No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 1:

1a – 65a

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[DO NOT PUBLISH]

In the United States Court of Appeals For the Eleventh Circuit

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No. 22-13778

JAMES GREGORY HOWELL, JR.,

Plaintiff-Appellant,

versus

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-03389-MHC

Before BRANCH, GRANT, and ED CARNES, Circuit Judges.

PER CURIAM:

James Howell, Jr., a former student, sued Morehouse School of Medicine after he was dismissed for academic deficiencies during his third year of medical school. Howell was granted an extensive array of disability accommodations while he was a student at Morehouse. To ameliorate the effects of his Attention-Deficit/Hyperactivity Disorder, he was given private testing rooms, designated note-takers in his classes, access to audio and video taped lectures, double time for examinations and in-class assignments, breaks during examinations and in-class assignments, and preferential seating in class. He claims, however, that Morehouse did not administer his note-taking accommodation effectively during his first two years because he did not receive notes for every class, and when he did receive notes, they were not always delivered within the 48-hour timeframe that Morehouse allegedly promised.

Though the problems with the note-taking accommodation had been indisputably corrected by Howell's third year of school, Howell struggled even more in his classes; he failed multiple courses and was academically dismissed from Morehouse School of Medicine. He admits, though, that during his third year he "really had to disengage from medical school" because he was researching his rights and "looking through over two years of emails." While ostensibly preparing for this lawsuit, he did not study, attend classes, or even take his exams.

Howell sued Morehouse, pleading fifteen counts related to the school's allegedly inadequate administration of his disability accommodations. Howell's basic theory of the case is that, because his note-taking accommodation was ineffective during his first two years, he never absorbed the foundational medical knowledge required to succeed in his later coursework. As a result, he argues that he is entitled to the novel relief of having his entire transcript wiped clean and being permitted to restart medical school "afresh." The district court dismissed all of Howell's claims and denied his third motion to amend the complaint.

After careful consideration of the record and the parties' briefs, and with the benefit of oral argument, we find no reversible error in the district court's well-reasoned orders dismissing Howell's federal and state law claims against Morehouse School of Medicine and denying his motion to amend his complaint a third time.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., **Plaintiff,** **v.** **THE MOREHOUSE SCHOOL OF MEDICINE, INC.,** **Defendant.**	**CIVIL ACTION FILE** **NO. 1:20-CV-3389-MHC**

ORDER

This case comes before the Court on Defendant Morehouse School of Medicine, Inc. ("MSM")'s Motion to Dismiss Plaintiff's Amended Complaint ("Mot. to Dismiss") [Doc. 36], Plaintiff James Gregory Howell, Jr. ("Howell")'s Motion Requesting Leave to Amend His Amended Complaint ("Mot. to Amend") [Doc. 41], and Howell's Motion for Leave to File Sur-Reply to Reply to Response to Defendant's Motion to Dismiss Plaintiff's Amended Complaint ("Mot. to File Sur-Reply") [Doc. 42].

I. BACKGROUND[1]

A. Factual Background

1. MSM's Student Handbook and Other Pertinent Policies

MSM's Student Handbook[2] states in the "Forward," that

> The provisions of this handbook reflect the general nature of and conditions concerning student services at MSM, but do not constitute a contract or otherwise binding agreement. Procedures set forth in this handbook are subject to change at any time, and all programs and activities described in this handbook are subject to cancellation or termination by MSM without prior notice.

2017-2018 Student Handbook [Doc. 1-4] at 2; 2018-2019 Student Handbook [Doc. 1-5] at 2; 2019-2020 Student Handbook [Doc. 1-6] at 2.[3] The MSM Student Handbook also provides for the following under the heading, "Disability Services":

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[1] Because this case is before the Court on a motion to dismiss, the facts are presented as alleged in the Amended Complaint [Doc. 24]. See Silberman v. Miami Dade Transit, 927 F.3d 1123, 1128 (11th Cir. 2019) (citation omitted).

[2] Typically, a motion to dismiss must be converted into a motion for summary judgment when a district court considers material outside the pleadings. FED. R. CIV. P. 12(d); Day v. Taylor, 400 F.3d 1272, 1275-76 (11th Cir. 2005). However, a district court may always consider exhibits attached to a complaint on a 12(b)(6) motion because they are part of the pleadings. FED. R. CIV. P. 10(c); Thaeter v. Palm Beach Cnty. Sheriff's Office, 449 F.3d 1342, 1352 (11th Cir. 2006). All of the attachments cited herein were either attached to the Complaint [Doc. 1] or the Amended Complaint.

[3] The Student Handbooks in effect during the three pertinent academic years all contain the same relevant language, so the Court will refer to them collectively as

> Morehouse School of Medicine's Office of Disability Services (ODS) serves as the primary resource for students with documented disabilities, disability concerns, and making requests for reasonable academic adjustments and accommodations. The ODS works in collaboration with faculty, staff and departments throughout MSM to develop successful strategies for maximizing students' academic achievement and participation in extracurricular activities and programs. Services and reasonable accommodations are designed to meet the individual needs of each student in accordance with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the ADAAA. These regulations require that any qualified person receive academic adjustments that are necessary and effective, and which do not compromise the academic standards of the School, to ensure equal access to educational opportunities, services, programs and activities at the School. MSM will not provide an academic adjustment or accommodation that is not reasonable or that would result in an undue hardship to the School or otherwise fundamentally alter the program. Any applicant, student, resident, or employee who believes he or she has been denied any service or benefit or otherwise discriminated against or harassed due to a disability may contact the Title IX Coordinator or the Deputy Title IX Coordinator.

MSM Student Handbook at 39-40. In the subsection entitled, "Investigation and Discipline of Complaints," under the Heading, "Nondiscrimination and Anti-Harassment Policies," the MSM Student Handbook states, in pertinent part:

> All reports and complaints of discrimination and harassment will be promptly investigated, and appropriate corrective action will be taken as expeditiously as possible. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to an impartial investigator. MSM will

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the "MSM Student Handbook," and will cite to the latest version, which is the 2019-2020 Student Handbook [Doc. 1-6].

> make reasonable efforts to protect the rights of both the Complainant and the Respondent. . . .
>
> ***
>
> The amount of time needed to conduct an investigation will depend in part on the nature of the allegation(s) and the evidence to be investigated (e.g., the number and/or availability of witnesses involved). Within 60 days of receipt of the complaint, the Title IX Coordinator or Deputy Title IX Coordinator will provide an interim notice of the outcome of the investigation or will advise the parties of the additional estimated amount of time needed for the investigation. Within 10 business days following the completion of an investigation, the Title IX Coordinator or Deputy Title IX Coordinator will simultaneously provide written notification to the Complainant and Respondent of the results of the investigation. If the investigation reveals that, by application of the preponderance of evidence standard, harassment, discrimination (or other inappropriate or unprofessional conduct even if not unlawful), or retaliation has occurred, disciplinary action may be taken by MSM. Written notice to the appropriate parties relating to discipline, resolutions, and/or final dispositions is deemed to be official correspondence from the School. Disciplinary sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator. MSM will take the appropriate corrective action based on results of the investigation and will follow up as appropriate to ensure that the remedial action is effective. Complainants are encouraged to report any reoccurrences of conduct that were found to violate MSM's nondiscrimination and anti-harassment policies or any other related concerns.

MSM Student Handbook at 73.

The term "Academic Deceleration" is included in the MSM Student Handbook with the following description:

> Students enrolled in the basic science years at MSM have the option to decelerate. This essentially allows them to complete the basic science curriculum over a three-year period (as opposed to the standard two-

> year basic sciences curriculum). Students may petition the Student Academic Progress & Promotions Committee (SAPP) to enter the Five-Year program in the first or second year according to policies outlined below. In addition, the SAPP Committee may choose to require students to enter the Five-Year program if deemed appropriate.

MSM Student Handbook at 102; Am. Compl. ¶ 84. The MSM Student Handbook further provides that the "1st and 2nd Year curriculum will consist of no more than 36 months excluding any leave of absence . . . ." MSM Student Handbook at 104.

The MSM Student Handbook also includes the following:

> **Dismissal and Suspension**
>
> A student's registration at MSM will be terminated by the Student Academic Progress and Promotion Committee (SAPP) or by administrative action if any student's performance or behavior is not consistent with his or her ability to become a competent, adequately informed and responsible physician. All of the following situations below will be reviewed by SAPP (unless there is a serious violation of the rules of conduct, in which case the Dean of the School may terminate the registration of a student by administrative action):
>
> ***
>
> iii. If a student on the decelerated track has a final grade of "D" or "F".
>
> ***
>
> viii. Any student receiving 2 or more final grade deficiencies will be considered by the SAPP Committee. Students on academic probation who continue to make unsatisfactory progress and receive one or more final grades of D or F will be considered for dismissal. Students receiving two or more final grades of D or F will automatically be scheduled for a dismissal hearing.

MSM Student Handbook at 107.

Finally, MSM's Student Information Guide [Doc. 1-10], provided by MSM's Office of Disability Services ("ODS"), provides a list of services available to qualified students, including "Note takers." MSM Student Information Guide at 2.

2. Howell's Acceptance to MSM

On March 1, 2017, Howell was accepted as a medical school student by MSM for the prospective class of 2021. Am. Compl. ¶ 45. On March 3, 2017, Howell notified MSM that he had Severe Attention Deficit/Hyperactivity Disorder ("ADHD"), and other Specified Anxiety Disorder – Intermittent Obsessive Anxiety, and recommended certain academic accommodations. Id. ¶¶ 38, 46. Howell's impairments "substantially limits and significantly restricts major life activities of Plaintiff including, but not limited to, learning, concentrating, and thinking." Id. ¶ 39.

On April 7, 2017, Marla Thompson ("Thompson"), the Title IX Coordinator and Manager of ODS, responded to Howell's inquiries and began the "interactive accommodation review process" with Howell. Id. ¶¶ 22, 48. Thompson was the "person in charge of determining [Howell's] eligibility for accommodations, granting accommodations, and managing their implementation." Id. ¶ 61. On

April 12, 2017, Thompson informed Howell that MSM would accept Howell's 2014 psychological evaluation, which included information regarding Howell's "medical history, diagnosis, and recommended accommodations," for the current academic year, 2017-2018. Id. ¶¶ 47, 51. Thompson also told Howell that he would need to provide an updated psychological evaluation for the next academic year, as the evaluation was only valid for three years. Id. ¶ 51; see also MSM Registration and Information Packet at 12. Thompson told Howell that MSM could satisfy Howell's requested accommodations, which included a note-taking accommodation. Am. Compl. ¶¶ 52-53. Thompson also communicated that there was a "system in place at MSM to satisfy his note-taking accommodation" and that the accommodation "would come with a 24-48-hour turnaround time goal for any class [Howell] was taking." Id. ¶¶ 54-55.

Howell alleges that during the interactive review process, he provided ODS all of the necessary paperwork, including the 2014 psychological evaluation, a summary letter from Howell's psychiatrist, and the completed ODS registration packet. Id. ¶ 67. Thompson informed Howell that she had received all of the documentation and would reach out if clarification was needed. Id. ¶ 69.

On June 16, 2017, Howell asked Thompson for an update on the status of his requested accommodations, and Thompson responded that his accommodations

- Double time for examinations and in-class assignments

Mem. from Thompson to Howell (June 30, 2017) [Doc. 1-9 at 1] (granting the accommodations for the time period of July 3, 2017, through June 30, 2018). The classes in the first year of MSM's medical school program had "a heavy emphasis on lectures, with variable use of textbooks and classes that built upon previous classes," such that "students were reliant on lectures, and taking notes, for obtaining all the necessary information they needed to know for their classes." Am. Compl. ¶ 91.

Howell alleges he was never warned during the interactive accommodation review process that the note-taking accommodation was not an established process. Id. ¶ 93. He alleges that on July 24, 2017, he contacted Dr. Brandi Knight ("Knight"), who was also involved with Howell's accommodations, to "stress" that the note-taking accommodation was "critical" for his success and that he "felt like he was going to fail [the] upcoming exam because [he] was not able to study all of the material due to not having timely notes[.]" Id. ¶ 112; see E-mail from Howell to Knight (July 24, 2017) [Doc. 1-13] ("I really feel like I'm going to bomb this exam. I'm simply not ready. There are lectures I still haven't even gone over yet."). Knight responded, "I have had some luck with identifying a note taker in class. I have two students that I'm checking out their notes for clarity and

precision . . . we can work together to make adjustments for the next exams in the future." E-mail from Knight to Howell (July 24, 2017) [Doc. 1-13].

On August 1, 2017, Howell sent his initial written complaint via e-mail to Thompson, stating "to this day, at the start of the fifth week of class, I still do not have a notetaker." Am. Compl. ¶ 94; E-mail Exchange between Thompson and Howell (Aug. 1, 2017) ("Aug. 1, 2017, Complaint") [Doc. 1-11] at 2-3. Thompson responded the same day that she "had not been made aware that this accommodation was not being met by you or members of your academic team," and would follow-up that week. Aug. 1, 2017, Complaint at 2. Thompson also stated that "we were ready to ensure [Howell's] accommodations would be implemented seamlessly," but that the note-taking accommodation "has required us to pivot and rethink the best and multiple ways we can accommodate this request." Id. at 1. Howell alleges that he was never provided with any written notification regarding the results of any investigation, corrective actions, or remedial actions from this initial complaint to Thompson. Am. Compl. ¶¶ 106-08.

Howell alleges that he received his first set of notes on August 10, 2017, and that these notes were for classes that had occurred "nine or ten days prior." Id. ¶ 110. Howell alleges that, for the 2017-18 academic school year, he only received

notes for 61% of his classes and that the turnaround time for the notes that were received was 4.17 days. Id. ¶¶ 119-20.

In an e-mail exchange between Knight, Thompson, and Howell regarding ways to give Howell access to notes more quickly, by having his notetakers upload them directly to a shared online folder, Knight stated, "I'm sorry for the timing on anything on my part. there [sic] are a lot of pieces to this puzzle that I wasn't anticipating, so I'm doing the best that I can with the notetakers. This is a totally new process for us and there is nothing set to work seamlessly and quickly. I'm doing this all as it comes day by day. You are at the mercy of me because I am your direct connect. But I can only give you what I receive – notes come as the students finish them …they are super concerned that they are correct and complete for you." E-mail Exchange Between Knight, Thompson, and Howell (Oct. 27-31, 2017) ("Oct. 31, 2017, E-mail") [Doc. 1-12] at 1; Am. Compl. ¶ 109. In the same e-mail exchange, Knight informs Howell about some computer issues as well as the fact that she secured another notetaker for Howell. Oct. 31, 2017, E-mail; Am. Compl. ¶ 115. However, Howell alleges that he was never provided with the additional notetaker. Am. Compl. ¶ 116.

Howell received a 2.49 grade point average ("GPA") on a 4.00 scale for the 2017-2018 academic year, which was a passing GPA. Id. ¶ 121. He alleges that

he failed one class, Organ Systems 3 ("OS3"), for which he only received 68.60% percent of the notes for all of the classes. Id. ¶¶ 126, 128. Howell alleges that he was able to remediate the course by subsequently passing a 126-question exam on the subject by June 30, 2018. Id. ¶¶ 128, 130. Howell passed this exam with the lowest possible score, but he still was not provided with the remaining 31.40% of the missing notes from OS3. Id. ¶¶ 129-31.

Howell sent Thompson an e-mail on May 7, 2018, which expressed his continued concerns about the untimeliness of his note-taking accommodation. E-mail from Howell to Thompson (May 7, 2018) [Doc. 1-15] at 1. Howell alleges that this complaint was not promptly investigated, nor did he receive any results or corrective actions. Am. Compl. ¶¶ 133-37.

Howell alleges that, after his first year of the medical school program, MSM "suggested" that he enter academic deceleration, by splitting the classes of the second year into two separate years. Id. ¶ 138. Howell alleges that he elected to enter the decelerated second year medical curriculum because of his "mounting lack of faith in MSM's ability to provide for [Howell's] note-taking accommodation, coupled with the poor grades (2.48/4.00 first year GPA), and emotional turmoil [Howell] was experiencing." Id. ¶ 140.

4. The 2018-2019 Academic School Year

Howell alleges that, on July 20, 2018, ODS requested an updated psychological evaluation from Howell for the new academic year, which he provided. Am. Compl. ¶¶ 164, 167. For Howell's second academic school year, Howell was provided with the following accommodations:

- Private and/or distraction reduced testing room
- Designated note-taker in classes and access to audio taped lectures
- Double time for examinations and in-class assignments

Id. ¶ 142; Mem. from Thompson to Howell (Oct. 25, 2018) [Doc. 1-9 at 2] (granting the accommodations for the time period of October 25, 2018, through June 30, 2019). Howell alleges that problems with his note-taking accommodation persisted throughout the second academic year. Am. Compl. ¶ 144. The courses once again had a "heavy emphasis on lectures, and students were reliant on lectures, and taking notes, for obtaining all the necessary information they needed to know for their classes." Id. ¶ 145.

Howell alleges that in late 2018 to early 2019, Knight spoke to Howell about hiring a professional notetaker to help with the untimeliness of Howell's note-taking accommodation. Id. ¶ 147. However, on January 17, 2019, Knight informed Howell that no one would be hired. Id. ¶ 148; E-mail from Knight to

Howell (Jan. 17, 2019) [Doc. 1-17] ("As far as the hired notetaker, no one has been hired. The focus has been made to streamlining the process away from me and to the curriculum managers. You'll likely see other people sending you notes now as opposed to my emails."). Knight also informed Howell that

> The options of having the curriculum managers and staff participate is the quickest improvement that we can make. There are other students that receive notes and they all come to me. It's very tough for me to keep up with the timing of receiving and sending the notes. Students receiving the notes want them - and they should have them - in a 24h or less turn around. Sometimes that is just not feasible for me to accomplish. Hiring individuals takes a long time with job posting and HR and training. So that is on the table for upcoming years, but not as a [sic] immediate solution.

E-mail from Knight to Howell (Jan. 22, 2019) [Doc. 1-18]. However, Howell alleges that no other staff were involved with the note-taking accommodation until Knight left MSM around March 2019. Am. Compl. ¶ 151.

Howell sent Thompson additional complaints by e-mail on February 25, 2019, regarding problems with communications between Thompson and Knight, and continued issues with the untimeliness of the notes. E-mails from Howell to Thompson (Feb. 25, 2019) [Doc. 1-19]. Howell alleges that these complaints were not investigated and no corrective or remedial actions were taken. Am. Compl. ¶¶ 153-56.

first two years at MSM. E-mail from Howell to Dr. Anachebe (Feb. 17, 2020) [Doc. 1-20] and attachment [Doc. 1-21]. Dr. Anachebe responded by stating that he did not handle accommodations and directed Howell to ODS. E-mail from Dr. Anachebe to Howell (Feb. 18, 2020) [Doc. 1-22]. On or around February 19 and 26, 2020, Howell met with Thompson, who informed him that in March 2019, she first became aware that Knight had access to notes from notetakers of previous years and chose not to provide these notes or reveal her possession of them. Am. Compl. ¶ 182. He was also informed that other students not registered through ODS who were performing poorly academically may have had access to these previous years' notes. Id. ¶ 183. In this same meeting, Thompson told Howell that she needed to meet with Dr. Anachebe to discuss Howell's concerns. Id. ¶ 184.

