHD diagnosis or lack thereof.

¹⁵⁶ See e.g., Benjamin J. Lovett, Lawrence J. Lewandowski, and Lindsey Carter, *Separate Room Testing Accommodations for Students with and Without ADHD*, 37 J. OF PSYCHOEDUCATIONAL ASSESSMENT 852, 852–62 (2019); Miller et al., *supra* note 116 at 683.

¹⁵⁷ Lovett et al., *supra* note 136, at 852.

not find any significant effects of ADHD status or test setting on performance on a timed, silent reading comprehension test.¹³⁸ Still, student-level data indicated that roughly 41% of students with ADHD had a substantial benefit from the accommodations, suggesting particular benefits on their levels of distractibility.¹³⁹ Interestingly, Lewandowski et al. previously found that students without ADHD performed *better* on a comprehension test in a group setting rather than a private room, perhaps due to the motivational impact of peers testing in the same room.¹⁴⁰ This suggests that such accommodations, when sought by students who were falsely diagnosed, may backfire. Even then, there is no evidence that law schools will be overwhelmed by fraudulent ADHD diagnoses.¹⁴¹

C. School Resources

One very real concern relates to the strain on school resources necessary to provide accommodations. As discussed, law schools are only required to provide *reasonable* accommodations.¹⁴² However, what starts as a reasonable accommodation for one student—six hours to take a four-hour exam and a seat in a private room, for instance—can result in a logistical problem when the number of students requiring accommodations increases. For the Fall 2022 semester, the average law school enrolled roughly 596 J.D. students.¹⁴³ Assuming a worldwide ADHD prevalence of 4.4%, conservatively,¹⁴⁴ this would give the average law school about twenty-six students with ADHD.¹⁴⁵

¹³⁸ *Id.* at 852.

¹³⁹ *Id.* at 858.

¹⁴⁰ Lawrence Lewandowski et al., *Private Room as a Test Accommodation*, 40 ASSESSMENT AND EVALUATION IN HIGHER EDUC. 279, 282 (2015).

¹⁴¹ See Roslin, *supra* note 34, at 120 (citing 81 FED. REG. 53204, 53123–14 (Aug. 11, 2016) for a DOJ finding of “no evidence to indicate that the rate of fraudulent claims of disability has increased since the implementation of the ADA Amendments Act in 2009.”)

¹⁴² See 42 U.S.C. § 12112(a), 12112(b)(5).

¹⁴³ See *Fall 2022 Law School Enrollment Data Reported to the ABA*, American Bar Association, 2022 STANDARD 509 INFORMATION REPORT DATA OVERVIEW (Dec. 22, 2022) https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2022/2022-aba-standard-509-data-overview-final.pdf. For the Fall 2022 semester, the 196 ABA accredited law schools reported a total J.D. enrollment of 116,723. Once non-J.D. students, including LL.M. students, are added in, this average increases to roughly 719 students per school. Median JD enrollment was 529.

¹⁴⁴ Kosheleff et al., *supra* note 6, at 669.

¹⁴⁵ I use the number 26 for the sake of argument. In reality, the number is probably higher, considering that the percentage of lawyers with ADHD is higher than the percentage of the general population with ADHD. See 2016 ABA Study, *supra* note 18.

Some schools, of course, are far larger than others.¹⁴⁶ Even if just twenty-six students requested ADHD-related exam accommodations, though, this raises a number of questions. Does the school even have twenty-six separate rooms to put students in? Will each student need their own proctor at all times? Will some students have to take the exam at a different date from other students, thus potentially compromising the integrity of the exam?

These questions do not have an easy answer. As mentioned, the estimation of twenty-six students is purely that: an estimate. It also does not account for the number of students requesting accommodations for other disabilities. Many classes also likely have different assessment formats that eliminate the need for accommodations. In any event, providing extended time and space for accommodations requires extra effort on the part of professors, law school support staff administering the exams, and even janitorial staff who are unable to clean rooms while a student is using them later than the rest of the students. All of this is not to suggest, however, that these accommodations are not necessary or appropriate for at least some students, given current exam formats. Part IV offers suggestions to reduce the need for these accommodations in the first place.

D. Preparation for Practice

“Well, it won’t be like this in practice.” This statement represents another common criticism of ADHD accommodations: practicing attorneys will not be able to request accommodations to assist with their ADHD.¹⁴⁷ This is also not necessarily true.

Separate from Title II and III of the ADA, which govern law school and testing accommodations, Title I of the ADA requires employers to provide employees with reasonable accommodations for their disabilities.¹⁴⁸ Legally, though, an employer need not provide even a reasonable accommodation if it would cause the employer an undue hardship.¹⁴⁹ Certainly, then, there are times when a formal accommodation may not seem possible, particularly when it comes to extended time. Sometimes a client needs a quick answer on something before a phone call or has a filing deadline that cannot be pushed back. Let us consider, though, some common time-sensitive scenarios faced in practice.

A client may ask for a particular answer on a call a few hours after posing the question. Indeed, asking a client to bump the call back by a couple of hours because an associate has ADHD will likely be ineffective. Any attorney can attest, however, that it sometimes takes longer to find an answer than a

¹⁴⁶ For example, Georgetown University reported 2053 enrolled JD students, while Appalachian School of Law reported only 152. See @Biblioblond, *supra* note 110.

