Misconduct Is Not a Disability

University officials are aware that federal and state laws provide protections for persons with disabilities. The Rehabilitation Act precludes federal grantees from discriminating against any "otherwise qualified individual ... solely by reason of her or his disability." 29 U.S.C. § 794(a). Similarly, Title III of the ADA provides that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the ... services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). The ADA defines "discrimination" as including "a failure to make reasonable modifications" that are "necessary" to provide a disabled individual with such full and equal enjoyment, "unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." Id. § 12182(b)(2)(A)(ii). To the extent possible, most courts construe the ADA and Rehabilitation Act to impose similar requirements. *See, e.g., Freilich v. Upper Chesapeake Health, Inc.*, 313 F.3d 205, 214 (4th Cir.2002). In the context of a student excluded from an educational program, to prove a violation of either Act, the plaintiff must establish that (1) he/she has a disability, (2) he/she is otherwise qualified to participate in the defendant's program, and (3) he/she was excluded from the program on the basis of his/her disability. *See, e.g., Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 498 (4th Cir.2005).

Frequently, a university will be confronted with a student with a documented disability who has engaged in misconduct related to that disability. A recent case illustrates how a court will likely address such a difficult situation. Halpern was dismissed from a medical program at Wake Forest University because of repeated instances of misconduct. The student had been previously diagnosed with ADHD and claimed that his misconduct was a by-product of his disability or the medication he was prescribed to treat it. The Court did not agree and held that the dismissal was proper. *Halpern v. Wake Forest Univ. Health Sciences*, 669 F.3d 454, 461-62 (4th Cir. 2012). The Court felt that the student had failed to prove that, due to his behavior, he was "otherwise qualified" to meet the professional standards of the program. Moreover, any claim that those standards should be modified to accommodate his disability was without merit because the standards were an important part of the overall program and modification would alter the nature of the medical education program.

Other courts have reached similar results. For example the dismissal of an employee for attendance problems was held not to constitute discrimination, even if her disability caused her absences. *Tyndall v. Nat'l Educ. Ctrs., Inc.*, 31 F.3d 209, 213 (4th Cir.1994). Similarly, an employer was not held liable for terminating an employee for intoxication, although it was related to alcoholism, his disability. *Little v. FBI*, 1 F.3d 255, 259 (4th Cir.1993)

The Court in the *Halpern* case also noted that academic institutions are entitled to great deference in deciding who should be admitted to or allowed to continue in a particular academic program, even if the student is disabled. In the context of due-process challenges, the United States Supreme Court has held that a court should defer to a school's professional judgment generally regarding a student's academic or professional qualifications. *See Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985). The Supreme Court

stated in this case that a court may not override a school's decision unless it represents such a substantial departure from accepted academic norms as to demonstrate that the responsible person/committee did not actually exercise professional judgment. Based on this, and similar precedent from the high court, federal courts of appeal have overwhelmingly extended some level of deference to a college's professional judgments regarding students' qualifications when addressing disability discrimination claims. As the *Halpern* court remarked, "great deference to a school's determination of the qualifications of a hopeful student" is appropriate "because courts are particularly ill-equipped to evaluate academic performance." *Halpern* at 669 F.3d 454, 462-63.

UAH administrators need to be aware of the rights enjoyed by the University's disabled students. However, this area of law can be quite complex. The Office of Counsel is always available for consultation with University officials facing difficult decisions such as were present in *Halpern* in which disability issues, conduct questions, and the application of academic/disciplinary standards are intertwined.