On March 13, 2020, Howell met with Dr. Anachebe, who said she did not handle accommodations and that she "did not want to discuss Plaintiff's medical situation." Id. ¶ 187. Dr. Anachebe also provided Howell with the contact information of MSM's Chief Compliance Officer, Keith Henderson ("Henderson"). Id. ¶ 189. After this meeting, Howell e-mailed Thompson about the ineffectiveness of meeting with Dr. Anachebe. Id. ¶ 191; E-mail from Howell to Thompson (Mar. 13, 2020) [Doc. 1-25] ("I'm left perplexed here because I don't know who can help me, let alone discuss these matters with me.").

Howell alleges that he "concluded that taking a leave of absence would not solve [his] problems because [his] grades would not be fixed . . . ." Am. Compl. ¶ 190.

7. Compliance Complaint and Dismissal Hearing

On March 16, 2020, Howell e-mailed Henderson to discuss his complaint about his note-taking accommodation, but Howell alleges that Henderson failed to respond. E-mail from Howell to Henderson (Mar. 16, 2020) [Doc. 1-27]; Am. Compl. ¶ 200. On March 28, 2020, Howell filed an internal compliance complaint to MSM's Office of Compliance regarding MSM's failure to timely provide for his note-taking accommodation and for the "attempts to conceal and retaliatory acts" described therein (the "Compliance Complaint"). Id. ¶ 201; Compliance Compl. (Mar. 28, 2020) [Doc. 1-28]. The Compliance Complaint was investigated by Alecia Bell ("Bell"), MSM's Interim Chief Compliance Officer. Am. Compl. ¶ 202. On April 28, 2020, Howell e-mailed Bell discussing his Compliance Complaint, and stated:

> I've really had to disengage from medical school. Starting in late January/early February 2020, for about a cumulation of two or more months, I began researching what my rights were and conducting my own analysis by looking through over two years of emails. During this time, I also tried meeting with ODS and Dr. Anachebe over the period of about a month to see if we could all come to an agreement, but nothing came from the meetings. During these times it was difficult, if not impossible, to focus on my studies, for all of my time and focus was

> towards this issue with the notetaking accommodations. ODS was aware of this and I spoke about my feelings of depression to both ODS and Dr. Anachebe. I have been severely behind and missed exams in March, because I had no time, nor energy and focus, to study for any of the classes. Since the missed March exams, any attempt to vaguely continue in my studies have been stifled because I didn't know whom I can speak to about any of this or whom I can trust.

E-mail from Howell to Bell (Apr. 28, 2020) ("Apr. 2020 E-mail") [Doc. 1-29] at 2-3.

On May 27, 2020, Howell told Bell that MSM "may attempt to dismiss Plaintiff for failing Plaintiff's classes for the 2019-2020 academic school year," and told her to contact Dr. Brenda Klement ("Dr. Klement"), the Committee Chair, to inform Dr. Klement of the open and ongoing Compliance Complaint. Am. Compl. ¶ 204. Bell confirmed that she would contact Dr. Klement. Id. ¶ 205.

On May 29, 2020, MSM notified Howell that, because of his failing grades in the Pathophysiology and Pathology courses, the SAPP Committee requested he appear at a dismissal hearing on June 16, 2020, in accordance with the MSM Student Handbook:

> The committee is aware that you have received failing grades in the Pathophysiology and Pathology courses. **The committee requests that you appear before them for a dismissal hearing based on the following MSM policy:**
>
> "a student in the decelerated track has a final grade of D or F." (Page 107, iii. 2019-2020 Student Handbook)

> "Any student receiving 2 or more grade deficiencies will be considered for dismissal by the SAPP committee. Students on academic probation who continue to make unsatisfactory progress and receive one or more additional final grades of D or F will be considered for dismissal. Students receiving two or more final grade deficiencies (D or F) will automatically be scheduled for a dismissal hearing." (Page 107, viii. 2019-2020 Student Handbook)

Letter from Dr. Klement to Howell (May 29, 2020) ("Dismissal Hearing Notice") [Doc. 1-30 at 4-5].

In response, Howell e-mailed Dr. Klement and others that he had an open and ongoing investigation regarding his Compliance Complaint. E-mail from Howell to Dr. Klement (May 30, 2020) [Doc. 1-31] at 2. In e-mail and phone conversations, Howell complained to Dr. Klement and Bell about the "prejudicial nature of having a dismissal hearing before the investigative conclusion of an already filed compliance complaint regarding the failure of MSM in accommodating Plaintiff's disability . . . ." Am. Compl. ¶ 210. Dr. Klement e-mailed Howell that after speaking with Bell, "[MSM] needed to continue to proceed with the dismissal hearing on 6/16 until someone indicates that it should be postponed or cancelled." E-mail from Dr. Klement to Howell (June 1, 2020) [Doc. 1-31] at 2.

On June 5, 2020, Bell notified Howell via telephone that she and Dr. Klement "decided that since there was supposedly not a process in place at MSM

concerning dismissal hearings where the student also has an ongoing compliance investigation, and because [Bell]" had still not completed her investigation, "the dismissal hearing against [Howell] would continue as scheduled." Am. Compl. ¶ 215. Bell advised Howell to disclose the details of his Compliance Complaint at the dismissal hearing. Id. ¶ 217. However, on June 12, 2020, Dr. Klement notified Howell that the dismissal hearing was postponed until further notice. E-mail from Dr. Klement to Howell (June 12, 2020) [Doc. 1-31] at 1.

On June 19, 2020, Bell notified Howell that the investigation regarding his Compliance Compliant was complete and that a written report would be prepared. Am. Compl. ¶ 222. According to Howell, Bell believed that "greater understanding around the requirements of the ADA is necessary for all involved in academia," and that she "encouraged more training from our ODS office." Id. ¶ 224. Howell asked Bell whether he would be provided a copy of the written report on his Compliance Complaint, and Bell stated that all such reports were confidential. E-mail from Bell to Howell (June 23, 2020) [Doc. 1-35]. However, Bell later notified Howell that he would be receiving a written letter of determination. E-mail from Bell to Howell (July 6, 2020) [Doc. 1-37] ("Typically Compliance investigations are kept completely confidential, but for the purpose of formal ODS complaints the process is a bit different. I apologize for not

recognizing that difference prior to this message."). That letter, which was sent to Howell on July 14, 2020, found that while class notes had not been provided within 24-48 hours of each class during a period including 2017-2019 (his first two years of medical school), that issue was resolved by March 2019, and class notes thereafter were provided within 24-48 hours. Letter to Howell (July 14, 2020) [Doc. 1-41]. Howell subsequently was notified that his dismissal hearing would be held on July 28, 2020. E-mail from LaRonda Evans to Howell (July 13, 2020) [Doc. 1-39].

In preparation for the dismissal hearing, Howell e-mailed six exhibits to Dr. Klement, which he indicated that he wanted the committee to review before the hearing. Am. Compl. ¶¶ 253-55 (citing Doc. 1-44, which contained the exhibits). But at the start of the hearing, Howell was informed that the committee members had not and were not going to look over Howell's exhibits. Id. ¶ 256. Howell thus gave an oral account of everything discussed in the exhibits, including the failures in the note-taking accommodation. Id. ¶ 260. Howell alleges that at least three or more dismissal hearing committee members had knowledge of his Compliance Complaint. Id. ¶ 268. During the dismissal hearing, at least one committee member determined that the note-taking accommodation was not essential because

Howell had access to textbooks and class recordings. Id. ¶¶ 262-63. Howell was notified by phone later that day that he was being dismissed from MSM. Id. ¶ 269.

The written letter of dismissal from the SAPP Committee stated, in pertinent part:

> **You were brought before the committee because you received final grade deficiencies in the Pathology and Pathophysiology courses, and you are in the decelerated program.**
>
> After careful consideration of the information you presented during the hearing, the written information you submitted to the committee (Exhibits A-F), and your academic transcript, the committee voted to dismiss you from Morehouse School of Medicine. The decision was based on the school's policy of receiving a final grade of D or F while in the decelerated track, and for receiving two or more final grades of D or F (Page 107, iii and viii, respectively, 2019-2020 Student Handbook). In addition, MSM has a policy that the 1stand 2ndYear Curriculum will consist of no more than 36 months excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook), and you have reached this time limit.

Letter from Dr. Klement to Howell (July 30, 2020) ("Dismissal Letter") [Doc. 1-46 at 2-4]. The Dismissal Letter also informed Howell of his opportunity to appeal the decision to the President and Dean of MSM. Id.

Howell alleges that "[o]n information and belief, MSM has allowed other students to spend more than 36 months during their 1st and 2nd Year Curriculum," that "other students have been told by MSM all the reasons for their dismissal

> your academic years 2017-2018 and 2018-2019 that you did not receive written notes from the note-taker within 24-48 hours of your courses/classes. The committee was also aware that as of the end of March 2019, you did begin to receive written notes through the note-taker within 24-48 hours.
>
> While I find there is sufficient evidence to support the SAPP Committee's decision to schedule you for a dismissal hearing, I additionally find the delay in the completion of your hearing was not proper. In addition, I find there is not sufficient evidence to support the SAPP Committee's decision to dismiss you from the MD program. For these reasons, I am reversing the SAPP Committee's decision to dismiss you from the MD program, effective immediately.

Letter from Dr. Rice to Howell (Sept. 15, 2020) ("Decision of Appeal") [Doc. 24-6 at 2-3].

On September 16, 2020, the Senior Associate Dean of Educational Affairs e-mailed Howell a proposed plan for reentry into MSM's medical school program, which would allow Howell to retake both Pathophysiology and Pathology courses. E-mail from Martha Elks to Howell (Sept. 16, 2020) [Doc. 24-7] at 3. Howell indicated that he believed the proposed plan to be deficient because of MSM's failure "to accommodate me during my first two years [which] have left me with deficient fundamentals to succeed to my full potential" and believes he should be permitted to restart Medical School. E-mail from Howell to Martha Elks (Sept. 30, 2020) [Doc. 24-7] at 1-2. There is no indication in the Amended Complaint that Howell has re-enrolled at MSM.

9. Negligent Misrepresentation (Count IX);

10. Breach of Contract (Count X); and

11. Punitive Damages (Count XI).

Compl. ¶¶ 285-593.

On October 20, 2020, MSM filed its first Motion to Dismiss Plaintiff's Complaint [Doc. 19]. On November 17, 2020, Howell filed the Amended Complaint, consisting of 343 pages and 877 paragraphs, and including eight additional exhibits. The Amended Complaint restates the first eleven causes of action from the initial Complaint and adds the following additional causes of action:

1. Hostile Learning Environment (Count XII);
2. Unjust Enrichment (Count XIII);
3. Breach of Fiduciary Duty (Count XIV); and
4. Intentional Infliction of Emotional Distress (Count XV).

Am. Compl. ¶¶ 752-877.

On November 20, 2020, the parties submitted their Joint Preliminary Report and Discovery Plan ("JPRDP") [Doc. 28]. The JPRDP states, "Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not

be accepted for filing, unless otherwise permitted by law." JPRDP at 12. The JPRDP, including the time limits for amending pleadings, was adopted as this Court's Scheduling Order on November 24, 2020. Scheduling Order [Doc. 29].

In light of the filing of the Amended Complaint, the Court denied as moot MSM's first Motion to Dismiss. Nov. 25, 2020, Order [Doc. 31] at 2. MSM filed its Motion to Dismiss Howell's Amended Complaint on December 29, 2020, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On March 15, 2021, almost four months after the filing of the JPRDP, Howell filed his Motion to Amend.

II. MOTION TO AMEND[4]

A. Legal Standard

Under Federal Rule of Civil Procedure Rule 15(a), a party may amend his complaint once as a matter of course within twenty-one days after service of a response by answer or motion. Otherwise, the party may amend his complaint

[4] The Motion to Amend was filed after MSM's Motion to Dismiss but will be considered first because a newly amended complaint becomes the operative complaint and has the effect of mooting motions to dismiss earlier versions. See Dresdner Bank, A.G. v. M/V Olympia Voyager, 463 F.3d 1210, 1215 (11th Cir. 2006) (internal punctuation and citation omitted) ("An amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary.").

"only with the opposing party's written consent or the court's leave." FED. R. CIV. P. 15(a)(2). Rule 15(a) further instructs that "[t]he court should freely give leave when justice so requires." Id. "The Supreme Court has emphasized that leave to amend must be granted absent a specific, significant reason for denial." Spanish Broad. Sys. v. Clear Channel Commc'ns, 376 F.3d 1065, 1077 (11th Cir. 2004) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). When considering whether such a reason exists, the district court may consider factors "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." Foman, 371 U.S. at 182; see also Felio v. Hyatt, No. 1:12-CV-4186-ODE, 2014 WL 12634467, at *6 (N.D. Ga. Aug. 7, 2014) (citing Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1241 (11th Cir. 2009)).

However, when a motion to amend is filed after the time provided by a court's scheduling order, the plaintiff "must first demonstrate good cause under Rule 16(b) before [the court] will consider whether amendment is proper under Rule 15(a)." Sosa v. Airprint Sys., Inc., 133 F.3d 1417, 1419 (11th Cir. 1998) (citations omitted). Rule 16 requires that the Court enter a scheduling order that contains limitations on "the time to join other parties, amend the pleadings,

complete discovery, and file motions." FED. R. CIV. P. 16(b)(3)(A). Such orders "may be modified only for good cause and with the judge's consent." FED. R. CIV. P. 16(b)(4); see also S. Grouts & Mortars, Inc. v. 3M Co., 575 F.3d 1235, 1241 (11th Cir. 2009) ("A plaintiff seeking leave to amend its complaint after the deadline designated in a scheduling order must demonstrate 'good cause' under FED. R. CIV. P. 16(b)."). If the court were to consider Rule 15(a) amendments without regard to the requirements of Rule 16(b), the court "would render scheduling orders meaningless and effectively would read Rule 16(b) and its good cause requirement out of the Federal Rules of Civil Procedure." Sosa, 133 F.3d at 1419.

B. Analysis

Howell's Motion to Amend seeks leave to amend his already voluminous Amended Complaint to add "additional paragraphs to address Defendant's Motion to Dismiss . . . to address Defendant's Reply . . . and to remedy unintentional typographical and other errors and omissions." Mot. to Amend ¶ 3. Howell argues that the amendment would not prejudice MSM because he is "adding facts to satisfy Defendant's new objections and arguments," the amendment would not be futile, and would not cause undue delay. Id. ¶¶ 6-7. Howell attaches the proposed Second Amended Complaint [Doc. 41-4] with tracked changes demonstrating the

proposed changes. Howell proposes no additional cause of action to his Amended Complaint. In its response, MSM argues that the Motion to Amend should be denied because Howell fails to mention the Rule 16 requirements, let alone demonstrate good cause to grant his request. MSM's Opp'n to Pl.'s Mot. for Leave to Amend the Am. Compl. ("MSM's Opp'n to Mot. to Amend") [Doc. 43]. This Court agrees.

The good cause standard under Rule 16 "precludes modification [of a scheduling order] unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" Sosa, 133 F.3d at 1419 (citing FED. R. CIV. P. 16 advisory committee's note) and Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992) ("If [a] party was not diligent, the [good cause] inquiry should end."). Lack of diligence can include situations where either (1) the plaintiff "has full knowledge of the information with which it seeks to amend its complaint before the deadline passes," or (2) the "plaintiff's failure to seek the information it needs to determine whether an amendment is in order." S. Grouts, 575 F.3d at 1241 n.3.

Because the JPRDP was filed on November 20, 2020, the deadline for filing amendments to the pleadings was December 21, 2020. Howell's Motion to Amend was filed almost three months after this deadline, on March 15, 2021. Howell has

not "indicate[d] with any specificity the good cause he had for untimely moving to amend his complaint." Smith v. Sch. Bd. of Orange Cnty., 487 F.3d 1361, 1367 (11th Cir. 2007). In fact, Howell admits that the primary purpose of his Motion to Amend is to respond to MSM's arguments raised in its Motion to Dismiss the Amended Complaint, and he does not otherwise argue that any of the proposed amendments arise from information not already in his possession when he filed the Amended Complaint. See Adams v. Lockheed Martin and Int'l Assoc. of Machinists and Aerospace Workers, Local Lodge 709, AFL-CIO, No. 1:05-CV-0942-CC, 2005 WL 8155423, at *2 (N.D. Ga. July 13, 2005) (citing Sosa, 133 F.3d at 1418) ("[T]he presumption is against modification, unless the movant can show more affirmative diligence."). Howell's explanation shows a lack of diligence. See S. Grouts, 575 F.3d at 1241 n.3.

"It is only after the court addresses whether the proposed amendment may be granted under Rule 16 that the court is to determine whether it is proper under Rule 15." Nobles v. Rural Cmty. Ins. Servs., 303 F. Supp. 2d 1279, 1283 (M.D. Ala. 2004). Because Howell fails to show good cause to modify the Court's Scheduling Order to permit the filing of a motion to amend three months after the deadline for doing so, the Court is not required to consider his arguments under Rule 15. However, even if this Court had determined there was good cause to

modify the Scheduling Order to permit the out-of-time amendment, it would still deny the Motion to Amend under Rule 15. This is not the first time Howell, prompted by a pending motion to dismiss, has moved to amend his complaint—Howell filed the Amended Complaint in an attempt to address some of the deficiencies in the initial pleading identified in the first motion to dismiss. Howell has failed, at minimum, to demonstrate that there was no dilatory motive here. See Foman, 371 U.S. at 182; see also Ferrell v. Busbee, 91 F.R.D. 225, 232 (N.D. Ga. 1981) (denying plaintiff's motion to amend where the court found that plaintiff had failed to demonstrate a "minimal level of diligence and competence" and could not demonstrate that his motion "was not served as a dilatory tactic"). Therefore, Howell's Motion to Amend is **DENIED**.

III. MOTION TO DISMISS

A. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Under Federal Rule of Civil Procedure 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp.

v. Twombly, 550 U.S. 544, 570 (2007). The Supreme Court has explained this standard as follows:

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted). Thus, a claim will survive a motion to dismiss only if the factual allegations in the pleading are "enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555.

At the motion to dismiss stage, the court accepts all well-pleaded facts in the plaintiff's complaint as true, as well as all reasonable inferences drawn from those facts. McGinley v. Houston, 361 F.3d 1328, 1330 (11th Cir. 2004); Lotierzo v. Woman's World Med. Ctr., Inc., 278 F.3d 1180, 1182 (11th Cir. 2002). Not only must the court accept the well-pleaded allegations as true, but these allegations must also be construed in the light most favorable to the pleader. Powell v. Thomas, 643 F.3d 1300, 1302 (11th Cir. 2011). However, the court need not accept legal conclusions, nor must it accept as true legal conclusions couched as factual allegations. Iqbal, 556 U.S. at 678. Thus, evaluation of a motion to dismiss

requires the court to assume the veracity of well-pleaded factual allegations and "determine whether they plausibly give rise to an entitlement to relief." Id. at 679.

B. Discussion

1. Federal Claims

a. Disability Discrimination Claims Under the ADA and the RA in General

Title III of the ADA sets forth a general rule against disability-based discrimination in public accommodations:

> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). The RA provides the following protection for persons facing a disability:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

29 U.S.C. § 794(a). "Both the ADA and the [RA] prohibit discrimination on the basis of disability by an institution of higher education." J.A.M. v. Nova Se. Univ., Inc., No. 0:15-CV-60248-KMM, 2015 WL 4751149, at *3 (S.D. Fla. Aug. 12, 2015), aff'd, 646 F. App'x 921 (11th Cir. 2016).