¹⁴⁷ This author has encountered similar criticism in legal academic circles and among practicing attorneys.

¹⁴⁸ 42 U.S.C. § 12112.

¹⁴⁹ *Id.* § 12112(b)(5)(A); 29 C.F.R. § 1630.2(o)(4).

client might have hoped. In such a scenario, the best the attorney can do is provide the client with an update on the information they have found thus far and offer to continue researching with the best estimate of the time to completion. This certainly does not apply to only disabled attorneys, but it is nonetheless a form of accommodation.

Or perhaps a supervising attorney asks a more junior attorney for work product by the end of the day, while really just planning to review it on their morning commute into the office. Again, the attorney with or without ADHD should seek to clarify when the senior attorney plans to review their work to allow for more flexibility in their working hours.¹⁵⁰ Although the EEOC has issued guidance stating that firms are not required to reduce billable hour requirements or production, it encourages attorneys to raise the issue of reasonable accommodations if they are having any issues meeting production standards and timetables.¹⁵¹

Indeed, some deadlines are immovable. The litigator may face a court deadline, or the corporate lawyer may have to file a timely report with the SEC. Practicing attorneys will already be familiar with different deadline structures from their time in law school. A professor who assigns a final paper cannot give students with ADHD an extra half a semester to complete the work, so the students will necessarily work within the bounds of their other accommodations. The same can be said about deadlines in practice.

On the other hand, many other accommodations could also allow the attorney with ADHD to perform their jobs successfully. The Job Accommodation Network¹⁵² provides specific examples of potential accommodations for employees with ADHD.¹⁵³ Some particularly apt suggestions include providing a quiet workspace, a private workspace, or both; allowing the employee to work from home if office accommodations are ineffective; and providing assistance with prioritization of tasks to aid

¹⁵⁰ Whether any attorney should have to work late into the night to meet what might be an arbitrary deadline is an attorney wellness discussion for another day. However, employers should not have a problem slightly extending an internal deadline to allow for better work product.

¹⁵¹ U.S. EQUAL EMP. OPPORTUNITY COMM'N, REASONABLE ACCOMMODATIONS FOR ATTORNEYS WITH DISABILITIES (2006), https://www.eeoc.gov/laws/guidance/reasonable-accommodations-attorneys-disabilities#fn_8_~:text=other%20source.24-,H,-.%20Actions%20Not%20Required [<https://perma.cc/HZJ7-V33J>].

¹⁵² *About JAN*, JOB ACCOMMODATION NETWORK, <https://askjan.org/about-us/index.cfm> [<https://perma.cc/WS5E-N9R9>]. (last visited Dec. 22, 2023). JAN is a service of the U.S. Department of Labor's Office of Disability Employment Policy.

¹⁵³ For a comprehensive list, see *Attention Deficit/Hyperactivity Disorder (ADHD)*, JOB ACCOMMODATION NETWORK, <https://askjan.org/disabilities/Attention-Deficit-Hyperactivity-Disorder-AD-HD.cfm> [<https://perma.cc/8R24-8HT8>] (last visited Dec. 22, 2023).

with time management.¹⁵⁴ Many of these suggested accommodations represent little to no additional cost to the employer.

Recall that 12.5% of lawyers reported having ADHD in the 2016 ABA Study.¹⁵⁵ Despite this, in NALP's diversity reporting for law firms across the US, only 1.99% of all lawyers identified as having a disability.¹⁵⁶ This is up from 1.41% reported in 2022 but still lower than the 6.2% of law school graduates—not law firm employees—who report having a disability.¹⁵⁷ Note, too, that the 1.99% figure represents all disabilities, not just ADHD.¹⁵⁸ These statistics raise an interesting question: are law firm employees not self-reporting their disabilities to avoid disclosing them to their employers or the state bar, or do many of these individuals simply not consider their ADHD to be a disability?

In a more recent study, however, Blanck, et al., focused on lawyers “who identify as having health conditions, impairments, and disabilities, and on lawyers who identify as” LGBTQ+.¹⁵⁹ Over 200,000 lawyers were invited to participate. One quarter of the respondents indicated they had a health condition, impairment, or disability, with roughly 31% of those respondents reporting a mental condition, including ADHD.¹⁶⁰ So why the discrepancy? Note that the Blanck study “consciously aimed to oversample lawyers with multiple marginalized identities” and recruited, in part, from lawyers in national organizations of people with disabilities.¹⁶¹ One would expect such a sample to have a higher number of respondents reporting disabilities. Meanwhile, the NALP data consists of attorneys at law firms only.¹⁶² For the class of 2021, only 49.8% of graduates with disabilities reported employment in private practice, compared to 57.0% of graduates without disabilities.¹⁶³ The percentage of graduates with disabilities working in public interest, at 15.4%, was much higher than the 8.7% of graduates without disabilities

¹⁵⁴ *Id.*

¹⁵⁵ See 2016 ABA Study, *supra* note 18.

¹⁵⁶ NAT'L ASS'N FOR L. PLACEMENT, 2023 REPORT ON DIVERSITY IN U.S. LAW FIRMS 11 (2023) [hereinafter 2023 REPORT ON DIVERSITY].

¹⁵⁷ *Id.*

¹⁵⁸ See *id.* at 11, 39.

¹⁵⁹ Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers who Identify as LGBTQ+*, 23 UDC L. REV. 23, 24 (2020) [hereinafter First Phase Findings].

¹⁶⁰ *Id.* at 23–25.

¹⁶¹ *Id.* at 24–25.

¹⁶² See 2023 REPORT ON DIVERSITY, *supra* note 156 at 1 (stating that the report “provide[s] an in-depth analysis of the state of diversity in U.S. law firms” (emphasis added)).

¹⁶³ NAT'L ASS'N FOR L. PLACEMENT, EMPLOYMENT OUTCOMES FOR GRADUATES WITH DISABILITIES (2022) <https://www.nalp.org/1222research> (last visited Dec. 22, 2023) [<https://perma.cc/D2D6-VA4X>].

working in the sector.¹⁶⁴ In other words, a disproportionately small number of lawyers with disabilities work at law firms, compared with their peers without disabilities. Additionally, both the 2016 ABA Study and the yearly NALP surveys rely on self-reporting.¹⁶⁵ Law firm respondents may be particularly hesitant to self-identify as having a disability because they would prefer not to disclose it to their employer.

Alternatively, the 2016 ABA Study asked about “past mental health concerns,”¹⁶⁶ which phrasing may have increased the number of affirmative responses. For instance, a senior attorney who struggled with ADHD symptoms as a junior associate may have since gotten accommodations or otherwise controlled their symptoms to the point where the same attorney would not feel the need to identify this as a disability. Thus, the same individual could have self-reported ADHD symptoms in 2016 while not reporting having a disability in 2022.

In any event, employers of law school graduates will have employees with ADHD. While some of these attorneys may be suffering in silence, others may just as well be receiving the accommodations they need and to which they are entitled. Unfortunately, with underreported disability statistics, the profession also lacks data on the amount and types of accommodations provided across the industry.¹⁶⁷ Law school faculty, staff, and students alike, then, must not purport to know what specific accommodations an attorney with ADHD may receive in the workplace. We must also consider that the graduate with ADHD has sought out a job where they will be most likely to succeed given their unique skills and challenges.

Certainly, it is the law schools’ responsibility to prepare students for the possibility that they might not receive the same accommodations in practice as they did in school. This should be communicated to the students, though, so they can work with their medical providers to decide what accommodations would be most appropriate to seek out in school based on

¹⁶⁴ See *id.*

¹⁶⁵ See 2023 REPORT ON DIVERSITY, *supra* note 156, at 11; 2016 ABA Study, *supra* note 18, at 48.

¹⁶⁶ 2016 ABA Study, *supra* note 18, at 50.

¹⁶⁷ See Blanck et al., *Diversity and Inclusion in the American Legal Profession: Workplace Accommodations for Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 20 J. OCCUPATIONAL REHAB. 537, 539 (2020) (noting, “Lawyers and legal professionals, however, have been understudied in the literature on workplace accommodations”) (footnote omitted). The article mentions that previous *First Phase Findings* “showed that 28% of lawyers reported requesting at least one type of accommodation,” with these requests coming from 42.88% of lawyers with disabilities and 23.23% of those without disabilities. *Id.* at 538, 546 (referring generally to *First Phase Findings*, *supra* note 159). However, the article (understandably) does not break down the percentages by disability or provide specifics on the types of accommodations sought.

their future plans. As with any accommodation request, preparation for practice concerns should be analyzed on a case-by-case basis.

We also cannot say that the landscape of accommodations in the legal profession will continue unchanged. NALP's diversity report has shown an increasing percentage of attorneys with disabilities in recent years.¹⁶⁸ Although NALP does caution against drawing conclusions about trends moving forward,¹⁶⁹ it has also added a survey of summer associates into the mix. At law firms, 2.85% of summer associate respondents self-identified as having a disability.¹⁷⁰ Perhaps with the younger generation of lawyers, the stigma surrounding having a disability has begun to lessen. Let us hope, then, that the future of legal practice advances to broaden the accommodations available and reduce any fear of seeking accommodations in the first place.

E. Diversity, Equity, and Inclusion

This article has, thus far, focused on concerns related to over-accommodation: providing more accommodations than viewed as necessary, accommodations not likely to be received in practice, or accommodations to students who have been improperly diagnosed. However, a separate concern exists for students who are not receiving accommodations due to underlying inequities related to race and socioeconomic status. As a result of these issues, recent discourse has called for the elimination of a long-standing diagnosis as a prerequisite for accommodations.¹⁷¹

The socioeconomic concerns are numerous and, in part, straightforward. The ADHD evaluation process can be expensive and time-consuming.¹⁷² The first step usually requires talking to a child's pediatrician, who may perform an initial evaluation that takes one to three hours.¹⁷³ However, additional testing may be needed at a later date.¹⁷⁴ A lower-income parent may not be able to take off work to accompany their child to diagnostic testing, either because they cannot afford a day without pay or because their job does not permit them to take time off for such purposes.¹⁷⁵ Consider,

¹⁶⁸ See 2023 REPORT ON DIVERSITY, *supra* note 156, at 11 (stating that the percentage of partners self-reporting with a disability in 2023 was "roughly three times the 2019 figure," and the corresponding figure for associates is "more than four times" the 2019 figure).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 39 tbl.15.

¹⁷¹ See Sampat & Grant, *supra* note 104 at 1211; Ashley Yull, *The Impact of Race and Socioeconomic Status on Access to Accommodations in Postsecondary Education*, 23 AM. U. J. GENDER SOC. POL'Y & L., 353, 353–58 (focusing hypotheticals on an autism diagnosis, but logically applying to other psychiatric disorders); Elliot, *supra* note 100, at 122; Roslin, *supra* note 34, at 112.