Discrimination claims under the ADA and the RA are governed by the same standards. Cash v. Smith, 231 F.3d 1301, 1305 (11th Cir. 2000); see also Ellis v. England, 432 F.3d 1321, 1326 (11th Cir. 2005) (stating that cases involving the ADA "are precedent" for those involving the RA).

"In order to establish a prima facie case of discrimination under the RA or ADA, a plaintiff must demonstrate that he (1) is disabled, (2) is a qualified individual, and (3) was subjected to unlawful discrimination because of his disability." Cash, 231 F.3d at 1305.

b. Whether Howell is an "Otherwise Qualified" Individual

An "otherwise qualified" person is one who is able to meet all of a program's requirements in spite of his disability. Onishea v. Hopper, 171 F.3d 1289, 1300 (11th Cir. 1999). The parties do not dispute that Howell's ADHD constituted a disability for the purposes of the ADA and the RA. However, MSM moves to dismiss Howell's disability discrimination claims for several reasons, one of which is that Howell has failed to sufficiently allege that he is a "qualified individual." Mem. in Supp. of MSM's Mot. to Dismiss Pl.'s Am. Compl. ("Def.'s Br.") [Doc. 36-1] at 16-17. Because this is a preliminary inquiry that will inform the Court's analysis of the federal claims under the ADA and the RA, the Court will address this issue first.

"In the context of postsecondary education, an 'otherwise qualified' individual must be able to meet the academic and technical standards requisite to admission or participation in the education program or activity, in spite of his handicap." Goldberg v. Fla. Int'l Univ., 838 F. App'x 487, 492 (11th Cir. 2020) (citing Onishea, 171 F.3d at 1300, and 34 C.F.R. § 104.3(*l*)(3)) (defining "otherwise qualified" under the RA); see also Ellis v. Morehouse Sch. of Med., 925 F. Supp. 1529, 1540 (N.D. Ga. 1996) (stating that, to demonstrate that he is otherwise qualified, a plaintiff must show "(1) that he has a disability, and (2) that he can meet essential requirements required to remain a student in good standing at Morehouse despite his disability, or, can meet the essential functions as a Morehouse medical student with a reasonable accommodation for his disability").

MSM contends that Howell's allegations that he is otherwise qualified to perform MSM's academic requirements are conclusory and the fact that Howell failed his third year at MSM after being fully accommodated demonstrates that, as a matter of law, he was not an otherwise qualified individual for the purposes of his ADA or the RA claims. Def.'s Br. at 17. However, the appropriate time to evaluate whether an individual is "otherwise qualified" is at the time he requests the accommodation. Redding v. Nova Se. Univ., Inc., 165 F. Supp. 3d 1274, 1294-95 (S.D. Fla. 2016) (citing Gilks v. Pine State Trading Co., No. 1:12-CV-0046-NT,

2012 WL 2861015, at *3 (D. Me. July 10, 2012)) ("The relevant point in time from which to review a plaintiff's status as an 'otherwise qualified individual' is when the plaintiff requests and is denied an accommodation, rather than any time after that."). MSM does not dispute Howell's allegation that he had ADHD, was found qualified for and granted a note-taking accommodation at the beginning of each of the three academic school years he was enrolled at MSM based on psychological evaluations provided by his physicians, and Howell relied on this accommodation to supplement his class attendance in order to meet the academic requirements of MSM's medical program. There is also no dispute regarding Howell's academic record and that he failed two courses in his third year, but Howell has alleged that such failure was due at least in part to a lack of foundational knowledge caused by the ineffective administration of the note-taking accommodation during the first two academic school years.[5] Nevertheless, even if Howell later took actions to disqualify himself, this does not preclude liability based on ineffective administration of the accommodations that were requested, found appropriate, and

[5] Contrary to MSM's argument in its reply brief [Doc. 39], Howell's e-mail regarding his academic conduct in the third year, see Apr. 2020 E-mail, does not undermine his status as an "otherwise qualified" individual at the time Howell requested the accommodation; it demonstrates that he may have contributed to his own failed grades by taking affirmative steps to hinder his academic performance.

granted at the start of each academic year. See Redding, 165 F. Supp. 2d at 1295 ("Because Nova's only stated basis for asserting that Redding cannot meet the 'qualified individual' element of her failure-to-accommodate claims is that Redding later became disqualified *after* the alleged denials of accommodations, Nova fails to meet its burden of establishing an absence of evidence that Redding was qualified at the time she requested accommodations for taking her make-up exams . . . .").

MSM relies on Shaikh v. Lincoln Mem'l Univ., 46 F. Supp. 3d 775 (E.D. Tenn. 2014), for the proposition that Howell was not "otherwise qualified" because he was granted the accommodations he requested, including the note-taking accommodation. Def.'s Br. at 17-18. However, this reliance is misplaced. In Shaikh, which was decided on summary judgment, the plaintiff "acknowledged that he 'received 50% more time throughout undergrad and that worked fine,'" and "it was reasonable for [the school] to conclude that any additional accommodations were unnecessary, particularly given the fact that plaintiff did not request any additional accommodations until after he failed two courses." Shaikh, 46 F. Supp. 3d at 784. In other words, the factual record in Shaikh demonstrated that the accommodations made by the institution were implemented effectively. In this case, which is before the Court on a motion to dismiss, Howell alleges that the

note-taking accommodation was not administered properly during the first two academic school years, and that contributed to his failed grades in two courses during the third academic school year. At this stage of the litigation, the Court is required to accept those allegations as true.

Consequently, based on the allegations in the Amended Complaint and all reasonable inferences drawn therefrom, the Court cannot conclude as a matter of law that Howell has failed to plead that he was an "otherwise qualified" individual.

c. Failure to Accommodate Claims (Counts I and III)

"[F]ailure to accommodate is an *independent* basis for liability under the ADA." Alboniga v. Sch. Bd. of Broward Cnty., Fla., 87 F. Supp. 3d 1319, 1337 (S.D. Fla. 2015) (citation omitted). "If establishing discrimination by failure to make reasonable accommodation, a plaintiff must merely show that (1) he was disabled, (2) he was otherwise qualified, and (3) a reasonable accommodation was not provided." Nadler v. Harvey, No. 06-12692, 2007 WL 2404705, at *4 (11th Cir. Aug. 24, 2007) (citing Lucas v. W.W. Grainger, Inc., 257 F.3d 1249, 1255 (11th Cir. 2001)). "As to the third prong, "[i]f establishing discrimination by failure to make a reasonable accommodation, a plaintiff who satisfies the first two prongs meets the last prong merely by showing that a reasonable accommodation

was not provided." Alboniga, 87 F. Supp. 3d at 1338 (quoting Pardo v. Napolitano, No. 07-20438, 2009 WL 3448181, at *2 (S.D. Fla. Oct. 26, 2009)).

"[I]n relation to failures to accommodate—the focus of the RA and the ADA is the elimination of acts or omissions that constitute failures to provide reasonable accommodations." Awodiya v. Ross Univ. of Medicine, No. 19-12832, 2020 WL 9718875, at *2 (11th Cir. May 24, 2020). A failure to accommodate claim "requires no animus and occurs when a covered entity fails to fulfill its affirmative duty to 'make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability' without demonstrating that 'the accommodation would impose an undue hardship on the operation of the business.'" Nadler, 2007 WL 2404705, at *4 (quoting 42 U.S.C. § 12211(b)(5)(A)); see also Holly v. Clairson Indus., L.L.C., 492 F.3d 1247, 1262 (11th Cir. 2007) (concluding that a failure to reasonably accommodate a disabled individual itself constitutes discrimination under the ADA unless the defendant can show undue hardship).

Howell's failure to accommodate claim is unique in that it is not based on the denial of an accommodation, but the failure to adequately provide for the accommodation once it was granted. Howell alleges that MSM's failure to effectively implement the note-taking accommodation undermined the

foundational knowledge he needed to develop in the first two years of the medical school program so that he could succeed in year three. Am. Compl. ¶¶ 349, 439.

i. Whether Howell's Failure to Accommodate Claims are Time-Barred

In its Motion to Dismiss, MSM contends that any alleged failures to properly accommodate Howell that occurred during in his first and second academic school years are time-barred. Def.'s Br. at 19-20. In MSM's view, once the first two academic years are removed from consideration, Howell's entire failure to accommodate claim fails because he does not allege any deficiencies in the accommodations provided in the 2019-2020 school year.

"Georgia's two-year statute of limitations for personal injury actions should be applied to discrimination claims" brought under the ADA and the RA. Everett v. Cobb Cnty. Sch. Dist., 138 F.3d 1407, 1409-10 (11th Cir. 1998). Although claims of discrimination normally accrue when the plaintiff is informed of the discriminatory act, Delaware State Coll. v. Ricks, 449 U.S. 250, 258 (1980), under the ADA, "[f]ederal courts historically have applied the continuing-violation doctrine to permit a plaintiff to recover on an otherwise time-barred claim, where at least one of the violations she alleges occurred within the statutory limitations period." Abram v. Fulton Cnty. Gov't, 598 F. App'x 672, 674 (11th Cir. 2015) (citing Hipp v. Liberty Nat. Life Ins. Co., 252 F.3d 1208, 1221-22 (11th Cir.

2001)); see also Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 120 (2002). The continuing violations doctrine is inapplicable to discrete discriminatory acts. Johns v. Marsh & McLennan Agency LLC, No. 3:19-cv-687-ALB-SRW, 2020 WL 15403397, at *2 (M.D. Ala. Mar. 31, 2020) (collecting cases).

However, "Title III claims . . . are different," in that Title III of the ADA provides a remedy of injunctive relief "to remedy present acts of discrimination to ensure disabled individuals are provided full and equal enjoyment of places of public accommodation in the future." Alonso v. Alonso, No. 18-23668-Civ-Scola, 2019 WL 3337233, at *3 (S.D. Fla. July 25, 2019) (citing Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1329-30 (11th Cir. 2013), and Silva v. Baptist Health S. Fla., Inc., 856 F.3d 824, 841 n.16 (approving application of "continuing violations" doctrine to Title III claim for injunctive relief, and distinguishing discrete acts of discrimination from ongoing, continuing violations)); see also McPherson v. Fla. Dep't of Corr., No. 4:19cv156-MW/CAS, 2019 WL 11271429, at *2 (N.D. Fla. Sept. 20, 2019) (analyzing whether the plaintiff alleged a continuing violation to extend the statute of limitations of his ADA and the RA claims).

The Court finds that Howell has alleged a continuing violation under Title III of the ADA and the RA. Howell's claim in the Amended Complaint is based

on the persistent ineffective administration of his note-taking accommodation which began in his first academic year, 2017-2018, and continued into his second academic year, 2018-2019. This was not a discrete discriminatory act but a series of alleged continual denials of effective accommodations which occurred throughout 2018 until March 2019. Because he filed his Complaint on August 13, 2020, the Court does not find that Howell's failure to accommodate claim is time-barred.

ii. Whether Howell was Provided with Reasonable Accommodations

MSM also argues that Howell has failed to state a failure to accommodate claim because the accommodations granted to him were reasonable. Def.'s Br. at 18-23. Because Howell was granted access to audio-taped lectures, additional time for tests and assignments, private and/or distraction reduced testing environment, and a designated note-taker, and was given the chance to remediate certain courses and decelerate, MSM contends that Howell was provided with reasonable accommodations. However, Howell contends that the opportunity to remediate, decelerate the program, and have access to written course materials and recorded lectures were not accommodations because they were available to all students. Br. and Mem. in Supp. of Pl.'s Resp. to Def. MSM's Mot. to Dismiss Pl.'s Am. Compl. ("Pl.'s Resp.") [Doc. 37-1] at 10. MSM's motion fails to address

the core of Howell's allegation—that the note-taking accommodation was "necessary to ameliorate the effects of his disability," but was provided in an ineffective or inadequate manner.

MSM argues, without citation, that "[p]assing grades in foundational classes indicates a student can succeed in advanced classes." Def.'s Br. at 21. MSM quotes language from Redding, stating that a reasonable accommodation is only one that is "necessary to ameliorate a disability's effect of preventing meaningful access to the benefits of, or participation in, the program at issue," but MSM omits another portion of this decision that provides important context for this case. Def.'s Br. at 15 (quoting Redding, 165 F. Supp. 3d at 1299). Importantly, Redding also stated:

> Implicit in Nova's argument is that meaningful participation is mere advancement to the next academic year. Participation in an academic program cannot be defined so narrowly. Academic achievement is measured by more than pass/fail. Nova's argument deems delayed advancement equal to advancement and the value of a 'C+' average equal to an 'A' average. Meaningful participation and access to an academic program includes the *opportunity* to advance to the next academic year on the regular schedule and to achieve one's academic potential on a level playing field with one's peers. When a qualified student's disability prevents such meaningful participation, a reasonable accommodation cannot be called unnecessary.

Redding, 165 F. Supp. 3d at 1299. The district court in Redding denied summary judgment to the university defendant, finding that there were questions of fact as to

whether the granted accommodations would have impacted the plaintiff's academic performance. Id. at 1299-1300.

Howell has alleged that the deficiencies in the note-taking accommodation that existed in his first and second academic years affected his academic record, prevented him from advancing with his peers on schedule, and ultimately contributed to his dismissal.[6] Based on the language in Redding, Howell has at least alleged a lack of meaningful participation in MSM's academic program because of the inadequacy of the note-taking accommodation.

MSM cites to at least three additional cases outside this Circuit that were also decided at summary judgment, and all three are inapposite. See Def.'s Br. at 19, 22. First, MSM cites to Betts v. Rector & Visitors of Univ. of Va., 145 F. App'x 7, 14 (4th Cir. 2005), but Betts does not involve allegations that certain accommodations were administered ineffectively. Second, MSM cites to Durand

[6] The Court notes again that the e-mail Howell sent regarding his academic conduct in the third year, see Apr. 2020 E-mail—that he no longer attended class and was too distracted by his legal pursuits—does not destroy his failure to accommodate claim, because Howell has alleged that, in breaching its affirmative duty to provide a reasonable accommodation, MSM did more than just improperly dismiss him in his third year. Specifically, as discussed above, Howell has alleged that the deficiencies in the accommodation impacted his foundational knowledge, led to his deceleration, and contributed to his dismissal. The degree to which his own actions contributed to his performance and dismissal is not an issue that the Court can decide as a matter of law at this stage of the proceeding.

v. Fairview Health Servs., 230 F. Supp. 3d 959, 966 (D. Minn. 2017), and Hoppe v. College of Notre Dame, 835 F. Supp. 2d 26, 32-33 (D. Md. 2011). In these two cases, the plaintiffs alleged to some degree that the accommodations were not provided adequately. Durand dealt with auxiliary aids and services provided at a hospital, and Hoppe dealt with a student with a learning disability who was given extra time for exams and "essentially provided" with a solitary environment within which to take them. However, in both cases, in deciding that the accommodations were provided reasonably, the courts relied on a developed factual record post-discovery. At this stage of the proceedings, the Court must credit Howell's allegation that the ineffectiveness of the note-taking accommodation administered during the first two academic years negatively impacted his ability to pass all of his courses in the third year.

The factual record as later developed may establish that the deficiencies in the note-taking accommodation could not have been remedied, would have caused a disruption of MSM's program, or did not truly affect Howell's performance and ultimate dismissal. However, accepting the allegations in the Amended Complaint and the reasonable inferences drawn therefrom as true, the Court cannot at this stage determine that Howell has failed to state a failure to accommodate claim.

Assuming he seeks appropriate relief in this Court for such a violation, MSM's Motion to Dismiss Counts I and III is **DENIED**.[7]

d. Disparate Treatment (RA and ADA) (Counts II and IV)

MSM moves to dismiss Howell's disparate treatment claims because Howell fails to sufficiently allege that MSM intended to discriminate against him because of his disability. Def.'s Br. at 24-27. Howell contends that the failure of MSM to effectively provide for a note-taking accommodation constitutes intentional discrimination. Pl.'s Resp. at 16-18. He also somehow asserts that his appeal from his dismissal "went unheard and unanswered" and he was dismissed because of his disability despite the fact that Dr. Rice overturned the decision of the SAPP Committee. Id. at 19-20.

Disparate treatment involves discriminatory intent or animus and occurs when a disabled individual is treated differently than a non-disabled individual. 42 U.S.C. § 12112(b). A disparate treatment claim "involves discriminatory intent and occurs when a disabled person is singled out for disadvantage because of her disability." Forbes v. St. Thomas Univ., Inc., 768 F. Supp. 2d 1222, 1227 (S.D. Fla. 2010).

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[7] See *infra*, Part III.B.1.h.

> A plaintiff alleging disparate treatment under the ADA must show that the defendant intended to discriminate or was improperly motivated in making the discriminatory decision, while a plaintiff claiming disparate treatment under the RA must show that the defendant discriminated "*solely* by reason" of his or her disability. Schwarz v. City of Treasure Island, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008). Among the factors a court may consider in determining whether disparate treatment is present are (1) the discriminatory effect of the decision, (2) the historical background of the decision, (3) the sequence of events leading up to the challenged decision, (4) any departure from normal procedural or substantive criteria, and (5) relevant legislative or administrative history. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 267-68 (1977).

J.A.M., 2015 WL 4751149, at *3.

Similar to the failure of the plaintiff in J.A.M., Howell fails to offer factual allegations showing that his disability was a motivating factor in MSM's decision to dismiss him, or that his disability was the sole reason for his dismissal. Howell's conclusory statements that "MSM discriminated against Plaintiff . . . on the basis of [his] disability," Am. Compl. ¶¶ 372-403, are legal conclusions and are not supported by the factual allegations that succeed them, even taken as true. Importantly, Howell alleges that the discrimination is shown by: (1) the failure to provide the note-taking accommodation; (2) the investigation of his Compliance Complaint for over three months; (3) the awareness of the dismissal hearing committee of his disability; and (4) the failure of the dismissal hearing committee to consider his exhibits and written evidence. However, the allegations contained

in, and the exhibits attached to, the Amended Complaint demonstrate that the dismissal hearing was scheduled not because of Howell's disability but because Howell failed two of his classes in his third academic year, an action required by the policy contained in the MSM Student Handbook. See Dismissal Hearing Notice; Dismissal Letter; MSM Student Handbook at 107-08. In addition, there is not one communication among the many included as exhibits to the Amended Complaint which reveals in any manner any sort of discriminatory animus or motive on behalf of MSM.

Howell also alleges that "on information and belief," students without disabilities "receive prompt and equitable resolutions" to their compliance complaints, are provided with "open and honest communication regarding adverse proceedings against them," and MSM has allowed other students to spend more than thirty-six months in their first- and second-year curricula. Am. Compl. ¶¶ 276, 396, 482. Once again, Howell does not allege any actual facts to support this allegation. See Schwarz, 544 F.3d at 1216 (finding that the plaintiff "cannot muster a single instance" in which it was treated differently than similarly-situated non-handicapped people); Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002) (per curiam) (rejecting handicapped persons' disparate treatment claim under the

Fair Housing Act because they failed to introduce any evidence that they were treated differently than similarly situated non-handicapped people).