¹⁷² *ADHD Screening*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/diagnostics/24758-adhd-screening> [<https://perma.cc/NAX6-2956>]

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ See Sampat & Grant, *supra* note 104, at 1232.

too, that the family may not have access to a pediatrician or primary care doctor to perform the test in the first place. Further, insurance may not fully cover such testing.¹⁷⁶ Any number of cost factors could deter parents from seeking an ADHD evaluation for their child.

In terms of race, studies have indicated for years that African American and Latinx children have lower rates of ADHD diagnoses than white children.¹⁷⁷ Data also suggests that this disparity has resulted from an underdiagnosis of the children of color, rather than an overdiagnosis of ADHD in white children,¹⁷⁸ for a variety of reasons. Studies have shown, for instance, that non-white groups are less likely to be familiar with ADHD; thus, minority parents are less likely to identify ADHD in their children than white parents are.¹⁷⁹ African American parents who are familiar with ADHD typically view it as a social construct and something their child will grow out of.¹⁸⁰ Additionally, white medical providers and minority patients often communicate poorly, which could negatively impact treatment of minority ADHD patients.¹⁸¹

A failure to accurately diagnose ADHD in minority patients may result from a physician's unconscious bias.¹⁸² For instance, physicians can hold biases of criminal behavior and aggression towards minority groups, leading these children to be diagnosed with more violent behavioral disorders instead of ADHD.¹⁸³ African Americans are also "five times more likely than non-Hispanic white children to receive a diagnosis of adjustment disorder than ADHD."¹⁸⁴ Adjustment disorders are linked to a specific stressor; diagnostically, symptoms of an adjustment disorder end a maximum of six months following the termination of the stressor.¹⁸⁵ Such a misdiagnosis can

¹⁷⁶ Ashley Henshaw, Done Team, *The Cost of Diagnosis: Is ADHD Testing Covered by Health Insurance?*, <https://www.donfirst.com/blog/diagnosis-covered-by-health-insurance> [https://perma.cc/DNT5-9GHH].

¹⁷⁷ Tumaini R. Coker et al., *Racial and Ethnic Disparities in ADHD Diagnosis and Treatment*, 138 *PEDIATRICS* 1, 2 (2016) (internal citations omitted).

¹⁷⁸ *Id.* at 7.

¹⁷⁹ Sampat & Grant, *supra* note 104, at 1228.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Matthew C. Fadus et al., *Unconscious Bias and the Diagnosis of Disruptive Behavior Disorders and ADHD in African American and Hispanic Youth*, 44 *ACAD. PSYCH.* 95, 95 (2019).

¹⁸³ *Id.* at 97.

¹⁸⁴ *Id.* at 98.

¹⁸⁵ *DSM-V*, *supra* note 5, at 319–20.

prevent an individual from ADHD with receiving proper medication and treatment.¹⁸⁶

Aside from a disconnect with medical providers, minority families also face additional cultural stigma that white families do not face.¹⁸⁷ For instance, research shows that African American parents specifically are concerned that an ADHD diagnosis may affect their children's employment opportunities.¹⁸⁸ In many Asian cultures, moreover, disabilities are viewed as taboo; people with disabilities may become social outcasts, so many Asian parents do not want to have their children tested for any sort of disability.¹⁸⁹ And minority parents in general may fear that an ADHD diagnosis will just be yet another way for people to discriminate against their child.¹⁹⁰

Gender also plays a role in underdiagnosed children. Boys tend to have the predominantly hyperactive type of ADHD, while girls are more likely to have the inattentive type.¹⁹¹ An elementary school teacher, then, will likely take more notice of the boy who talks a lot and frequently leaves his seat as opposed to the girl who quietly daydreams in class.¹⁹² Women with ADHD often realize it in adulthood, which puts them at a disadvantage when having to prove a history of symptoms.¹⁹³

Therefore, law students in these minority groups are more likely to not have a long-standing ADHD diagnosis, which makes the documentation process more difficult for receiving accommodations. Eliminating a historical diagnosis requirement would certainly help in the context of the bar exam. In this author's view, the age at which a student was diagnosed with ADHD should not matter for purposes of receiving law school accommodations. However, a lack of longstanding documentation could very well increase the stigma students face when requesting accommodations. In other words, dropping the requirement for a diagnosis at childhood, while solving issues of inequity, would likely not calm fairness concerns from critics.

Consider, also, that such an elimination may not overcome cultural or socioeconomic concerns. If a student's family shies away from seeking an ADHD diagnosis for their child because of extreme cultural stigma, that same student may still shy away from seeking their own diagnosis as an adult. Similarly, there is nothing to say that a student's financial situation will suddenly improve, thus allowing them to seek out treatment and diagnoses. This section does not intend to discourage students from seeking needed and

¹⁸⁶ See Fadus et. al, *supra* note 182, at 98.

¹⁸⁷ Sampat & Grant, *supra* note 104, at 1229.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 1233.

¹⁹² *See id.*

¹⁹³ *See* Sampat and Grant, *supra* note 104, at 1234.

deserved treatment. Rather, we must rethink the way we are providing assessments to all students so that all students with disabilities have an equal chance for success, not just the white or wealthy students.

IV. SUGGESTIONS

The following suggestions attempt to address many of the concerns described in the previous section. In a perfect world, adequate funding would eliminate many of those concerns; this section will detail that below. However, an increase in funding, while ideal, may be unrealistic. Thus, the section continues by providing suggestions on what law schools can do now to temper concerns while providing necessary access.

A. Accessibility Services Funding

Of the fifty highest-ranked law schools by U.S. News and World Report in 2023,¹⁹⁴ only five appear to have offices devoted to disability and accessibility services specific to the law schools themselves, as opposed to sharing resources with the parent college or university.¹⁹⁵ Of the law schools that do share disability services with the parent school, twenty provide no obvious, publicly-available contact information for students to contact the appropriate school official to gain access to these services.¹⁹⁶ The schools may indeed offer resources privately to their students without posting them on, for example, a student life webpage. Still, students would benefit from having this information easily available on a continuing basis on their law school's student affairs page. Appendix I contains further information on law school and university disability resource offices.

With so few offices for law students with disabilities, it is no wonder ADHD accommodations strain school resources. Without a designated disability services staff, this burden is likely to fall more heavily on other law school faculty and staff members. In fact, many of the reviewed schools lack specific guidelines on what documentation is necessary to show an ADHD diagnosis necessary to receive accommodations.¹⁹⁷ Thus, university staff may spend more time answering preliminary questions about the necessary documentation. While providing agreed-upon documentation guidelines

¹⁹⁴ See *2023–24 U.S. News Law School Rankings: This Year vs. Last Year (+/-)*, SPIVEY CONSULTING, <https://www.spiveyconsulting.com/blog-post/2023-2024-rankings-with-plus-minus/> [https://perma.cc/Y8ZT-5C5T].

¹⁹⁵ Source material on file with author. Based on publicly available information. See also Appendix I.

¹⁹⁶ Information based on reviews of publicly available law school and parent university websites, including student affairs (or similar) pages.

¹⁹⁷ Source material on file with author. See also, Appendix I.

would take up more time on the front end, providing a helpful resource that students could access instead of multiple students asking the same repeat questions would ultimately save time for these staff members.

This poses the question of why so few schools have their own disability services office or other staff equipped to handle accommodation concerns and whether schools are doing anything to change this. Perhaps a portion of law school endowment money could be used to increase accessibility in law schools, for instance. Based on law school endowment data from 2019, over twenty schools had a per-student endowment amount of over \$200,000.¹⁹⁸ In fact, Stanford and Harvard's law schools each had a per-student endowment of over \$1,000,000.¹⁹⁹ Yale's figure was over \$2,000,000.²⁰⁰ While Harvard and Yale both have law school-specific disability services offices, the majority of the U.S. News & World Report top-twenty list does not.²⁰¹

Endowment funds come with use restrictions, and many public law schools rely on state funding rather than endowments.²⁰² Certainly, some of this funding is used for important purposes such as funding teaching and student scholarships. Increasingly, though, schools with large endowments have come under fire for using endowment size as a tool to boost rankings rather than actually supporting students or otherwise improving school operations.²⁰³

Using such funding for accessibility, specifically, would enhance student experiences and could improve diversity in the legal profession by making law school more accessible to individuals with ADHD. For instance, even if a school chose to utilize the parent university's disability services, the law school could use endowment funding to hire additional support staff to assist with providing exam accommodations. Alternatively, this money could provide overtime pay for existing staff who must work extended hours to support students receiving extended time, separate room accommodations, or both.

Providing additional proctors would also allow professors to offer more in-school exams, if preferred, because there would be enough proctors for students in individual rooms. Furthermore, an increase in proctors may provide comfort to other students who worry that their peers are using these private rooms to access disallowed resources. Thus, having more disability

¹⁹⁸ Brian Leiter, *Per student value of law school endowments*, BRIAN LEITER'S LAW SCHOOL REPORTS (May 9, 2022), <https://leiterlawschool.typepad.com/leiter/2022/05/per-student-value-of-law-school-endowments-2021.html> [https://perma.cc/LQ4T-DDB9].

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *See id.*; Appendix I.

²⁰² *See* Leiter, *supra* note 198; Albert Phung, *How Do University Endowments Work?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/how-do-university-endowments-work/> [https://perma.cc/L6HF-2GBW].

²⁰³ Phung, *supra* note 202.

services staff could also allow for more personalized accommodations, leading to a ripple effect addressing multiple other concerns. In the absence of these additional resources, though, there is still room to modify assessments themselves.

B. *Final Examinations*

Offering suggestions on how to modify law school final examinations requires a critical look at what, precisely, we desire to test. Broadly, tests either measure “speed” or “power.”²⁰⁴ As the name suggests, speed tests rely on differences in test-taking speed to measure performance, while the test questions are relatively simple.²⁰⁵ In contrast, differences in performance on power tests result from the increasing difficulty of the test questions, rather than the time pressure students face when completing the test.²⁰⁶ Many standardized tests, such as the LSAT, are both speed and power tests, but the speeded component can disadvantage test-takers with disabilities that impact their reading speeds.²⁰⁷ Law school finals also tend to have elements of both speed and power; professors design difficult questions to test students’ knowledge while restricting the time they receive to answer the questions. This subsection will discuss suggested modifications to speeded exams versus the benefits of eliminating the speed component altogether.