"Accordingly, because the Amended Complaint does not contain sufficient factual matter, which, if accepted as true, plausibly shows that [Howell] was dismissed because of his disability, the ADA and RA disparate treatment claims must be dismissed." See J.A.M., 2015 WL 4751149, at *4. MSM's Motion to Dismiss Counts II and IV is **GRANTED**.

e. Disparate Impact (ADA) (Count V)

MSM moves to dismiss Howell's disparate impact claim, arguing that Howell fails to allege that at least one other person has been affected. Def.'s Br. at 27-29. Howell responds by alleging that the evaluation and disciplinary system at MSM falls more harshly on students with disabilities. Pl.'s Resp. at 21.

"To succeed on a disparate impact claim under the ADA, a plaintiff must prove that a particular facially neutral employment practice caused a 'significant discriminatory effect.'" Smith v. Miami-Dade Cnty., 21 F. Supp. 3d 1292, 1295 (S.D. Fla. 2014), aff'd, 621 F. App'x 955 (11th Cir. 2015) (quoting Stephen v. PGA Sheraton Resort, Ltd., 873 F.2d 276, 279 (11th Cir. 1989)). "[T]o establish a prima facie case that a particular employment practice had a disparate impact on a protected group, a plaintiff must: (1) 'identify the specific employment practice

that allegedly has a disproportionate impact'; and (2) 'demonstrate causation by offering statistical evidence sufficient to show that the challenged practice has resulted in prohibited discrimination.'" Id. (quoting Spivey v. Beverly Enters., Inc., 196 F.3d 1309, 1314 (11th Cir. 1999)).

Howell alleges that MSM had a policy of "walling off" an academic hearing from ODS or other compliance records, and that this "operates in such a way that its effects will fall more harshly on students with disabilities." Am. Compl. ¶ 516 (emphasis added). MSM, relying on Smith, argues that Howell fails to state a claim for disparate impact because he has not alleged any other person has been impacted by this policy. Def.'s Br. at 29. While the Court recognizes that Smith was decided on a summary judgment motion, nothing in the voluminous pleadings and documents before the Court, even taking all of the allegations as true, would support the inference that even one other person has been adversely affected by MSM's policy to keep its academic and ODS records separate. There are no other specific allegations in the Amended Complaint which purport to show that the evaluation and disciplinary process treat disabled students more harshly than non-disabled students. Thus, Howell has failed to state a claim for disparate impact and MSM's Motion to Dismiss Count V is **GRANTED**.

f. Retaliation (ADA and RA) (Count VI)

Howell alleges in Count VI that he engaged in protected conduct by filing several compliance complaints and challenging MSM's plan to schedule a dismissal hearing and that, in response, MSM retaliated against him by delaying the resolution of his complaints, ignoring his e-mails, dismissing him from the school, and then offering to reinstate him without his desired remedies. Am. Compl. ¶¶ 537-44.

The ADA makes it unlawful for any person to retaliate "against any individual because such individual has opposed any act or practice made unlawful" under the ADA. 42 U.S.C. § 12203(a). To establish a prima facie case for retaliation under the ADA and the RA, a plaintiff may show that: (1) he engaged in a statutorily protected activity; (2) he suffered a materially adverse employment action; and (3) the adverse employment action was causally related to the protected activity. Morales v. Ga. Dep't of Human Res., 446 F. App'x 179, 183 (11th Cir. 2011) (citing Goldsmith v. Bagby Elevator Co., Inc., 513 F.3d 1261, 1277 (11th Cir. 2008)).[8]

[8] Typically, "[o]nce a *prima facie* case is established, the burden then shifts to the defendant employer to come forward with legitimate non-discriminatory reasons for its actions that negate the inference of retaliation. The plaintiff must then demonstrate that it will be able to establish at trial that the employer's proffered non-discriminatory reasons are a pretextual ruse designed to mask retaliation."

MSM contends that Howell has failed to state a prima facie claim for retaliation because he has failed to allege the third element, that there is a causal link between the protected expression and any adverse action. Def.'s Br. at 33. This Court agrees.[9]

Taken as true, the facts alleged demonstrate that Howell began sending Thompson complaints regarding the note-taking accommodation as early as August 1, 2017, during the first academic year. Am. Compl. ¶ 94. Howell continued to complain about the lateness of the provision of class notes through the second academic year, including multiple complaints on February 25, 2019. Id.

Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (11th Cir. 1997) (internal citations omitted). However, because this case is before the Court on a Motion to Dismiss, where all inferences are made in the plaintiff's favor, Howell's only burden here is to plausibly allege the prima facie case. See Belyea v. Fla., Dep't of Revenue, 859 F. Supp. 2d 1272, 1273-74 (N.D. Fla. 2012) (stating in the motion to dismiss posture that the plaintiff "must allege facts that are either (1) sufficient to support a plausible inference of discrimination or retaliation, or (2) sufficient to show, or at least support an inference, that the plaintiff can make out a prima facie case under the familiar burden-shifting framework set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and its progeny").

[9] The Court also notes that the only action that could be considered adverse for the purposes of Howell's retaliation claim is his dismissal from the school, as a "reasonable person in his position" would not view the delayed resolution of complaint that were eventually resolved, not responding to e-mails, and then vacating the dismissal and offering to reinstate him as adverse. See Higdon v. Jackson, 393 F.3d 1211, 1219 (11th Cir. 2004) (quoting Shotz v. City of Plantation, Fla., 344 F.3d 1161 (11th Cir. 2003)).

¶¶ 152-56. No adverse actions are alleged at any point during this entire period. Howell then filed his Compliance Complaint on March 28, 2020. Id. ¶ 201. Two months later, on May 29, 2020, MSM notified Howell of the scheduling of a dismissal hearing pursuant to the MSM Student Handbook because of his failing grade in two courses. Dismissal Hearing Notice. He proactively notified the SAPP Committee that he had a pending Compliance Complaint, as it appeared that the academic committee and ODS had separate records, and his Dismissal Hearing then was postponed until after the Compliance Complaint was investigated. The communications between Howell and MSM officials throughout the period after the notice of the dismissal hearing support the fact that the hearing was initiated because of his failing grades, not the previous two years' worth of complaints about the effectiveness of the note-taking accommodation and not the Compliance Complaint made two months before the initial hearing notice. Based on the allegations and exhibits filed with the Amended Complaint, it cannot reasonably be inferred that Howell has sufficiently alleged an adverse action (his dismissal from the school) that is causally linked to his protected activity (filing a Compliance Complaint). This is not a case where there was a close temporal proximity between the decision maker's awareness of the protected conduct and the adverse action. Farley v. Nationwide Mut Ins. Co., 197 F.3d 1322, 1337 (11th Cir. 1999).

Accordingly, the Court concludes that Howell has failed to state a claim for retaliation, and MSM's Motion to Dismiss as to Count VI is **GRANTED**.

g. Hostile Learning Environment (Count XII)

Howell alleges a "hostile learning environment" claim under the ADA and the RA based upon MSM's "willful indifference" with regard to students with disabilities, which is shown by MSM's failure to adequately provide for the note-taking accommodation and otherwise failure to follow their own policies and procedures. Am. Compl. ¶¶ 701-21. Howell alleges that the "continuous [series] of separate acts were MSM's pervasive inconsistent and untimely production of notes." Id. ¶ 704-16. MSM contends that the Eleventh Circuit has not recognized this cause of action in the ADA or the RA context and that Howell does not sufficiently allege specific harassing actions against him because of his disability. Def.'s Br. at 44-5. Howell concedes that this is "an underdeveloped area of law" but argues that he has sufficiently stated a claim for relief. Pl.'s Resp. at 50-56.

The Eleventh Circuit has not yet opined on what framework applies to hostile learning environment claims under the ADA and the RA, but one court[10]

[10] The only other case interpreting this claim in this circuit appears to be Warren v. DeKalb Cnty. Schs., No. 1:18-cv-02310, 2019 WL 11508500, at *4-5 (N.D. Ga. Mar. 14, 2019), which construed the pro se plaintiff's hostile learning environment

within this Circuit has set forth that such a claim would require the plaintiff to show at least five elements:

> (1) the plaintiff is an individual with a disability, (2) he or she was harassed based on that disability, (3) the harassment was sufficiently severe or pervasive that it altered the condition of his or her education and created an abusive educational environment, (4) the defendant knew about the harassment, and (5) the defendant was deliberately indifferent to the harassment.

Moore v. Chilton Cnty. Bd. of Educ., 936 F. Supp. 2d 1300, 1314 (M.D. Ala. 2013) (quoting S.S. v. E. Ky. Univ., 532 F.3d 445 (6th Cir. 2008)) (involving a high school aged girl who committed suicide after incessant peer-on-peer bullying and disability harassment). Moore was based on peer-on-peer disability harassment claims under the ADA and RA, and the court determined that the Sixth Circuit's rationale in S.S. was instructive. Importantly, S.S. was also a peer-on-peer disability harassment case that applied the standard set forth in Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 645-47 (1999), for Title IX peer-on-peer harassment claims.

This Court concludes that Howell has failed to state a claim for hostile learning environment because his allegations do not involve peer-on-peer

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claim as a violation of O.C.G.A. § 20-2-1185 for failure to create a safety plan for disabled students.

> Deliberate indifference requires knowledge that a federally protected right is likely to be harmed and a failure to act upon that likelihood. See City of Canton, Ohio v. Harris, 489 U.S. 378, 388-89 (1989). Negligence, even if gross, cannot constitute deliberate indifference. See Bozeman v. Orum, 422 F.3d 1265, 1272 (11th Cir. 2005). For conduct to be deliberately indifferent, there must be both knowledge of likely harm and failure to act on the part of a policymaker, that is, someone capable of making an "official decision" on behalf of the organization. Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290-91 (1998).

Saltzman v. Bd. of Comm'rs of N. Broward Hosp. Dist., 239 F. App'x 484, 487-88 (11th Cir. 2007).

The factual allegations of the Amended Complaint, taken as true, do not plausibly allege that MSM was deliberately indifferent. First, Howell primarily alleges that Thompson and Knight, who were part of MSM's ODS and in charge of administering his accommodation, had knowledge of the alleged harm that the deficient note-taking accommodation was inflicting, but he does not allege that either Thompson or Knight were policymakers or that they were capable of making "official decisions" on behalf of MSM. He alleges that he communicated with Dr. Anachebe, Associate Dean of Admissions and Student Affairs at MSM, in February of 2020, but it was during his third academic year when Howell had no complaints with the administration of the note-taking accommodation. Am. Compl. ¶¶ 178-79. He also alleges that he communicated with Dr. Rice, the president of MSM, when he appealed his dismissal decision. Id. ¶ 306. While the

Associate Dean of Admissions and Student Affairs and the president and dean of the school are potentially policy-makers, Howell makes no allegation that either official knew of the failures of the note-taking accommodation when it was happening, or that such failures were causing violations of students' disability rights under the ADA or the RA, and did nothing about it. Indeed, Dr. Rice reversed the decision of the SAPP Committee and directed that Howell be reinstated.

"Deliberate indifference . . . is an exacting standard. It requires proof that the defendant knew that harm to a federally protected right was substantially likely and failed to act on that likelihood." Silberman, 927 F.3d at 1134 (quotation marks and citations omitted) (alterations accepted). Here, Howell has failed to meet it, and thus, has not shown that he is entitled to money damages under either the ADA or the RA for failure to provide a reasonable accommodation.

Furthermore, Howell's requested relief of restarting his entire medical education with a deletion of his entire prior academic record is improper under the ADA or the RA.

> [T]he court agrees with the defendants' position on whether this court has the authority to remove grades from the plaintiff's college transcript. Even if the plaintiff could demonstrate a violation of the ADA, he would not be entitled to an order requiring the defendants to remove his "History of Motion Pictures" grade from his college transcript. Removing grades from a college transcript, even if the

> plaintiff were to demonstrate an ADA or Sec. 504 violation, is simply not appropriate relief under the ADA or Sec. 504, as this court said in a prior order. Thus, to the extent that the plaintiff seeks this court to issue an order to remove his "History of Motion Pictures" grade from his record, this is not a relief that is available under the ADA.

Wilf v. Bd. of Regents of the Univ. Sys. of Ga., No. 1:09-CV-1877-RLV, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010). Howell cites to Shepard v. Irving, 77 F. App'x 615 (4th Cir. 2003), which stated that "[a]ssuming the plaintiff prevails on her substantive claims, the 'F' and the plagiarism conviction would constitute a continuing injury to the plaintiff." Id. at 620. Shepard is not binding precedent and is clearly distinguishable because Howell has not alleged that he has accepted MSM's plan for entry so, at this point, he would have no standing under Shepard to assert any such claim for relief. Compare Alejandro v. Palm Beach State Coll., 843 F. Supp. 2d 1263, 1273 (S.D. Fla. 2011) (rejecting the defendant's argument that the plaintiff lacked standing for no longer being enrolled in the college, because the plaintiff had shown that she was enrolled in a class for the next semester). Moreover, Howell has alleged that he would be able to retake the courses he failed during the 2019-2020 school year, which provides at least a portion of the requested relief—the portion most directly related to the harm allegedly inflicted by the ineffective administration of the note-taking accommodation. Am. Compl. ¶¶ 315-22.

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 2:

66a – 130a

JAMES GREGORY HOWELL, JR.
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The requested relief that remains with respect to Counts I and III involve actions to be taken by the Court to remedy the lapses in Howell's note-taking accommodation. However, it is undisputed that in Howell's third academic year from 2019-2020, prior to the filing of the lawsuit, he had no complaints with how this accommodation was being administered. Am. Compl. ¶ 171. He also has not alleged that he will return to MSM if he cannot "restart" his medical education which all of his previous record "deleted," which is not available relief. Thus, assuming that this Court eventually rules in favor of Howell on his claims in Counts I and III, based upon the facts as currently alleged, this Court is unable to contemplate in what manner it could grant any further relief to Howell with respect to the note-taking accommodation.

"[A] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. If events that occur subsequent to the filing of a lawsuit . . . deprive the court of the ability to give the plaintiff . . . meaningful relief, then the case is moot and must be dismissed." Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1183 (11th Cir. 2007) (quoting Troiano v. Supervisor of Elections in Palm Beach Cnty, 382 F.3d 1276, 1281-82 (11th Cir. 2004)); see also Chambers v. Zesto Enters., Inc., No. 1:09-CV-0292-WSD, 2009 WL 3200682, at *3 (N.D. Ga. Sept. 29, 2009) ("Once a defendant remedies any

alleged deficiencies, a plaintiff's claim becomes moot.") (citing Cole v. Nat'l Collegiate Athletic Ass'n, 120 F. Supp. 2d 1060, 1068 (N.D. Ga. 2000) ("The only season of competition which was affected by his partial-qualifier status is over, and no additional relief is available from this or any court. Money damages are not available under Title III of the ADA and this court can fashion no equitable remedy to benefit plaintiff."); Brother v. CPL Investments, Inc., 317 F. Supp. 2d 1358, 1373 (S.D. Fla. 2004) (same)).

Because neither party addresses the mootness issue in their current briefs, the Court will order additional briefing on this issue.

2. State Law Claims

a. Fraud and Negligent Misrepresentation (Counts VII, VIII, and IX)

"There are five elements to a claim of fraud under Georgia law: (1) a false representation of a past or present fact; (2) scienter; (3) intention to induce the plaintiff to commit an act or refrain from committing an act; (4) reliance; and (5) damage." DeLong Equip. Co. v. Washington Mills Abrasive Co., 887 F.2d 1499, 1519 (11th Cir. 1989) (citing O.C.G.A. § 51-6-1; see also Parsells v. Orkin Exterminating Co., 172 Ga. App. 74 (1984)).

"Negligent misrepresentation is a similar cause of action substituting negligence for the intent to deceive element." Prince Heaton Enters., Inc. v.

Buffalo's Franchise Concepts, Inc., 117 F. Supp. 2d 1357, 1360 (N.D. Ga. 2000) (citing Robert & Co. Assoc. v. Rhodes–Haverty P'ship, 250 Ga. 680 (1983)). "A claim for negligent misrepresentation requires proof that: (1) the defendant negligently supplied false information to foreseeable persons, known or unknown; (2) such persons reasonably relied upon that information; and (3) economic injury proximately resulted from that reliance." Am. Casual Dining, L.P. v. Moe's Sw. Grill, L.L.C., 426 F. Supp. 2d 1356, 1365-66 (N.D. Ga. 2006). "Reliance is an essential element of both fraud and negligent misrepresentation, and that reliance must be justified." Hicks v. Sumter Bank & Trust Co., 269 Ga. App. 524, 527 (2004).

> Additionally, "a plaintiff must plead fraud, or negligent misrepresentation with particularity." Brown v. SunTrust Bank, No. 2:14-CV-0014-RWS-JSA, 2014 WL 4925719, at *9 (N.D. Ga. Sept. 30, 2014); see also Inman v. Am. Paramount Fin., 517 F. App'x 744, 748 (11th Cir. 2013) (applying Rule 9(b) to conclude that the plaintiff failed to plead sufficient factual allegations to support a negligent misrepresentation claim). "The Eleventh Circuit has held that 'under Rule 9(b), the Plaintiffs must allege (1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled the Plaintiffs; and (4) what the defendants gained by the alleged fraud.'" Brown, 2014 WL 4925719, at *9 (quoting Brooks v. Blue Cross and Blue Shield of Fla., Inc., 116 F.3d 1364, 1380-81 (11th Cir. 1997)). "This means that to state an actionable claim for fraud, the plaintiff must state the who, what, when[,] where, and how." Jenkins v. BAC Loan Servicing, LP, 822 F. Supp. 2d 1369, 1380 (M.D. Ga. Sept. 29, 2011) (alteration in original) (internal quotation marks and citation omitted).

Bishop v. Shorter Univ., Inc., No. 4:15-CV-0033-HLM, 2015 WL 13753710, at *9 (N.D. Ga. June 4, 2015).

MSM moves to dismiss Howell's fraud and negligent misrepresentation claims, arguing that Howell has failed to plausibly allege that Thompson made a false statement, had scienter, intended to deceive Howell, or that Howell could have justifiably relied on such statements. Def.'s Br. at 36-38.

Howell alleges that Thompson willfully misrepresented and concealed important facts to induce Howell to matriculate at MSM by the May 15, 2017, deadline. Specifically, he alleges that:

- Thompson communicated to him that there was a note-taking system in place even though she knew there was no such system.
- He was "made to believe" that the note-taking accommodation would operate efficiently and that he would receive notes within a 24-48 hour timeframe, but this timeframe was never measured.
- He was never warned that the note-taking accommodation was new or that there would be an initial delay.

Am. Compl. ¶¶ 561-62, 586-88, 612-25. Howell also alleges that he justifiably relied on Thompson's misrepresentation "because she was the person in charge of

determining Plaintiff's eligibility for accommodations and managing the accommodation's implementation" and that he suffered actual financial damages. Id. ¶¶ 564, 580-81, 590, 599-600, 626, 633-34.

Howell's fraud and negligent misrepresentation claims turn on the element of justifiable reliance. Howell has failed to allege justifiable reliance on Thompson's statements regarding the note-taking accommodation. He alleges that Thompson was in charge of his accommodations, that he exercised due diligence in requesting his accommodations, and that he would have had no reason to doubt Thompson's representations. Am. Compl. ¶¶ 565-67, 590-92, 627-29. However, Howell was not entitled to rely on Thomas's statements because her statements describing a 24-48 hour turnaround time "goal" are speculative. Next Century Commc'ns Corp. v. Ellis, 214 F. Supp. 2d 1366, 1371 (N.D. Ga. 2002) (quoting Longnecker v. Ore Sorters, Inc., 634 F. Supp. 1077, 1082 (N.D. Ga. 1986)) ("A party's reliance on another's predictions of a future event is not justifiable as a matter of law."), aff'd, 318 F.3d 1023 (11th Cir. 2003). While Thompson stated that a note-taking accommodation would be provided, this did not preclude MSM from adjusting the accommodation in the face of unexpected occurrences. See Aug. 1, 2017, Complaint (stating that the note-taking accommodation was forcing MSM to examine their procedures). Thus, Howell has failed to allege an essential

element of his fraud and negligent misrepresentation claims, and MSM's Motion to Dismiss is **GRANTED** as to Counts VII, VIII, and IX.

b. Breach of Contract (Count X)

"The elements of a breach of contract claim in Georgia are the (1) breach and the (2) resultant damages (3) to the party who has the right to complain about the contract being broken." Bates v. JPMorgan Chase Bank, NA, 768 F.3d 1126, 1130 (11th Cir. 2014) (quoting Norton v. Budget Rent A Car Sys., Inc., 307 Ga. App. 501, 502 (2010)). "The construction of a contract is a question of law for the court." Global Ship Sys., LLC v. Cont'l Cas. Co., 292 Ga. App. 214, 215 (2008) (citing O.C.G.A. § 13-2-1). "To form a valid contract, 'there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate.'" Carr v. Bd. of Regents of Univ. Sys. of Ga., 249 F. App'x 146, 150 (11th Cir. 2007) (quoting O.C.G.A. § 13-3-1).

> Additionally, there must be a "meeting of the minds of the parties, mutuality, and the clear expression of the terms of the agreement." Jackson v. Easters, 190 Ga. App. 713, 714 (1989). The plaintiff has the burden of proving the existence of a contract, and there can be no breach where the documents alleged to have created the contact did not amount to a complete written contract. See Bd. of Regents of the Univ. Sys. of Ga. v. Tyson, 261 Ga. 368 (1991).

Muckle v. UNCF, 930 F. Supp. 2d 1355, 1359 (N.D. Ga. 2012).

In considering claims for breach of educational contracts, courts in this district call for deference to the educational institutions' decisions regarding their own institutional standards:

> This Court's decision need not and should not be controlled by a mechanistic application of the law of contract. Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976),[11] recognizes that educational contracts have unique qualities and are to be construed in a manner which leaves the school sufficient discretion to properly exercise its educational responsibility.

Jansen v. Emory Univ., 440 F. Supp. 1060, 1062-63 (N.D. Ga. 1977) ("[C]ourts are not empowered to review the manner of grading students and the setting of degree requirements."), aff'd, 579 F.2d 45 (5th Cir. 1978) (internal punctuation omitted). Georgia courts have found that deference to the educational institutions' decisions regarding their own institutional standards is particularly appropriate when it comes to medical schools:

> [T]he rule of judicial nonintervention in academic affairs is particularly appropriate in the health care field because a medical school must be the judge of the qualifications of its students to be granted a degree; courts are not supposed to be learned in medicine and are not qualified to pass opinion as to the attainments of a student in medicine. Courts are of course no more qualified in dentistry than in medicine and should not lightly undercut the compelling need and very strong policy

[11] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

> consideration in favor of giving school officials the widest possible latitude in the management of school affairs.

Burke v. Emory Univ., 177 Ga. App. 30, 32 (1985) (internal punctuation omitted) (citing Jansen, 440 F. Supp. 1063).

Howell alleges that "[t]here existed a contract between MSM and Plaintiff based on, including but not limited to, MSM's 2017-2018, 2018-2019, and 2019-2020 Student Handbooks." Am. Compl. ¶ 645. He alleges that MSM violated this contract by failing to provide for the note-taking accommodation, investigate or remedy his numerous written complaints, or provide a safe and non-discriminatory environment, all in violation of MSM's own policies and procedures. Id. ¶¶ 648-61. Howell alleges that MSM also violated its own procedures and policies by not considering all of his exhibits at the dismissal hearing, and for, in part, dismissing him because he would have exceeded thirty-six months in the first- and second-year curriculum. Id. ¶ 663-66. He also alleges that MSM breached the agreements contained in the letters granting him accommodations in each of the years he was enrolled at MSM. Id. ¶ 687. In its Motion to Dismiss, MSM contends that the Student Handbooks and accommodation letters did not create a binding contract between Howell and MSM. Def.'s Br. at 39-41.

In Carr, the Eleventh Circuit Court of Appeals held that the plaintiff had "presented no evidence from which a reasonable jury could conclude that the

undergraduate catalog formed a binding, written contract between herself and [the school board]" because "[e]ach version of the undergraduate catalog contained the statement that it was for 'informational purposes only and should not be construed as the basis of a contract between a student and [the Board].'" Carr, 249 F. App'x at 151. While the court in Carr examined evidence provided by the parties at the summary judgment stage, because Howell provides similar evidence as exhibits to the Amended Complaint, this Court has the opportunity to consider similar evidence in this case. Along with his pleadings, Howell presented the MSM Student Handbook, each version of which indicates:

> The provisions of this handbook reflect the general nature of and conditions concerning student services at MSM, but do not constitute a contract or otherwise binding agreement. Procedures set forth in this handbook are subject to change at any time, and all programs and activities described in this handbook are subject to cancellation or termination by MSM without prior notice.

Docs. 1-4 at 2, 1-5 at 2, 1-6 at 2.

Howell attempts to distinguish Carr by citing to Barnes v. Zaccari, 757 F. Supp. 2d 1313 (N.D. Ga. 2010), which states, "the Georgia Court of Appeals has held that private universities in Georgia formed contracts with their students via the student handbook issued during the student's enrollment." Pl.'s Resp. at 47 & n.38 (citing Barnes, 757 F. Supp. 2d at 1335, aff'd in part, rev'd in part and remanded, 669 F.3d 1295 (11th Cir. 2012), and vacated in part, 592 F. App'x 859

(11th Cir. 2015)). But none of the cases Barnes cites to support this proposition contemplate a disclaimer such as the one here and in Carr. Thus, based on the language in Carr, Howell has not met his burden of alleging the existence of a contract. See Muckle, 930 F. Supp. 2d at 1359 (dismissing the plaintiff's breach of contract claim for failure to state a claim because he failed to show the existence of a valid contract between the parties); see also Shah v. Clark Atlanta Univ., Inc., No. 1:97-CV3786CAM, 1999 WL 1042979, at *20 (N.D. Ga. July 20, 1999) (dismissing at summary judgment the plaintiff's breach of contract claim, based on a faculty handbook, which specifically stated that it should not be construed as a legally binding contract). Accordingly, MSM's Motion to Dismiss Count X is **GRANTED**.

c. Unjust Enrichment (Count XIII)

In Count XIII, Howell claims that MSM has been unjustly enriched by the payment of $184,279.00 in tuition to attend medical school because of their multiple failures with respect to the implementation of the note-taking accommodation. Am. Compl. ¶¶ 756-73. MSM asserts that Howell does not specifically allege that a benefit was conferred upon it, that Howell received reasonable accommodations, and that the tuition payments were made before his dismissal. Def.'s Br. at 46.

> A claim for unjust enrichment exists where a plaintiff asserts that the defendant induced or encouraged the plaintiff to provide something of value to the defendant; that the plaintiff provided a benefit to the defendant with the expectation that the defendant would be responsible for the cost thereof; and that the defendant knew of the benefit being bestowed upon it by the plaintiff and either affirmatively chose to accept the benefit or failed to reject it.

Collins v. Athens Orthopedic Clinic, 356 Ga. App. 776, 778, 849 S.E.2d 213, 216 (2020) (alteration accepted) (quoting Campbell v. Ailion, 338 Ga. App. 382, 387 (2016)). The claim for unjust enrichment is "an equitable principle that may be applied when there is no valid written contract between the parties." Id. (alteration accepted) (quoting Ga. Dep't of Cmty. Health v. Data Inquiry, 313 Ga. App. 683, 687 (2012)).

This case is analogous to Williams v. Corp. of Mercer Univ., No. 5:20-CV-361 (LAG), 2021 WL 2328009, at *8 (M.D. Ga. June 7, 2021), where the plaintiff, a student at Mercer University during the Spring of 2020, sought a pro-rated refund of his tuition and fees based on the school's failure to provide in-person educational programs due to the impact of COVID-19. Id. at *1. The Court found that the "[p]laintiff has sufficiently alleged the factual elements to pursue her unjust enrichment claim" where the plaintiff conferred a benefit to the defendant in the form of tuition and fees in exchange for in-person instruction and access to on-campus facilities and services, and the defendant affirmatively chose to accept the

tuition and fees. Id. at *8; see also Doe v. Emory Univ., No. 1:20-CV-2002-TWT, 2021 WL 358391, at *7 (N.D. Ga. Jan. 22, 2021) (holding that the "Plaintiffs allege[d] that they conferred a benefit upon the Defendant in exchange for in-person services and that the Defendant failed to reject that benefit," and that in doing so, the plaintiffs "sufficiently alleged the required factual elements to pursue this equitable claim.").[12]

MSM contends that Howell has failed to allege that he conferred a benefit on MSM. Def.'s Br. at 46. MSM cites to Paylan v. Teitelbaum, 798 F. App'x 458, 464 (11th Cir. 2020), for the generic conclusion that an unjust enrichment claim is due to be dismissed where the plaintiff does not allege that he conferred a benefit, but MSM does not explain how Howell's allegations do not meet this requirement. Moreover, in light of Howell's allegations regarding the tuition he paid, the Court

[12] Although the courts in Williams and Emory University specifically found that the plaintiffs in those cases alleged sufficient facts to state a claim for unjust enrichment under Georgia law, the claims for unjust enrichment were precluded in those cases because of the existence of a claim for breach of contract. Williams, 2021 WL 2328009, at *8 (quotation and citation omitted) ("Because Plaintiff adequately has alleged breach of contract, the equitable concept of unjust enrichment does not apply, and Plaintiff's claim for unjust enrichment is subject to dismissal."); Emory Univ., 2021 WL 358391, at *7 ("Here, the unjust enrichment claim is sufficiently pleaded, but so is the Plaintiffs' breach of implied contract, which bars unjust enrichment claims in Georgia.").

disagrees with MSM's argument that Plaintiff failed to allege that he conferred a benefit on MSM. See Am. Compl. ¶¶ 777-78.

MSM also cites to Life Chiropractic Coll., Inc. v. Fuchs, 176 Ga. App. 606, 609 (1985), in which the court found that summary judgment should have been granted on the plaintiff's unjust enrichment claim where "it [was] clear that the payments in question were for the period prior to the suspension, and . . . there [was] no question that the appellee received in return for these payments the benefit of the classroom facilities, equipment, and faculty provided by the college." See id. at 609. However, as mentioned above, Howell has alleged that MSM either failed to provide or only partially provided the promised resources and this case is not before the Court on a summary judgment motion after the facts have been more fully developed.

Although MSM may ultimately prevail on Howell's claim for unjust enrichment, the Court finds that Howell has at least "adequately pleaded it would be inequitable for [MSM] to retain the full tuition and fees paid by him." See Gibson v. Lynn Univ., Inc., 504 F. Supp. 3d 1335, 1344 (S.D. Fla. 2020). Accordingly, MSM's Motion to Dismiss is **DENIED** as to Count XIII.

d. Breach of Fiduciary Duty (Count XIV)

Howell alleges that a confidential relationship existed between him and MSM and that MSM breached its fiduciary duty by failing to provide the note-taking accommodation it promised him and by failing to investigate and remediate his complaints on the matter. Am. Compl. ¶¶ 786-94. Howell also alleges that, due to the breach, he "received poor grades, a poor education, and a poor, disorganized and fragmented medical knowledgebase at MSM." Id. ¶ 804. MSM contends that it owes no fiduciary duty to Howell just because he was a student or that he placed his trust in Thompson in the interactive accommodations process. Def.'s Br. at 47.

"It is well settled that a claim for breach of fiduciary duty requires proof of three elements: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach." Griffin v. Fowler, 260 Ga. App. 443, 445 (2003) (citing Conner v. Hart, 252 Ga. App. 92, 94 (2001)). "A fiduciary relationship exists 'where one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith.'" Bishop, 2015 WL 13753710, at *7 & n.4 (quoting O.C.G.A. § 23-2-58) (noting that "[i]n Georgia, the terms fiduciary relationship and confidential relationship are

synonymous"). "Such relationship may be created by law, contract, or the facts of a particular case." Douglas v. Bigley, 278 Ga. App. 117, 120 (2006) (footnote omitted). But generally, "[t]he existence of a confidential or fiduciary relationship is a question for the jury." Bedsole v. Action Outdoor Advert. JV, LLC, 325 Ga. App. 194, 201 (2013).

As stated in Bishop, "[t]he Georgia appellate courts have not found that the relationship between a university and its students is a confidential or fiduciary one as a matter of law." Bishop, 2015 WL 13753710, at *8. However, "the relationship between a student and a school, like many other relationships under Georgia law, may or may not be a fiduciary relationship; that determination depends on the facts before the reviewing court." Murray-Shanks v. Rabun Gap-Nacoochee Sch., Inc., No. 2:13-CV-211-WCO, 2014 WL 12516253, at *4 (N.D. Ga. Feb. 4, 2014); see also Bishop, 2015 WL 13753710, at *8 ("The Court's conclusion that a university does not always owe a fiduciary duty to its students, however, does not preclude the finding of a confidential relationship under the particular facts of this case.").

In this case, Howell has alleged that, during the interactive accommodation process, he was required to provide confidential psychological reports to MSM's ODS, which reviewed those records to determine what accommodations would be

appropriate. This knowledge may have created a fiduciary duty for MSM with respect to its accommodation decision. Like in Bishop, Howell has alleged at least some facts that MSM "exercised a controlling influence over [Howell's] conduct and interests" and was entrusted with medical information related to the school's determination of its future conduct with respect to Howell. Bishop, 2015 WL 13753710, at *8. MSM's motion to dismiss fails to cite to precedent which would compel this Court, as a matter of law, to conclude that the allegations currently before the Court do not state a claim for breach of fiduciary duty. Thus, making all reasonable inferences in favor of Howell, the Court finds that Howell has plausibly alleged the existence of a fiduciary duty, and MSM's Motion to Dismiss is **DENIED** as to Count XIV. Bishop, 2015 WL 13753710, at *8; Murray-Shanks, 2014 WL 12516253, at *4.

e. Intentional Infliction of Emotional Distress (Count XV)

In the Amended Complaint, Howell alleges that MSM "pervasively" ignored and was indifferent to his needs, making him "fearful and scared" that his future would be ruined, and feel "alone, isolated, and intimidated." Am. Compl. ¶¶ 835, 836, 843. He alleges that MSM's actions were "extreme and outrageous" and caused him "severe humiliation, mental anguish, and emotional and physical distress." Id. ¶¶ 874-75. MSM contends that Howell has failed to allege facts to

show that its conduct was extreme, reckless, or outrageous or that his distress was severe. Def.'s Br. at 48-49.

Under Georgia law, in order to state a claim for the intentional infliction of emotional distress, a plaintiff must allege the following elements: "(1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; and (4) The emotional distress must be severe." Smith-Tyler v. Bank of Am., N.A., 992 F. Supp. 2d 1277, 1282 (N.D. Ga. 2014) (internal quotation marks and citation omitted). The burden placed upon a plaintiff is stringent. Bridges v. Winn-Dixie, 176 Ga. App. 227, 229 (1985); see also Mears v. Gulfstream Aerospace Corp., 225 Ga. App. 636, 640 (1997) ("Claimants bear a heavy burden in establishing the type of extreme and outrageous conduct necessary to sustain a claim for intentional infliction of emotional distress.").

> The defendant's conduct must be so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Whether a claim rises to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress is a question of law.

Cumberland Contractors, Inc. v. State Bank & Tr. Co., 327 Ga. App. 121, 127 (2014); see also Abdul-Malik v. AirTran Airways, Inc., 297 Ga. App. 852, 858 (2009) (quoting Peoples v. Guthrie, 199 Ga. App. 119, 121 (1991)) ("[E]motional

distress includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that liability arises. The law intervenes only where the distress is so severe that no reasonable [person] could be expected to endure it.").

The allegations contained in the Amended Complaint are insufficient to state a claim for intentional infliction of emotional distress against MSM. Even assuming that MSM acted with deliberate indifference, which as previously discussed is not supported by the factual allegations, Howell has failed to allege conduct that was extreme and outrageous or emotional distress that approaches the level of severity required by Georgia law.

> Georgia law has ruled that far more egregious conduct than this falls short of the outrageousness necessary to constitute intentional infliction of emotional distress. See Bowers v. Estep, 204 Ga. App. 615, 618 (1992) (plaintiff failed to state an IIED claim where he alleged he was intentionally harassed, threatened, humiliated, intimidated in the course of his supervisors' inquiries concerning his emotional condition, belittled, and maliciously transferred to another position causing him to take a leave of absence and be admitted to a psychiatric clinic); Jarrard v. U.P.S., Inc., 242 Ga. App. 58 (2000) (supervisor giving plaintiff a harsh performance evaluation on his first day back from extended psychiatric care and continuing the interview despite plaintiff's tearful requests for a postponement causing him to suffer a complete mental breakdown did not rise to the level of outrageous required for an IIED claim).

Bozeman v. Per-Se Techs., Inc., 456 F. Supp. 2d 1282, 1363 (N.D. Ga. 2006). Accordingly, MSM's Motion to Dismiss as to Count XV is **GRANTED**.

f. Punitive Damages (Count XI)[13]

Howell alleges in Count XI that he is entitled to punitive damages because MSM's actions showed "willful misconduct, malice, fraud, wantonness, oppressions, and that entire want of care which would raise the presumption of conscious indifference to the consequences." Am. Compl. ¶¶ 696-97. In the prayer for relief, Howell specifically asks for punitive damages related to his claims for fraud and concealment (Counts VII, VIII), negligent misrepresentation (Count IX), breach of fiduciary duty (Count XIV), and intentional infliction of emotional distress (Count XV). As discussed above, Howell has failed to state a claim as to fraud and concealment, negligent misrepresentation, and intentional infliction of emotional distress, so the derivative claims for punitive damages for those dismissed claims fails. See Stephen A. Wheat Tr. v. Sparks, 325 Ga. App. 673, 682 (2014) ("An award of . . . punitive damages is derivative of a plaintiff's

[13] Howell's Motion to File Sur-Reply [Doc. 42] only addresses MSM's arguments as to Count XI for punitive damages. See Mot. to File Sur-Reply. Because the Court maintains Howell's claim for other reasons, the Court need not reach any issue raised in Howell's motion. Thus, the Motion to File Sur-Reply is **DENIED AS MOOT**.

substantive claims.). However, the Court also has concluded that Howell did allege facts sufficient to state a claim for the breach of fiduciary duty in Count XIV. Consequently, any punitive damages related to Count XIV may still be sought. See Bunch v. Byington, 292 Ga. App. 497, 504 (2008) (citation omitted) ("A breach of fiduciary duty will support an award of punitive damages.").

Accordingly, MSM's Motion to Dismiss as to any claims for punitive damages that relate to Counts VII, VIII, IX, and XV is **GRANTED** but MSM's Motion to Dismiss is **DENIED** as to a claim for punitive damages related to Count XIV.