1. Changing Speeded Tests

As discussed earlier, attorneys may face extreme time pressure in practice. For this reason, some argue for continued implementation of exams with a time constraint.²⁰⁸ Imagine the possibility of offering final exams solely in a multiple-choice format, in a “closed book” universe; students must not access any notes or outside resources. This could eliminate the perceived unfairness that comes along with receiving extended time: if no students had access to outside materials, no student could benefit from having more time to consult those materials. Such a format would be similar to the multiple-choice portion of the bar exam, albeit limited to one subject area.

²⁰⁴ Colker, *supra* note 4, at 689 (internal citation omitted).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *See id.* at 689–90, 703. Colker establishes that the LSAT is a speeded exam, despite the lack of such a designation from the LSAC.

²⁰⁸ *See* William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975, 1034 (2004) (“Alternatively, it is hard to deny the intuition that some raw quantity of ‘speed’ or ‘mental quickness’ is a characteristic that might be valuable in a variety of legal contexts.”).

This is not the solution. From the students' perspective, while this suggestion may help reduce the perceived unfairness of extended time, this format would do little to allay concerns surrounding accommodations for separate rooms. A dishonest student would still be able, critics would argue, to access prohibited materials if the room had no proctor.²⁰⁹ On the other hand, requiring the student to take the exam with a proctor would continue to strain school resources.

Moreover, if we are serious about preparing students for the practice of law, we should test them in a way that mimics what they will actually be doing in practice. Anecdotally, the bar exam has been criticized as an unfair indicator of how well the test takers would perform as attorneys because the format of the test is so different from what they will see in practice.²¹⁰ Setting up law school exams in a closed book, multiple choice format raises similar issues.

Many scenarios exist that would provide a practicing lawyer with time flexibility. Generally, when clients ask questions, there is going to be research involved. Even in transactional practice, attorneys typically must review documentation to fully answer a client's questions. While the lawyer may have a general idea of what is required under a contract, for instance, they typically don't have every specific requirement held in their memory. Therefore, a speeded exam with artificial time constraints and a complete ban on using supporting materials is not an accurate model for a student's ability to perform the typical tasks of a law firm associate.

To be sure, law students are in law school to learn the law. Closed book, multiple choice exams are not the only way for the students to show their knowledge and abilities, though. This format also leaves open the possibility that students who are struggling to grasp a particular topic may opt to guess on the related exam questions instead of putting in the time while studying to fully understand the idea. Luckily, there are other options.

Professors who still want to test "some raw quality of 'speed' or 'mental quickness'"²¹¹ can still alleviate typical accommodation-related concerns by changing the format of their final examinations. This could include adding a portion of the exam that is not just written. While writing is an important skill for lawyers to master, it is not the only skill necessary in practice. Professors may consider adding an element similar to a client interview, oral argument, or simulated negotiation, for instance. Each of these would require

²⁰⁹ See generally *On Timed Exams*, PRAWFS BLOG (May 14, 2012), <https://prawfsblawg.blogs.com/prawfsblawg/2012/05/on-timed-exams.html> [<https://perma.cc/38DA-PK6B>] (discussing concerns of academic integrity with take-home exams).

²¹⁰ See, e.g., *Doesn't the bar exam defeat the whole purpose of law school? If you completed law school, you don't need a closed book test since lawyers will always be allowed to research their questions*, QUORA <https://www.quora.com/Doesnt-the-bar-exam-defeat-the-whole-purpose-of-law-school-If-you-completed-law-school-you-dont-need-a-closed-book-test-since-lawyers-will-always-be-allowed-to-research-their-questions> [<https://perma.cc/5P3V-JHZX>].

²¹¹ See Henderson, *supra* note 208.

the students to think on their feet and do not lend themselves to extended time as a particularly appropriate accommodation. All students should receive the general instructions ahead of time, allowing for differences in processing time.

2. Removing Speeded Tests

For reasons already discussed, including deadline flexibility and the importance of differing skillsets, this author recommends removing the speed component of final exams entirely. Continuing to increase time limits on exams should eventually obviate the need for extended time. In other words, providing a longer time limit on an exam would allow each student to take as much time as they needed to complete the exam, regardless of accommodation status. Of course, providing a proctored, in-school exam with a 24-hour time limit—or higher—is not feasible. Thus, for these longer exams, a take-home format is preferable. Students could obtain the exam file at any point during the exam period and return it when finished. This may be twenty-four hours later for a student without ADHD and some time after that for a student with ADHD, or students may turn the exams in at similar times. In providing take-home exams, we allow the students the flexibility and autonomy to work as best fits their skill sets. Ultimately, there will be those who raise concerns about academic dishonesty, but once again, our students deserve a certain level of trust from us.

Additionally, removing the speed component from examinations would incorporate principals of universal design into law school assessments. The concept of universal design emerged in the 1980s to increase building access for people with and without disabilities.²¹² Congress has also specifically defined universal design for learning, which should benefit all people, regardless of disability status, as “a scientifically valid framework. . . that. . . provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged.”²¹³ By removing the time pressure for all students, an extended time

²¹² Karla Gilbride, *Evolving Beyond Reasonable Accommodations Towards “Off-Shelf Accessible” Workplaces and Campuses*, 30 AM. U. J. GENDER, SOC. POL’Y & L. 297, 304 (2022). Imagine a small apartment building requiring one or two stairs to get in the door from street level. Adding a separate, ramped entrance would provide accommodations under the ADA for wheelchair users. Simply replacing the steps with a small ramp, though, could benefit non-disabled residents and guests under the principles of universal design. The wheelchair user could gain access to the building, and the parent of a young child could easily push a stroller right up to the building entrance without having to struggle backwards up the stairs.

²¹³ Colker, *supra* note 4, at 689 n.38 (internal citations omitted).

accommodation becomes moot;²¹⁴ student's fairness concerns should then lessen.

A universal design approach to final exams would also benefit students who may unknowingly have ADHD, as noted above in Part III. These changes to the structure of final exams would apply to marginalized students who may have ADHD but have not received a formal diagnosis due to lack of resources or cultural concerns. By making final assessments more manageable for all students, law schools can increase access to a legal education for more diverse populations.

From a practical standpoint, such an exam structure would also allow students more agency in their own time management, regardless of ADHD status. If an exam with a twenty-four-hour time limit were designed to be completed in eight hours, students must use their own judgment to determine how much benefit they would receive from taking additional time to revise the exam versus moving on to prepare for exams in their other courses. This would provide the additional benefit of preparing students for the time management they will need in the practice of law. Young lawyers will not be working on one case or deal at a time. Students can learn to balance multiple caseloads by practicing when to set aside their final work for one course and move to another.

3. Exams Generally

Regardless of exam format, professors should craft their exam questions so extended time will not provide any advantage in allowing students to look up answers, as some critics worry.²¹⁵ Different professors have different preferences for the resources their students are permitted to access while taking exams. In some instances, students may use any resource they wish. Professors must ensure that exams with this level of access to outside resources have fact patterns that are complex enough so no student can simply Google—or search on Lexis or Westlaw—the facts and find a real-world answer. Thus, any extended time spent scouring the internet should not ultimately help the student.

Relatedly, fact patterns for exams where students may only use their outlines and casebooks should not be so similar to the main cases discussed in class that students are just parroting back those holdings. Ideally, exams test students' knowledge of the black letter law as it applies to new scenarios, as opposed to only testing their ability to recall the decisions discussed in class. And if a student does not understand the law itself, no amount of extended time sifting through notes or a book for a non-existent case will remedy this. Professors may also permit students to read exam instructions ahead of time and provide opportunities to answer questions on these instructions. This extended time may be especially beneficial to students with

²¹⁴ See *id.* at n.69.

²¹⁵ See *On Timed Exams supra* note 209.

ADHD, although it would allow every student to fully engage with and understand the task before them.

C. Other Assignments

Another possibility involves restructuring assessments away from the traditional method of basing the course grade on one final exam. This could be achieved by offering additional exams, quizzes, or shorter assignments throughout the semester, which many professors may already choose to do. While any student receiving accommodations on final exams would necessarily be entitled to accommodations for the smaller assignments, this approach still lessens typical concerns in a variety of ways.

First, from a school resources standpoint, offering assessments at different dates throughout the semester reduces the likelihood that a large number of students will need to take exams in separate rooms at a given time. This is not a perfect solution, though, and does require tradeoffs; faculty and staff may actually prefer, for instance, handling all assessments and accommodations during a short period at the end of the semester instead of spreading things out over a number of months. Nonetheless, it may be easier to handle one course-worth of accommodated students at a time instead of having to schedule multiple classes at once.

More frequent, shorter assignments may also temper concerns about unfairness from extended time. If non-accommodated students receive 30 minutes to complete a short quiz, for example, students receiving a time and a half accommodation would only receive 45 minutes to complete the same quiz. This could alter the perception of the other students; theoretically, one can do less with fifteen additional minutes than two additional hours.²¹⁶

Time-and-a-half accommodations are certainly not appropriate for all types of law school assessments. For instance, students in a first-year legal writing class typically have a period of many weeks or several months to complete a writing assignment, depending on the assignment's weight. It would likely not be a reasonable accommodation to provide a student with ADHD three months to complete a memo when the rest of the class has two.²¹⁷ However, this does not mean that there is nothing to be done in traditional legal writing courses or the so-called "paper courses" that many students take in the upper level, which do not require a traditional final examination. Professors should make deadlines clear at the start of the

²¹⁶ Or it may not. As a competitive bunch, law students may not be persuaded by this and make the same complaint that there is an unfair advantage for students who get extended time on every assignment.

²¹⁷ See Suzanne E. Rowe, *Reasonable Accommodations for Unreasonable Requests: The Americans with Disabilities Act in Legal Writing Courses*, 12 THE J. OF THE LEGAL WRITING INST. 3, 6 (2006).

semester and provide regular reminders, while making themselves available during office hours to discuss organizational concerns.

D. Proactive Solutions

We, as educators, should also consider proactively reaching out to students with ADHD over the course of the semester. Of course, professors may not know who in their class is receiving accommodations or who has a given disability, absent that student's sharing this information. Instead, we can learn to recognize the signs of ADHD in our students throughout the semester.²¹⁸ Students who are struggling but hesitant to reach out on their own may be more willing to seek help if the professor makes the first move.

Nonetheless, this approach requires a delicate touch to avoid making the student feel out of place or negatively singled out. If a student displays a pattern of leaving one or more times during every class period, consider emailing the student and reminding them of the importance of getting any notes they missed. This can encourage them to reach out to a classmate or come visit the professor in office hours. Some former students who have shared with me that they have ADHD have also been up front about their inability to take in answers to questions during class. If you notice a student asking the same question multiple times and still looking confused, for instance, check in with that student and suggest they come to office hours to walk through the response.