IV. CONCLUSION

For the foregoing reasons, Defendant Morehouse School of Medicine's Motion to Dismiss Plaintiff's Amended Complaint [Doc. 36] is **GRANTED IN PART and DENIED IN PART**. The Motion to Dismiss is **GRANTED** as to the following Counts of the Amended Complaint: Counts II, IV, V, VI, VII, VIII, IX, X, XII, XV, and XI for punitive damages as it relates to Counts VII, VIII, IX, and XV, which are **DISMISSED WITH PREJUDICE**. The Motion to Dismiss is **DENIED** as to the following Counts of the Amended Complaint: Counts I and III for failure to accommodate, Count XIII for unjust enrichment, Count XIV for

breach of fiduciary duty, and Count XI for punitive damages only as it relates to the claim for breach of fiduciary duty in Count XIV.

It is further **ORDERED** that Plaintiff James Gregory Howell, Jr.'s Motion Requesting Leave to Amend His Amended Complaint [Doc. 41] is **DENIED**, and Howell's Motion for Leave to File Sur-Reply to Reply to Response to Defendant's Motion to Dismiss Plaintiff's Amended Complaint. [Doc. 42] is **DENIED AS MOOT**.

Finally, it is further **ORDERED** that the parties brief the limited issue of whether Howell's claims under Counts I and III are moot given that the only relief available for this Court to provide appears to be relief that MSM already has provided to Howell. Plaintiff's supplemental brief is due fourteen (14) days from the date of this Order, Defendant's response is due fourteen (14) days from the filing of Plaintiff's supplemental brief, and Plaintiff's reply is due seven (7) days thereafter.

IT IS SO ORDERED this 14th day of September, 2021.

Mark H. Cohen

MARK H. COHEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., **Plaintiff,** **v.** **THE MOREHOUSE SCHOOL OF MEDICINE, INC.,** **Defendant.**	**CIVIL ACTION FILE** **NO. 1:20-CV-3389-MHC**

ORDER

This case comes before the Court on Plaintiff James Gregory Howell, Jr. ("Howell")'s Motion for Reconsideration of Order on Defendant's Motion to Dismiss ("Pl.'s Mot. for Recons.") [Doc. 49], Howell's Motion Requesting Leave to Amend His Amended Complaint ("Second Mot. to Amend") [Doc. 59], Howell's Second Motion Requesting Leave to Amend His Amended Complaint ("Third Mot. to Amend") [Doc. 62] [1]; Defendant Morehouse School of Medicine,

[1] Because Howell previously filed a Motion Requesting Leave to Amend His Amended Complaint on March 15, 2021 ("First Mot. to Amend") [Doc. 41], which was denied by this Court's September 14, 2021, Order (the "September 14 Order") [Doc. 47], this Court refers to Howell's Motion Requesting Leave to Amend His Amended Complaint filed on October 26, 2021, as his Second Motion to Amend,

Inc. ("MSM")'s Motion for Leave to File Surreply [Doc. 60]; Howell's Unopposed Motion for Leave to File Amended Response in Opposition of MSM's Motion for Leave to File Surreply [Doc. 64]; Howell's Motion to Strike MSM's Response to his Motion for Leave to Amend his Amended Complaint [Doc. 69]; and the final pending issue on MSM's Motion to Dismiss Plaintiff's Amended Complaint [Doc. 36].

I. BACKGROUND

This case arises out of claims by Howell, a medical student who was dismissed, but later reinstated, as a student at MSM. Howell's Amended Complaint included fifteen causes of action arising from an alleged failure of MSM to adequately accommodate his disability. Am. Compl. [Doc. 24].

On November 20, 2020, the parties submitted their Joint Preliminary Report and Discovery Plan ("JPRDP") which provides that "Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law." JPRDP [Doc. 28] at 12.

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and his Second Motion Requesting Leave to Amend His Amended Complaint filed on November 12, 2021, as his Third Motion to Amend.

The JPRDP, including the time limits for amending pleadings, was adopted by this Court's Scheduling Order on November 24, 2020. Scheduling Order [Doc. 29].

MSM filed a Motion to Dismiss Howell's Amended Complaint on December 29, 2020, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure [Doc. 36]. Howell filed a Motion Requesting Leave to Amend His Amended Complaint on March 15, 2021. First Mot. to Amend. On September 14, 2021, the Court denied the March 15, 2021, Motion to Amend, and dismissed all counts of the Amended Complaint except: Counts I and III for failure to accommodate under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("RA"), and Title III of the Americans With Disabilities Act, 42 U.S.C. § 12182 ("ADA"); Count XIII for unjust enrichment; Count XIV for breach of fiduciary duty; and Count XI for punitive damages only as it relates to the claim for breach of fiduciary duty in Count XIV. Sept. 14, 2021, Order at 82-83. The Court also ordered the parties to file supplemental briefs on the limited issue of whether Howell's claims under Counts I and III are moot given the relief available appears to be that provided by MSM. Id. at 83.

II. HOWELL'S MOTION FOR RECONSIDERATION

A. Legal Standard

"The Court does not reconsider its orders as a matter of routine practice." Belmont Holdings Corp. v. SunTrust Banks, Inc., 896 F. Supp. 2d 1210, 1223 (N.D. Ga. 2012) (citing LR 7.2E, NDGa). Under the Local Rules of this Court, "[m]otions for reconsideration shall not be filed as a matter of routine practice[,]" but only when "absolutely necessary." LR 7.2E, NDGa. Such absolute necessity arises only when there is "(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." Bryan v. Murphy, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003) (citation omitted). A motion for reconsideration may not be used "to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind." Id. at 1259. Nor may it be used "to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation." Adler v. Wallace Comput. Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001). Finally, "[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court 'could have done it better' the first time." Pres. Endangered

Areas of Cobb's History, Inc. v. U.S. Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995), aff'd, 87 F.3d 1242 (11th Cir. 1996). "If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied." Bryan, 246 F. Supp. 2d at 1259; see also Brogdon ex rel. Cline v. Nat'l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000).

B. Analysis

1. Disparate Treatment (Counts II & IV)

In the September 14 Order, this Court found that the Amended Complaint failed to offer factual allegations showing that Howell's disability was a motivating factor in MSM's decision to dismiss him or that Howell's disability was the sole reason for his dismissal. Sept. 14, 2021, Order at 48-51. Howell asserts that the Court's determination that the Amended Complaint does not contain sufficient facts to allege that Howell was dismissed because of his disability was clear error. Pl.'s Mot. for Recons. at 2-9. Howell argues that his disability was in fact the reason he was dismissed because he failed two classes in his third year of medical school due to the impact of MSM providing an inadequate Note Taking Accommodation ("NTA") during his first two years of medical school. Id. at 2-3. Howell argues that reconsideration is necessary to correct a clear error in the Court's interpretation of the facts alleged regarding: (1) the discriminatory effect of

the decision and the sequence of the events, and (2) the departure from normal procedure and policy. Id. at 2-9. Howell's arguments are without merit.

a. Discriminatory Effect of the Decision and the Sequence of Events

Howell's arguments on reconsideration are the same arguments he previously made, as is evident by his "respectfully request[ing] that this Court reconsider and address [these] portion[s] of Plaintiff's original argument." Id. at 3, 6. In the September 14 Order, the Court considered Howell's argument that discrimination was adequately alleged through "the failure to provide the note-taking accommodation." Sept. 14, 2021, Order at 49-50. However, the Court found this argument to be without merit and instead concluded that Howell's allegations failed to support a claim of discrimination, concluding, among other reasons, that there was no evidence of "any sort of discriminatory animus or motive on behalf of MSM." Id. at 50 (citations omitted). Because this Court has previously considered and rejected his argument, Howell's attempt to re-litigate the same arguments he previously raised are not valid grounds for reconsideration. See Bryan, 246 F. Supp. 2d at 1259; Brogdon, 103 F. Supp. 2d at 1338 ("Parties therefore may not employ a motion for reconsideration as a vehicle to present new arguments or evidence that should have been raised earlier, introduce novel legal

theories, or repackage familiar arguments to test whether the Court will change its mind.").

Howell next points to the evidence he included in First Motion to Amend on March 15, 2021, [Docs. 41, 41-1, 41-2, 41-3, and 41-4] and argues that "[d]ue to the denial of Plaintiff's motion for leave to amend and due to the discovery of new evidence, Plaintiff presents this new evidence here in his motion for reconsideration." Pl.'s Mot. to Recons. at 5. Although this is not actually "newly discovered" evidence (as it was included in Howell's motion to amend that was denied), the September 14 Order adjudicated a motion to dismiss where this Court was constrained to review the facts as alleged in the Amended Complaint and the exhibits attached thereto. See Love v. Pa. Higher Educ. Assistance Agency, No. 1:19-CV-02387-JPB, 2021 WL 673421, at *2 (N.D. Ga. Feb. 22, 2021) (denying a motion to reconsider and providing the following rationale: "Setting aside the issue of whether these documents are indeed 'newly discovered,' the Court agrees with PHEAA that the Court's review of PHEAA's Motion to Dismiss, which was based on a facial attack to the Complaint, was limited to the allegations set forth in the Complaint. Therefore, Plaintiffs cannot now seek to introduce evidence extrinsic to the Complaint for the Court's consideration."). Accordingly, the Court rejects Howell's argument regarding "new evidence."

b. Departures from Normal Procedural or Substantive Criteria

Turning to Howell's arguments that relate to "departures from normal procedural or substantive criteria," Howell again raises a barrage of arguments that he presented previously to the Court and asks the Court to "reconsider and address Plaintiff's original argument" five more times. Pl.'s Mot. to Recons. at 6-9. The Court rejects Howell's previously-litigated arguments. Bryan, 246 F. Supp. 2d at 1259; Brogdon, 103 F. Supp. 2d at 1338.

Howell also argues that the Court should reconsider its reliance on Schwartz v. City of Treasure Island, 544 F.3d 1201, 1216 (11th Cir. 2008), and Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002) (per curium), because both cases were decided on summary judgment. Pl.'s Mot. to Recons. at 9. Howell contends relying on these two cases is a clear error. Reply in Supp. of Mot. for Reconsideration ("Pl.'s Recons. Reply") [Doc. 58] at 2.

The Court cited Schwartz and Loren in support of the following:

> Howell also alleges that "on information and belief," students without disabilities "receive prompt and equitable resolutions" to their compliance complaints, are provided with "open and honest communication regarding adverse proceedings against them," and MSM has allowed other students to spend more than thirty-six months in their first- and second-year curricula. Am. Compl. ¶¶ 276, 396, 482.

> Once again, Howell does not allege any actual facts to support this allegation.

Sept. 14, 2021, Order at 50. (quoting Am. Compl.). The principle from these two cases that there must be a showing of a difference between the treatment of those with disabilities and those without disabilities to support a claim of disparate treatment claim equally applies when reviewing a motion to dismiss, where all of the allegations are accepted as true. In the September 14 Order, the Court also relied on a case which granted a motion to dismiss: "Accordingly, because the Amended Complaint does not contain sufficient factual matter, which, if accepted as true, plausibly shows that [Howell] was dismissed because of his disability, the ADA and RA disparate treatment claims must be dismissed." Id. at 51 (quoting J.A.M. v. Nova Se. Univ., Inc., No. 0:15-CV-60248-KMM, 2015 WL 4751149, at *4 (S.D. Fla. Aug. 12, 2015), aff'd, 646 F. App'x 921 (11th Cir. 2016)).

2. Deliberate Indifference (Counts I-IV)

In the September 14 Order, the Court held that Howell is not entitled to money damages under either the ADA or the RA for failure to provide a reasonable accommodation because Howell failed to plead facts which would plausibly allege that MSM was deliberately indifferent. Sept. 14, 2021, Order at 59-61. Howell argues that it was clear error for this Court to find that "[t]he factual allegations of the of the Amended Complaint, taken as true, do not

plausibly allege that MSM was deliberately indifferent because Plaintiff does not allege that either [Marla] Thompson or [Brandi] Knight were policymakers or that they were capable of making official decisions[2] on behalf of MSM and thus he has not shown that he is entitled to money damages under either the ADA or the RA for failure to provide a reasonable accommodation." Pl.'s Mot. to Recons. at 10-12 (internal quotations and citations omitted).

Howell is correct in asserting that an official is someone who enjoys substantial supervisory authority within an organization if they have complete discretion at a key decision point in the administrative process. Id. at 10 (citing Beckley v. City of Atlanta, Ga., No. 1:16-CV-1435-MHC, 2017 WL 6460300, at *8 (N.D. Ga. Oct. 18, 2017)); see also Liese, 701 F.3d at 350 (stating that an official is "someone who enjoys substantial supervisory authority within an organization's chain of command so that, when dealing with the complainant, the official had complete discretion at a key decision point in the administrative

[2] Howell cites Liese for the proposition that officials engaging in discriminatory conduct do not have to be policymakers. Pl.'s Mot. to Recons. at 10 (citing Liese v. Indian River Cnty. Hosp. Dist., 701 F.3d 334, 349-50). However, the Court did not hold that Howell must allege a policymaker engaged in deliberately indifferent conduct, but instead held that Howell does not allege "Thompson or Knight were policymakers or that they were capable of making 'official decisions' on behalf of MSM." Sept. 14, 2021, Order at 60 (emphasis added).

process.") (citations and quotations omitted). However, the allegations in the Amended Complaint with respect to Thompson and Knight are conclusory:

> Marla Thompson at all relevant times had complete discretion at key decision points in the administrative process regarding Plaintiff's accommodations, including, but not limited to, Plaintiff's note-taking accommodations.
> ***
>
> Marla Thompson and Dr. Brandi Knight enjoyed substantial if not complete supervisory authority within MSM's chain of command and the ability to institute corrective measures with regards to Plaintiff's note-taking accommodation.

Am. Compl. ¶¶ 23, 35. Unsupported legal conclusions like these are insufficient to survive a motion to dismiss. Oxford Asset Mgmt., Ltd. v. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002) ("[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal."). Here, there are not sufficient factual allegations to show that either Thompson or Knight had (1) substantial supervisory authority, or (2) complete discretion at a key decision point in the administrative process.

Moreover, this argument is yet another repackaging of an old argument and, therefore, an insufficient ground for reconsideration. See Br. and Mem. in Supp. of Pl.'s Resp. to Def. MSM's Mot. to Dismiss Pl.'s Am. Compl. ("Pl.'s Resp. to MSM's Mot. to Dismiss") [Doc. 37-1] at 66 ("[Marla Thompson] and [Brandi Knight] had substantial if not complete supervisory authority within MSM's chain

of command and the ability to institute corrective measures with regard to [Howell's] NTA.").

> To be sure, an "official" needn't be so high up the chain of command that she is "authorized to set an entity's policy." Liese, 701 F.3d at 349-50. But she must be high enough that her actions "constitute an official decision by the [entity] itself not to remedy the misconduct." Doe [v. Sch. Bd. Of Broward Cnty., Fla.], 604 F.3d [1248,] 1255 [11th Cir. 2010] (internal quotation marks and citation omitted). That, we have said, requires "substantial supervisory authority." Liese, 701 F.3d at 350.

Silberman v. Miami Dade Transit, 927 F.3d 1123, 1135 (11th Cir. 2019). This substantial supervisory authority is present when an official has the authority to overrule the decisions of someone below her. See, e.g., J.S., III by & through J.S. Jr. v. Houston Cnty. Bd. of Educ., 877 F.3d 979, 989 (11th Cir. 2017) (finding that principals have supervisory authority because they are responsible for supervising assigned personal, and teachers supervisory authority because they have responsibility to supervise aides and volunteers, but coaches do not because they do not have responsibility over aides.). For example, in Liese, a case about a hospital's failure to provide sign-language interpreters to a deaf patient, the doctors had the requisite supervisory authority because they "could overrule a nurse's decision not to provide the auxiliary aid," and there was "no evidence to suggest that the doctor's decisions were subject to reversal." Liese, 701 F.3d at 350.

Conversely, the nurses could decide to provide the accommodation (via asking for an interpreter or getting the hospital's interpreting system from the storage closet) but could be overruled by a doctor, thus lacking substantially supervisory authority. Id.

Howell appears to abandon his position that Knight was an official with supervisory authority, but argues that Thompson was highly involved in setting up students' accommodations. Pl.'s Recons. Reply at 4-5 (citing Am. Compl. ¶¶ 22, 65, 96-97, 100, 102-04, 162). However, none of the allegations cited by Howell from the Amended Complaint plausibly show that Thompson had any supervisory authority. See P.M. by & through Martine v. City of Winfield, Ala., No. 6:19-CV-00623-LSC, 2020 WL 10181570, at *6 (N.D. Ala. June 10, 2020) (finding that Mr. Box did not quality as an official with substantial supervisory authority).

In addition, the Amended Complaint does not allege that Thompson's decisions themselves were not reviewable. The "key decision point" is one "where the decision is not ordinarily subject to a higher-level review." Castle v. Cobb Cnty., Ga., No. 1:19-CV-01406-JPB, 2022 WL 1569705, at *6 (N.D. Ga. May 18, 2022) (internal quotations and citations omitted). Yet, Thompson told Howell that he needed to contact Dr. Ngozi Anachebe ("Anachebe"), Associate Dean of Admissions and Student Affairs, about her NTA concerns. Am. Compl. ¶ 185.

And even when Howell informed Thompson that Anachebe told him that she was not involved in accommodations, there is nothing alleged to show that Thompson retained any independent authority over the administration process. Id. ¶¶ 191-92.

> Missing here are the key ingredients that have come to define the Liese test—namely, the action (or inaction) of an individual with "substantial supervisory authority" within MDT's "chain of command" who knows that discrimination has taken place and is in a position to do something about it. Liese, 701 F.3d at 350. [The plaintiff's] complaint doesn't create a "reasonable expectation that discovery will reveal evidence" that fills in those gaps, and, accordingly, his claims haven't crossed "the line from conceivable to plausible." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007).

Silberman, 927 F.3d at 1136.

3. Fraud and Negligent Misrepresentation (Counts VII-IX)

The Court granted MSM's motion to dismiss the counts in the Amended Complaint alleging fraud and negligent misrepresentation because of Howell's failure to allege justifiable reliance on Thompson's statements regarding the note-taking accommodation. Sept. 14, 2021, Order at 67. Howell argues that the Court erred in finding that Howell failed to sufficiently allege justifiable reliance, and asks the Court to reconsider its holding that "Howell was not entitled to rely on Thomas's statements because her statements describing a 24-48 hour turnaround time 'goal' are speculative." Pl.'s Mot. to Recons. at 12-15 (quoting Sept. 14, 2021, Order at 67); see also Am. Compl. ¶ 26 ("Marla Thompson communicated to

Dr. Brandi Knight that Plaintiff's note-taking accommodation came with a 24-48 hour turnaround time goal."), ¶¶ 55, 124, 163, 177, 561-62, 587-88 (describing the 24-48 hour turnaround as a "goal"). The September 14 Order states, in pertinent part: "While Thompson stated that a note-taking accommodation would be provided, this did not preclude MSM from adjusting the accommodation in the face of unexpected occurrences." Sept. 14, 2021, Order at 67. Howell contends that there is nothing in the Amended Complaint that shows MSM made adjustments to the 24-48 hour turnaround time goal from Howell's note-taking accommodation, that MSM was faced with unexpected occurrences, or that goal existed for the entirety of the time Howell was a student at MSM. Pl.'s Mot. to Recons. at 13.

Howell's argument is without merit. Whether adjustments were made, unexpected occurrences happened, or the goal stayed the same, Georgia law does not permit a litigant asserting a claim of fraud or negligent misrepresentation to base the reliance element on allegations of the prediction of a future event. See VC Macon, GA LLC v. Va. Coll. LLC, No. 5:18-CV-00388-TES, 2021 WL 723979, at *5 (M.D. Ga. Feb. 24, 2021) (acknowledging the rule that predictions of future events cannot be justifiably relied upon and granting dismissal in part because the complaint only showed reliance on statements—which included words

like "expect," "anticipate" and "should"—predicting future events); Dalziel Dalzeal LLC v. Dickinson Wright PLLC, No. 1:21-CV-0377-MHC, 2022 WL 610198, at *8 (N.D. Ga. Jan. 7, 2022) ("[R]epresentations concerning expectations and hopes are not actionable.") (citation omitted); Riddle v. Driebe, 153 Ga. App. 276, 280 (1980) ("Fraud cannot consist of mere broken promises, unfilled predictions or erroneous conjecture as to future events.").

4. Intentional Infliction of Emotional Distress (Count XV)

Howell contends the Court committed a clear error in finding that Howell did not allege conduct that was extreme and outrageous or emotional distress that approaches the level of severity required by Georgia law. Pl.'s Mot. to Recons. at 16-20. See Sept. 14, 2021, Order at 78-81. First, Howell argues that reliance on the summary judgment case of Bozeman v. Per-se Techs., Inc., 456 F. Supp. 2d 1282, 1363 (N.D. Ga. 2006), was improper. Pl.'s Mot. for Recons. at 16. The cited excerpt of Bozeman stands for the proposition that conduct must meet a certain level of egregiousness to satisfy the element of extreme and outrageous conduct under Georgia law, and courts require allegations to meet the proper level of outrageousness in order to proceed even at the motion to dismiss stage of litigation. See, e.g., Lockhart v. Columbian Chems. Co., Inc., No. 1:07-CV-0669-BBM, 2007 WL 9706475, at *3 (N.D. Ga. Nov. 13, 2007) (granting a motion to

dismiss because the alleged behavior of instructing someone "not to hire 'Afro-Americans' because they could not be trusted" did not "come close to the level of extreme and outrageous conduct required for stating a claim of intentional infliction of emotional distress."); Pruitt v. Universal Prot. Servs., LLC, No. 1:20-CV-1884-JPB-CCB, 2021 WL 3073267, at *7 (N.D. Ga. June 14, 2021) (recommending dismissal because the complaint fell short of providing factual support to show that the defendant engaged in outrageous conduct).

Second, Howell argues the Court did not consider the whole of Howell's emotional distress argument, evidenced by the fact that the Court only cited a portion of his argument; he then restates a section of his brief in opposition to MSM's motion to dismiss. Pl.'s Mot. to Recons. at 17-18 (quoting Pl.'s Resp. to MSM's Mot. to Dismiss at 77-78). This is not proper grounds for reconsideration and is nothing more than (1) repackaging, and (2) telling the Court ways it could have done better. See Pres. Endangered Areas of Cobb's History, Inc., 916 F. Supp. at 1560.

Third, Howell asks to present new evidence to the Court regarding the severity of his emotional distress: "On September 20, 2021, Plaintiff's diagnosis of depression from the actions of MSM was upgraded to severe refractory depression by his psychiatrist." Pl.'s Mot. to Recons. at 18. Even if this Court were to

consider this "new" evidence, it would do nothing to call into question the Court's earlier order that MSM's alleged actions did not constitute the type of extreme or outrageous conduct that Georgia law requires for a claim for intentional infliction of emotional distress.

5. Available Relief

Finally, Howell argues that it was clear error for the Court to determine that Howell's "requested relief of restarting his entire medical education with a deletion of his entire prior academic record is improper under the ADA or the RA." Pl.'s Mot. to Recons. at 20; Sept. 14, 2021, Order at 61.

Howell's argument on reconsideration regarding restarting medical school fails because it is nothing more than a repackaging of the argument previously presented to, and rejected by, this Court. See Pl.'s Resp. to MSM's Mot. to Dismiss at 23 ("[Howell's] requested relief of allowing [Howell] to restart his medical education with all of his accommodations provided for[], and the deletion of his entire record at MSM is proper."). The Court was correct in concluding the relief sought by Howell was an improper remedy. Howell argues that Wilf v. Board of Regents of the University System of Georgia only precludes the Court from removing grades, and does not preclude Howell "from restarting his medical education and earning new grades, again it precludes only the removing of a

grade." Pl.'s Mot. to Recons. at 20 (citing Wilf v. Bd. of Regents of the Univ. Sys. of Ga., No. 1:09-CV-1877-RLV, 2010 WL 11469573, at *1 (N.D. Ga. July 6, 2010)). MSM argues that if removing a single grade is inappropriate, then restarting medical school and deleting every prior grade is inappropriate. MSM's Resp. in Opp'n to Pl.'s Mot. for Reconsideration [Doc. 54] at 18.

Howell has provided no authority to demonstrate that the Court erred in concluding that restarting school is not appropriate relief under the ADA or the RA; indeed, Howell has failed to provide the Court with a single example of this form of relief being ordered under either statute. Tharpe v. Nationstar Mortg., LLC, No. 13-14379-CIV, 2017 WL 10753458, at *1 (S.D. Fla. Jan. 24, 2017), aff'd, 718 F. App'x 814 (11th Cir. 2017) ("In reviewing a motion to reconsider, the Court will not alter a prior decision absent a showing of clear and obvious error where the interests of justice' demand correction.") (internal quotation and citations omitted). Instead, Howell points to Redding v. Nova Se. Univ., Inc., 165 F. Supp. 3d 1274, 1299 (S.D. Fla. 2016), which is inapposite because it considered

whether there were any questions of fact as to a failure to accommodate claim, and did not analyze the sufficiency of the form of relief at issue here.[3]

> Confusingly, Howell moves that the Court reconsider its finding that:
>
> > Howell has alleged that he would be able to retake the courses he failed during the 2019-2020 school year, which provides at least a portion of the requested relief—the portion most directly related to the harm allegedly inflicted by the ineffective administration of the note-taking accommodation. Am. Compl. ¶¶ 315-22.

Sept. 14, 2021, Order at 62, because Paragraphs 315-22 of the Amended Complaint do not support the Court's finding. Pl.'s Mot. to Recons. at 21. This is simply inaccurate. As an example, Paragraph 316 of the Amended Complaint states that MSM's reentry plan "allowed for Plaintiff to retake the courses that Plaintiff failed in the 2019-2020 academic school year (pathology and

[3] Because Howell has not shown clear error in the Court's decision about restarting medical school, the Court need not consider Howell's standing argument.

pathophysiology))[.]" Am. Compl. ¶ 316. The remainder of Howell's arguments are nothing more than a regurgitation of his previous arguments.

Therefore, for all of the reasons discussed above, Howell's Motion for Reconsideration is **DENIED**.

III. HOWELL'S MOTIONS TO AMEND

The Court previously denied Howell's First Motion to Amend in the September 14 Order. Sept. 14, 2021, Order at 30-33. Howell filed his Second Motion to Amend on October 26, 2021. Then, seventeen days later on November 12, 2021, Howell filed his Third Motion to Amend.

A. Legal Standard

Under Federal Rule of Civil Procedure Rule 15(a), a party may amend his complaint once as a matter of course within twenty-one days after service of a response by answer or motion. Otherwise, the party may amend his complaint "only with the opposing party's written consent or the court's leave." FED. R. CIV. P. 15(a)(2). Rule 15(a) further instructs that "[t]he court should freely give leave when justice so requires." Id. "The Supreme Court has emphasized that leave to amend must be granted absent a specific, significant reason for denial." Spanish Broad. Sys. v. Clear Channel Commc'ns, 376 F.3d 1065, 1077 (11th Cir. 2004) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). When considering whether

such a reason exists, the district court may consider factors "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." Foman, 371 U.S. at 182; see also Felio v. Hyatt, No. 1:12-CV-4186-ODE, 2014 WL 12634467, at *6 (N.D. Ga. Aug. 7, 2014) (citing Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1241 (11th Cir. 2009)).

However, when a motion to amend is filed after the time provided by a court's scheduling order, the plaintiff "must first demonstrate good cause under Rule 16(b) before [the court] will consider whether amendment is proper under Rule 15(a)." Sosa v. Airprint Sys., Inc., 133 F.3d 1417, 1419 (11th Cir. 1998) (citations omitted). Rule 16 requires that the Court enter a scheduling order that contains limitations on "the time to join other parties, amend the pleadings, complete discovery, and file motions." FED. R. CIV. P. 16(b)(3)(A). Such orders "may be modified only for good cause and with the judge's consent." FED. R. CIV. P. 16(b)(4); see also S. Grouts & Mortars, Inc. v. 3M Co., 575 F.3d 1235, 1241 (11th Cir. 2009) ("A plaintiff seeking leave to amend its complaint after the deadline designated in a scheduling order must demonstrate 'good cause' under FED. R. CIV. P. 16(b)."). If the court were to consider Rule 15(a) amendments

without regard to the requirements of Rule 16(b), the court "would render scheduling orders meaningless and effectively would read Rule 16(b) and its good cause requirement out of the Federal Rules of Civil Procedure." Sosa, 133 F.3d at 1419.

B. Howell's October 26, 2021, Motion to Amend (the Second Motion to Amend)

Howell's Second Motion to Amend once again seeks leave to amend his already voluminous Amended Complaint to add new facts related to (1) his updated psychiatric diagnoses; (2) Marla Thompson's official capacities and duties; and (3) MSM's alleged misstatements. Second Mot. to Amend at 2-8. Howell argues the amendment would not prejudice MSM because discovery was stayed eight days after it began, the amendments do not create undue delay because the case is only fourteen months old, and the amendment would not be futile. Id. at 9-10. Howell attaches the Proposed Second Amended Complaint [Doc. 59-1] demonstrating the proposed changes. Howell proposes no additional cause of action in his Proposed Second Amended Complaint.

This is becoming a well-traveled path for Howell. "Plaintiffs' proposed amendment, in reality, seems to be an effort at a third (or fourth) bite at the apple of whether their tort claims are futile." Aldridge v. Travelers Home & Marine Ins. Co., No. 1:16-CV-1247-SCJ, 2018 WL 3472045, at *1 (N.D. Ga. Jan. 22, 2018).

On November 17, 2020, Howell amended the Complaint as a matter of course pursuant to Rule 15(a)(1), adding 100 pages and four additional causes of action. See Am. Compl. The Court then denied Howell's First Motion to Amend, in which Howell made no mention of good cause. See Sept. 14, 2021, Order at 30-33. Now Howell has filed a second (filed October 26, 2021) and a third (filed November 12, 2021) motion to amend, both after the Court has ruled on MSM's motion to dismiss. At the outset the Court notes that:

> Plaintiff cannot be continually allowed to change aspects of his cause of action after defendants correctly point out the defects and flaws in his case and filings in this court in support of their motions and defenses. There is a minimal level of diligence and competence that must be employed by parties to a lawsuit, and plaintiff has continually failed to do so here.

Ferrell v. Busbee, 91 F.R.D. 225, 232 (N.D. Ga. 1981).

The good cause standard under Rule 16 "precludes modification [of a scheduling order] unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" Sosa, 133 F.3d at 1419 (citing FED. R. CIV. P. 16 advisory committee's note and Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992) ("If [a] party was not diligent, the [good cause] inquiry should end."). Lack of diligence can include situations where either (1) the plaintiff "has full knowledge of the information with which it seeks to amend its complaint before the deadline passes," or (2) the "plaintiff's failure to seek the

information it needs to determine whether an amendment is in order." S. Grouts, 575 F.3d at 1241 n.3. Because the JPRDP was filed on November 20, 2020, the deadline for filing amendments to the pleadings was December 21, 2020. Howell's Second Motion to Amend was filed over ten months after this deadline, on October 26, 2021.

With respect to the new allegation pertaining to Howell's updated psychiatric diagnosis, Howell was not diligent in filing the Second Motion to Amend because the updated psychiatric diagnosis was obtained on September 20, 2021, but Howell waited over a month to file the underlying motion. Id. ("Southern Grouts lacked diligence, at the very least, because it waited . . . to file a motion to amend its complaint with information that it had known over a month before . . . .").[4]

[4] The new allegation relating to the psychiatric diagnosis appear to be meant to bolster Howell's claim for intentional infliction of emotional distress which was dismissed by the Court in its September 14 Order. See Reply in Supp. of Pl.'s Second Mot. to Amend [Doc. 66] at 3-4. But the Court has denied Howell's motion for reconsideration on this very issue. See Aldridge, 2018 WL 3472045, at *1 (N.D. Ga. Jan. 22, 2018) ("The Court has already denied their motion for reconsideration . . . on this very issue. . . . If Plaintiffs wish to challenge the Court's decision on the tort claims, they can appeal to the Eleventh Circuit at the conclusion of the case."). Moreover, this additional "evidence" fails to address the reasons for the Court's dismissal of Howell's intentional infliction of emotional distress claim, which focused on the conduct of MSM rather than Howell's psychiatric condition.

With respect to the new allegations pertaining to Marla Thompson's official capacities and duties, Howell has not "indicate[d] with any specificity the good cause he had for untimely moving to amend his complaint." Smith v. Sch. Bd. of Orange Cnty., 487 F.3d 1361, 1367 (11th Cir. 2007). Specifically, he has not shown "why those facts previously were undiscoverable." Id.

Finally, Howell seeks to add several new allegations relating to MSM's allegedly false and fabricated statements in its October 12, 2021, Response to Supplemental Briefing [Doc. 55]. Mot. to Amend at 3-8. Howell's Second Motion to Amend fails to make any mention, much less argument, pertaining to diligence. Sosa, 133 F.3d at 1419. In fact, several of the proposed allegations pertaining to MSM's alleged fabrications reference information and events that occurred prior to (or just after) the December 21, 2020, amendment deadline and were thus capable of being raised by Howell knowledge before the original amendment deadline passed. See, e.g., Proposed Second Amended Complaint ¶ 337 (discussing communications that occurred on September 18, 2020), ¶ 338 (same), ¶ 341 (discussing conversations that took place on September 22, 2020), ¶ 342 (discussing email communications exchanged on November 11, 2020), ¶ 347 (discussing communications that occurred on December 23, 2020). Howell has failed to show the appropriate level of diligence that would establish good cause

under Rule 16(b). See Adams v. Lockheed Martin and Int'l Assoc. of Machinists and Aerospace Workers, Local Lodge 709, AFL-CIO, No. 1:05-CV-0942-CC, 2005 WL 8155423, at *2 (N.D. Ga. July 13, 2005) (citing Sosa, 133 F.3d at 1418) ("[T]he presumption is against modification, unless the movant can show more affirmative diligence.").

"It is only after the court addresses whether the proposed amendment may be granted under Rule 16 that the court is to determine whether it is proper under Rule 15." Nobles v. Rural Cmty. Ins. Servs., 303 F. Supp. 2d 1279, 1283 (M.D. Ala. 2004). Because Howell fails to show good cause to modify the Court's Scheduling Order to permit the filing of a motion to amend ten months after the deadline for doing so, the Court is not required to consider his arguments under Rule 15. However, even if this Court determined there was good cause to modify the Scheduling Order to permit the out-of-time amendment, it would still deny the Motion to Amend under Rule 15. The Court's previous holding applies with even more force now:

> This is not the first time Howell, prompted by a pending motion to dismiss, has moved to amend his complaint—Howell filed the Amended Complaint in an attempt to address some of the deficiencies in the initial pleading identified in the first motion to dismiss. Howell has failed, at minimum, to demonstrate that there was no dilatory motive here. See Foman, 371 U.S. at 182; see also Ferrell v. Busbee, 91 F.R.D. 225, 232 (N.D. Ga. 1981) (denying plaintiff's motion to amend where the court found that plaintiff had failed to demonstrate a

> "minimal level of diligence and competence" and could not demonstrate that his motion "was not served as a dilatory tactic").

Sept. 14, 2021, Order at 33. Therefore, Howell's Second Motion to Amend is **DENIED**.[5]

C. Howell's November 12, 2021, Motion to Amend the Amended Complaint (the Third Motion to Amend)

Howell's Third Motion to Amend was filed nearly eleven months after the December 21, 2020, deadline. This proposed amendment [Doc. 62-1] seeks to add a claim for violations of Title IX, 20 U.S.C. § 1681 et seq., based on sex discrimination, and a claim for violation of Title IV, 42 U.S.C. § 2000d et seq., based on race discrimination. Howell has failed to argue, let alone demonstrate, that he investigated potential sex and race discrimination claims with diligence. See, e.g., Morrissey v. ASD Shared Servs., LLC, No. 1:12-CV-4345-CAP-AJB,

[5] Also pending before the Court is Howell's Motion to Strike Defendant's Response to Plaintiff's Motion to Amend. Howell argues that MSM's Response in Opposition to Howell's Motion to Amend ("MSM's Opp'n to Howell's Mot. to Amend") [Doc. 61] should be stricken in its entirely for failing to comply with the local rules pertaining to pro hac vice counsel. Id. Howell's Motion to Amend is without merit for the reasons described above notwithstanding any of the arguments raised by MSM. Moreover, the Court's holding does not rely on MSM's Opposition to Howell's Motion to Amend. Accordingly, Howell's Motion to Strike is **DENIED AS MOOT**.

2013 WL 11330647, at *3 (N.D. Ga. Sept. 3, 2013) ("Plaintiff does not provide any information suggesting her diligence.").

> As we noted in Sosa, the "good cause standard precludes modification unless the schedule cannot be 'met despite the diligence of the party seeking the extension.'" 133 F.3d at 1418 (citing Fed. R. Civ. P. 16 advisory committee's note). The lack of diligence that precludes a finding of good cause is not limited to a plaintiff who has full knowledge of the information with which it seeks to amend its complaint before the deadline passes. That lack of diligence can include a plaintiff's failure to seek the information it needs to determine whether an amendment is in order.

S. Grouts, 575 F.3d at 1241 n.3. Conclusory statements claiming good cause without any demonstration of diligence are insufficient. Moreover, the allegations Howell is seeking to add occurred "during the time period in which Plaintiff was an MSM student." Third Mot. to Amend at 3. Accordingly, the information was available before the deadline to amend in the Scheduling Order and, in fact, before he filed the original complaint. See Sosa, 133 F.3d at 1419 (affirming the denial of a motion to amend in part because the "information supporting the proposed amendment to the complaint was available to Sosa even before she filed suit.").

Additionally, Howell was not prompt in filing the motion to amend. Morrissey, 2013 WL 11330647, at *3 ("To assess whether the moving party had been diligent, the Sosa Court analyzed when the information leading to the proposed amendment had become available, as well as how promptly the plaintiff

had moved to amend the complaint after the discovery of any new evidence."). Howell made three other filings to this Court in the window after allegedly discovering the new sex/race discrimination evidence, none of which pertained to this information. See Reply in Supp. of Pl.'s Second Mot. to Amend [Doc. 70] at 1. One of these three filings was the Second Motion to Amend in which Howell failed to include the sex and race discrimination amendments despite the fact that Howell purportedly discovered the new facts eleven days prior to filing. See Third Motion to Amend at 3 (stating that the new fact about a Black African American female student's experience at MSM "was not available to Plaintiff until October 15, 2021"). In sum, Howell was not diligent, and fails to show good cause to amend the Scheduling Order under Rule 16(b). Sosa, 133 F.3d at 1418 ("If a party was not diligent, the good cause inquiry should end." (internal citations and quotations omitted, alterations accepted)). Accordingly, the Court **DENIES** Howell's Third Motion to Amend.