V. CONCLUSION

Teaching law students with ADHD is not a new phenomenon. However, how to handle increasing student requests for accommodations continues to be a topic of interest in law schools. This article has addressed common concerns surrounding accommodations on law school assessments and argues for rethinking the traditional model of law school final examinations. By moving away from basing a student's grade almost entirely on a timed, in-class final examination, schools can embrace students' differing skillsets and set up all students for success, not just the neurotypical students.

When Congress enacted the ADAAA, it was concerned with expanding the definition of disability so more people could benefit from the Act's protections.²¹⁹ Law school professors are not, and should not, be responsible for determining who is deserving of completing their assessments and under what conditions. Expanding law school access to a more diverse range of students, however, is a worthy goal.

Ultimately, law professors must reckon with the reality that legal practice is changing, and will continue to change, to accommodate neurodiverse attorneys. Many full-time law school faculty may have also been out of legal practice for some time, which means that they are not the best judges of the

²¹⁸ See Heidi E. Ramos-Zimmerman, *supra* note 3, at 138–45.

²¹⁹ NEW ENGLAND L. BOS.: BLOG, *supra* note 25.

current atmosphere in law practice. Thus, how law schools have always done things cannot necessarily continue if we truly want to prepare students for practice.

APPENDIX I

LAW SCHOOL ACCESSIBILITY SERVICES

| Law School Rank | Law School Name | Separate Law School Disability Office? | Contact for Main Campus Help? | Guidelines for Documentation? | Guidelines for ADHD Specifically? |
|-----------------|--|--|-------------------------------|-------------------------------|-----------------------------------|
| 1 | Stanford University | No | Provides department name only | Yes | No |
| 1 | Yale University | Yes | N/A | Yes | No |
| 3 | University of Chicago | No | Yes | Yes | No |
| 4 | University of Pennsylvania (Carey) | No | No | Yes | Yes |
| 5 | Duke | No | Yes | No | No |
| 5 | Harvard Law School | Yes | N/A | Yes | Yes |
| 5 | NYU | No | Yes | No | No |
| 8 | Columbia University | No | Yes | Yes | Yes |
| 8 | University of Virginia | No | Yes | Yes | No |
| 10 | Northwestern University | No | No | Yes | No |
| 10 | University of California Berkeley | No | Yes | Yes | Yes |
| 10 | University of Michigan - Ann Arbor | No | Yes | Yes | No |
| 13 | Cornell University | No | Yes | Yes | No |
| 14 | University of California - Los Angeles | No | Provides department name only | Yes | No |
| 15 | Georgetown | Yes | N/A | Yes | No |
| 16 | University of Minnesota | No | No | Yes | No |

| | | | | | |
|----|--|-----|-----|-----|-----|
| 16 | University of Southern California (Gould) | No | Yes | Yes | Yes |
| 16 | University of Texas - Austin | No | Yes | Yes | Yes |
| 16 | Vanderbilt University | No | Yes | No | No |
| 20 | University of Georgia | No | Yes | Yes | Yes |
| 20 | Washington University in St. Louis | No | No | Yes | Yes |
| 22 | Brigham Young University (Clark) | No | No | Yes | Yes |
| 22 | Ohio State University (Moritz) | No | No | Yes | No |
| 22 | University of Florida (Levin) | No | Yes | Yes | No |
| 22 | University of North Carolina - Chapel Hill | No | No | Yes | No |
| 22 | Wake Forest University | No | No | Yes | No |
| 27 | Boston University | No | No | No | Yes |
| 27 | University of Notre Dame | No | Yes | No | No |
| 29 | Boston College | No | Yes | Yes | Yes |
| 29 | Fordham University | No | Yes | Yes | Yes |
| 29 | Texas A&M University | Yes | N/A | Yes | No |
| 32 | Arizona State University (O'Connor) | No | No | Yes | No |
| 32 | George Mason University (Scalia) | No | Yes | Yes | No |
| 32 | University of Utah (Quinney) | No | Yes | Yes | Yes |
| 35 | Emory University | No | No | Yes | No |
| 35 | George Washington University | No | Yes | Yes | Yes |
| 35 | University of Alabama | No | Yes | Yes | Yes |

| | | | | | |
|----|---|-----|-----|-----|-----|
| 35 | University of California - Irvine | No | Yes | No | Yes |
| 35 | University of Iowa | No | No | Yes | No |
| 40 | University of Kansas | No | Yes | Yes | No |
| 40 | University of Wisconsin - Madison | No | No | Yes | No |
| 40 | Washington and Lee University | Yes | N/A | Yes | Yes |
| 43 | University of Illinois Urbana - Champaign | No | Yes | Yes | Yes |
| 43 | Villanova University | No | No | Yes | No |
| 45 | Indiana University - Bloomington (Maurer) | No | No | Yes | Yes |
| 45 | Pepperdine University (Caruso) | No | No | Yes | Yes |
| 45 | SMU (Dedman) | No | No | Yes | Yes |
| 45 | William & Mary Law School | No | No | Yes | No |
| 49 | Baylor University | No | No | Yes | Yes |
| 49 | University of Washington | No | No | Yes | No |