IV. MOOTNESS

In the September 14 Order, the Court stated:

> The requested relief that remains with respect to Counts I and III involve actions to be taken by the Court to remedy the lapses in Howell's note-taking accommodation. However, it is undisputed that in Howell's third academic year from 2019-2020, prior to the filing of the lawsuit, he had no complaints with how this accommodation was being administered. Am. Compl. ¶ 171. He also has not alleged that he will return to MSM

> if he cannot "restart" his medical education [with] all of his previous record "deleted," which is not available relief. Thus, assuming that this Court eventually rules in favor of Howell on his claims in Counts I and III, based upon the facts as currently alleged, this Court is unable to contemplate in what manner it could grant any further relief to Howell with respect to the note-taking accommodation.

Id. at 63. The Court ordered the parties to "brief the limited issue of whether Howell's claims under Counts I and III are moot given that the only relief available for this Court to provide appears to be relief that MSM already has provided to Howell." Id. at 83.

> "[A] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. If events that occur subsequent to the filing of a lawsuit . . . deprive the court of the ability to give the plaintiff . . . meaningful relief, then the case is moot and must be dismissed." Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1183 (11th Cir. 2007) (quoting Troiano v. Supervisor of Elections in Palm Beach Cnty, 382 F.3d 1276, 1281-82 (11th Cir. 2004)); see also Chambers v. Zesto Enters., Inc., No. 1:09-CV-0292-WSD, 2009 WL 3200682, at *3 (N.D. Ga. Sept. 29, 2009) ("Once a defendant remedies any alleged deficiencies, a plaintiff's claim becomes moot.") (citing Cole v. Nat'l Collegiate Athletic Ass'n, 120 F. Supp. 2d 1060, 1068 (N.D. Ga. 2000) ("The only season of competition which was affected by his partial-qualifier status is over, and no additional relief is available from this or any court. Money damages are not available under Title III of the ADA and this court can fashion no equitable remedy to benefit plaintiff."); Brother v. CPL Investments, Inc., 317 F. Supp. 2d 1358, 1373 (S.D. Fla. 2004) (same)).

Id. at 63-64.

In his supplemental brief, Howell makes two arguments, both of which rely on his motion to reconsider and both of which are without merit. See generally

Suppl. Brief ("Howell's Mootness Br.") [Doc. 50]. "Relying on this Court's reconsideration," Howell first states that he "has sufficiently pled a claim for compensatory relief and his Counts I and III for Failure-to-Accommodate are not moot." Id. at 2. However, the Court has already concluded that Howell "failed to meet [the exacting standard of deliberate indifference], and thus has not shown he is entitled to money damages under either the ADA or the RA for failure to provide a reasonable accommodation." September 14, 2021, Order at 61. Howell also made this same argument on his motion for reconsideration which has been denied. See Section II, *supra*. Accordingly, his third iteration of the same argument is again rejected.

Second, Howell argues that the failure to accommodate claims are not moot because of his prayer to restart his entire medical school education. Howell's Mootness Br. at 3-7. The Court already determined that restarting medical school is not a valid form of relief. September 14, 2021, Order at 61-62 ("Furthermore, Howell's requested relief of restarting his entire medical education with a deletion of his entire prior academic record is improper under the ADA or the RA."). The Court also rejected this argument on reconsideration. See Section II, *supra*.

Finally, Howell contends: "Plaintiff, as a student who is no longer dismissed and has a valid claim for readmission, has standing for prospective relief."

Howell's Mootness Br. at 7. Howell's argument conflates the issues of standing and mootness. See, e.g., id. at 13 ("Due to Plaintiff's standing to request the aforestated [sic] prospective relief, and the real threat of future injury, Counts I and III for Failure-to-Accommodate are not moot.").

> Despite [the party's] conflation of the standing and mootness issues, these are separate and independent constitutional doctrines. See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 191 (2000). The Supreme Court has often described the relationship between the two as follows: "The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." Id. at 709. "[T]he Court has . . . warned that this description of mootness 'is not comprehensive,' and that standing and mootness are in fact distinct doctrines which must not be confused." Sheely, 505 F.3d at 1189 n.16 (quoting Laidlaw, 528 U.S. at 189-90.)

Melvin H. v. Atlanta Indep. Sch. Sys., No. 1:08-CV-1435-BBM, 2009 WL 10674830, at *8 (N.D. Ga. Mar. 27, 2009).

The Court concludes that Howell's claims under Counts I and III are moot because they "no longer present a live controversy with respect to which the court can give meaningful relief." Fla. Ass'n of Rehab Facilities, Inc. v. Fla. Dep't of Health and Rehab. Servs., 225 F.3d 1208, 1216-17 (11th Cir. 2000) (citations and quotations omitted). "[I]t is undisputed that in Howell's third academic year from 2019-2020, prior to filing of the lawsuit, he has no complaints with how this accommodation was being administered" and the "requested relief that remains

involves actions to be taken by the Court to remedy the lapses in Howell's note-taking accommodation." September 14, 2021, Order at 63. In addition, Howell's dismissal from MSM was overturned on September 15, 2020. Am. Compl. ¶ 313. "If an event occurring after the filing of a suit deprives the court of the ability to give the parties meaningful relief, then the case is moot and must be dismissed." Mailplanet.com, Inc. v. Lo Monaco Hogar, S.L., 291 F. App'x 229, 232 (11th Cir. 2008). Every argument for relief presented by Howell has been rejected by the Court twice.

Because Howell has failed to demonstrate how any relief that the Court could grant him for his failure to accommodate claims has not been rendered moot, the Court **DISMISSES** Counts I and III as moot.[6]

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[6] Also before the Court is MSM's Motion for Surreply, which seeks to respond to arguments made for the first time in the Reply In Support of Plaintiff's Supplemental Brief ("Howell's Mootness Reply") [Doc. 56]. Federal courts, as a general rule, do not consider arguments raised for the first time in a reply brief. Herring v. Sec'y, Dep't of Corr., 397 F.3d 1338, 1342 (11th Cir. 2005). Accordingly, to the extent that Howell's Mootness Reply raises new arguments, the Court has not considered them. See Rindfleisch v. Gentiva Health Servs., Inc., 22 F. Supp. 3d 1295, 1301 (N.D. Ga. 2014). Thus, MSM's Motion for Surreply is **DENIED AS MOOT**. Given that MSM's Motion for Surreply is denied as moot, Howell's Unopposed Motion for Leave to File Amended Response In Opposition to MSM's Motion for Leave to File Surreply is also **DENIED AS MOOT**.

V. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff's Motion for Reconsideration of Order on Defendant's Motion to Dismiss [Doc. 49], Plaintiff's Motion Requesting Leave to Amend His Amended Complaint [Doc. 59], and Plaintiff's Second Motion Requesting Leave to Amend His Amended Complaint [Doc. 62] are **DENIED**.

It is further **ORDERED** that Defendant's Motion for Leave to File Surreply [Doc. 60], Plaintiff's Unopposed Motion for Leave to File Amended Response in Opposition for MSM's Motion for Leave to File Surreply [Doc. 64]; and Howell's Motion to Strike MSM's Response to his Motion for Leave to Amend his Amended Complaint [Doc. 69] are **DENIED AS MOOT**.

It is further **ORDERED** that Defendant's Motion to Dismiss Plaintiff's Amended Complaint [Doc. 36] is **GRANTED** as to Counts I and III.

The following claims now remain in this case: Count XIII for unjust enrichment, Count XIV for breach of fiduciary duty, and Count XI for punitive damages only as it relates to the claim for breach of fiduciary duty in Count XIV.

IT IS SO ORDERED this 8th day of July, 2022.

Mark H. Cohen

MARK H. COHEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., Plaintiff,	}	
	}	Civil Action No.
vs.	}	1:20-cv-03389-MHC
THE MOREHOUSE SCHOOL OF MEDICINE, INC., Defendant,	}	

SCHEDULING ORDER FOR DEFENDANT'S MOTION TO DISMISS

Before the Court is Plaintiff, James Gregory Howell, Jr.'s, ("Plaintiff"), and Defendant, The Morehouse School of Medicine, Inc.'s, ("Defendant"), request to enter a Scheduling Order governing Defendant's response to Plaintiff's Amended Complaint. Defendant filed its Motion to Dismiss Plaintiff's Original Complaint on October 20, 2020. On November 17, 2020, Plaintiff filed his response to Defendant's Motion to Dismiss as well as a First Amended Complaint ("Amended Complaint"), [Doc. 24]. On November 25, 2020, the Court denied Defendant's Motion to Dismiss Plaintiff's Original Complaint as moot holding the Amended Complaint is now the operative pleading in this case [Doc. 31].

The purpose of this Scheduling Order is to organize and optimize the filings associated with Defendant's response to Plaintiff's Amended Complaint. Upon due consideration and for good cause shown, it is hereby,

ORDERED and ADJUDGED that:

1) Time and length for Defendant's Response to the Amended Complaint: Defendant's Motion to Dismiss Plaintiff's Amended Complaint is due on or before December 29, 2020. Defendant will have up to and including fifty (50) pages for its brief/memorandum in support of Defendant's motion. Defendant will not be required to file an Answer to the Amended Complaint until the Court provides a deadline, which will come after the Court's ruling on Defendant's Motion to Dismiss.

2) Time and length for Plaintiff's Response: Plaintiff's response to Defendant's motion will be due four weeks after Defendant's Motion has been filed and no later than January 26, 2021. Plaintiff will have up to and including seventy-five (75) pages for his brief/memorandum in support of Plaintiff's response.

3) Time and length for Defendant's Reply: Defendant's reply to Plaintiff's response to Defendant's motion will be due three weeks after Plaintiff's response is filed and no later than February 16, 2021. Defendant will have up to and including twenty-five (25) pages for its brief/memorandum in support of its reply.

4) Plaintiff's Original Complaint's exhibits: The exhibits [Docs. 1-1 to 1-53] from Plaintiff's Original Complaint [Doc. 1] need not be refiled for Plaintiff's Amended Complaint [Doc. 24] but shall be associated with the Amended Complaint even though the Original Complaint has been superseded.

Should Plaintiff desire to file a sur-reply in opposition to Defendant's Motion to Dismiss, Plaintiff must make the necessary request by motion and provide the basis for the same. The court will then issue a ruling on any such request. Relatedly, no amendments may be made to the Amended Complaint unless and until Plaintiff makes such a request by motion and receives the necessary leave of court.

DONE AND ORDERED this 2nd day of December, 2020.

Mark H. Cohen

MARK H. COHEN
United States District Judge

Before BRANCH, GRANT, and ED CARNES, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 35, IOP 2.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13778

JAMES GREGORY HOWELL, JR.,

Plaintiff-Appellant,

versus

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-03389-MHC

App. 129a

ORDER:

The motion of Appellant James Gregory Howell, Jr. to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

APPENDIX G

STATUTORY AND REGULATORY PROVISIONS INVOLVED

29 U.S.C. § 701. Findings; purpose; policy.

1. 29 U.S.C. § 701 provides:

701. Findings; purpose; policy.

(a) Findings

Congress finds that-

(1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;

(2) individuals with disabilities constitute one of the most disadvantaged groups in society;

(3) disability is a natural part of the human experience and in no way diminishes the right of individuals to-

(A) live independently;

(B) enjoy self-determination;

(C) make choices;

(D) contribute to society;

(E) pursue meaningful careers; and

(F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;

(4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce development systems defined in section 3102 of this title that provide meaningful and

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 3:

131a – 195a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under subchapter I, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services;

(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to-

(A) make informed choices and decisions; and

(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals; and

(7)

(A) a high proportion of students with disabilities is leaving secondary education without being employed in competitive integrated employment, or being enrolled in postsecondary education; and

(B) there is a substantial need to support such students as they transition from school to postsecondary life.

(b) Purpose

The purposes of this chapter are-

(1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through-

(A) statewide workforce development systems defined in section 3102 of this title that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

(B) independent living centers and services;

(C) research;

(D) training;

(E) demonstration projects; and

(F) the guarantee of equal opportunity;

(2) to maximize opportunities for individuals with disabilities, including individuals with significant disabilities, for competitive integrated employment;

(3) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and

providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living;

(4) to increase employment opportunities and employment outcomes for individuals with disabilities, including through encouraging meaningful input by employers and vocational rehabilitation service providers on successful and prospective employment and placement strategies; and

(5) to ensure, to the greatest extent possible, that youth with disabilities and students with disabilities who are transitioning from receipt of special education services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and receipt of services under section 794 of this title have opportunities for postsecondary success.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of-

(1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

(2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;

(3) inclusion, integration, and full participation of the individuals;

(4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and

(5) support for individual and systemic advocacy and community involvement.

29 U.S.C. § 705. Definitions.

2. 29 U.S.C. § 705 provides:

705. Definitions.

For the purposes of this chapter:

(1) Administrative costs

The term "administrative costs" means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under subchapter I, including expenses related to program planning, development, monitoring, and evaluation, including expenses for-

(A) quality assurance;

(B) budgeting, accounting, financial management, information systems, and related data processing;

(C) providing information about the program to the public;

(D) technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in section 723(b)(5) of this title;

(E) the State Rehabilitation Council and other advisory committees;

(F) professional organization membership dues for designated State unit employees;

(G) the removal of architectural barriers in State vocational rehabilitation agency offices and State operated rehabilitation facilities;

(H) operating and maintaining designated State unit facilities, equipment, and grounds;

(I) supplies;

(J) administration of the comprehensive system of personnel development described in section 721(a)(7) of this title, including personnel administration, administration of affirmative action plans, and training and staff development;

(K) administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(L) travel costs related to carrying out the program, other than travel costs related to the provision of services;

(M) costs incurred in conducting reviews of rehabilitation counselor or coordinator determinations under section 722(c) of this title; and

(N) legal expenses required in the administration of the program.

(2) Assessment for determining eligibility and vocational rehabilitation needs

The term "assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case-

(A)

(i) a review of existing data-

(I) to determine whether an individual is eligible for vocational rehabilitation services; and

(II) to assign priority for an order of selection described in section 721(a)(5)(A) of this title in the States that use an order of selection pursuant to section 721(a)(5)(A) of this title; and

(ii) to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

(B) to the extent additional data is necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment-

(i) is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements-

(I) existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 721(a)(5)(A) of this title for the individual; and

(II) such information as can be provided by the individual and, where appropriate, by the family of the individual;

(iii) may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

(iv) may include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior

patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(v) to the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings;

(C) referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(D) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(3) Assistive technology terms

(A) Assistive technology

The term "assistive technology" has the meaning given such term in section 3002 of this title.

(B) Assistive technology device

The term "assistive technology device" has the meaning given such term in section 3002 of this title, except that the reference in such section to

the term "individuals with disabilities" shall be deemed to mean more than 1 individual with a disability as defined in paragraph (20)(A)).[1]

(C) Assistive technology service

The term "assistive technology service" has the meaning given such term in section 3002 of this title, except that the reference in such section-

(i) to the term "individual with a disability" shall be deemed to mean an individual with a disability, as defined in paragraph (20)(A); and

(ii) to the term "individuals with disabilities" shall be deemed to mean more than 1 such individual.

(4) Community rehabilitation program

The term "community rehabilitation program" means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement-

(A) medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(B) testing, fitting, or training in the use of prosthetic and orthotic devices;

(C) recreational therapy;

(D) physical and occupational therapy;

(E) speech, language, and hearing therapy;

(F) psychiatric, psychological, and social services, including positive behavior management;

(G) assessment for determining eligibility and vocational rehabilitation needs;

(H) rehabilitation technology;

(I) job development, placement, and retention services;

(J) evaluation or control of specific disabilities;

(K) orientation and mobility services for individuals who are blind;

(L) extended employment;

(M) psychosocial rehabilitation services;

(N) supported employment services and extended services;

(O) customized employment;

(P) services to family members when necessary to the vocational rehabilitation of the individual;

(Q) personal assistance services; or

(R) services similar to the services described in one of subparagraphs (A) through (Q).

(5) Competitive integrated employment

The term "competitive integrated employment" means work that is performed on a full-time or part-time basis (including self-employment)-

(A) for which an individual-

(i) is compensated at a rate that-

(I)

(aa) shall be not less than the higher of the rate specified in section 206(a)(1) of this title or the rate specified in the applicable State or local minimum wage law; and

(bb) is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(II) in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(ii) is eligible for the level of benefits provided to other employees;

(B) that is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory

personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(C) that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(6) Construction; cost of construction

(A) Construction

The term "construction" means-

(i) the construction of new buildings;

(ii) the acquisition, expansion, remodeling, alteration, and renovation of existing buildings; and

(iii) initial equipment of buildings described in clauses (i) and (ii).

(B) Cost of construction

The term "cost of construction" includes architects' fees and the cost of acquisition of land in connection with construction but does not include the cost of offsite improvements.

(7) Customized employment

The term "customized employment" means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with

a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as-

(A) job exploration by the individual;

(B) working with an employer to facilitate placement, including-

(i) customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(ii) developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(iii) representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and

(iv) providing services and supports at the job location.

(8) Designated State agency; designated State unit

(A) Designated State agency

The term "designated State agency" means an agency designated under section 721(a)(2)(A) of this title.

(B) Designated State unit

The term "designated State unit" means-

(i) any State agency unit required under section 721(a)(2)(B)(ii) of this title; or

(ii) in cases in which no such unit is so required, the State agency described in section 721(a)(2)(B)(i) of this title.

(9) Disability

The term "disability" means-

(A) except as otherwise provided in subparagraph (B), a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

(B) for purposes of sections 701, 711, and 712 of this title and subchapters II, IV, V, and VII, the meaning given it in section 12102 of Title 42.

(10) Drug and illegal use of drugs

(A) Drug

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) Illegal use of drugs

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(11) Employment outcome

The term "employment outcome" means, with respect to an individual-

(A) entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;

(B) satisfying the vocational outcome of supported employment; or

(C) satisfying any other vocational outcome the Secretary of Education may determine to be appropriate (including satisfying the vocational outcome of customized employment, self-employment, telecommuting, or business ownership),

in a manner consistent with this chapter.

(12) Establishment of a community rehabilitation program

The term "establishment of a community rehabilitation program" includes the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to community rehabilitation program purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary of Education may determine, in accordance with regulations the Secretary of Education shall prescribe, in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of facilities for community rehabilitation programs), and may include such additional equipment and staffing as the Commissioner considers appropriate.

(13) Extended services

The term "extended services" means ongoing support services and other appropriate services, needed to support and maintain an individual with a most significant disability in supported employment, that-

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from support provided by the designated State unit.

(14) Federal share

(A) In general

Subject to subparagraph (B), the term "Federal share" means 78.7 percent.

(B) Exception

The term "Federal share" means the share specifically set forth in section 731(a)(3) of this title, except that with respect to payments pursuant to part B of subchapter I to any State that are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the

percentages determined in accordance with the provisions of section 731(a)(3) of this title applicable with respect to the State.

(C) Relationship to expenditures by a political subdivision

For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary of Education shall by regulation prescribe.

(15) Governor

The term "Governor" means a chief executive officer of a State.

(16) Impartial hearing officer

(A) In general

The term "impartial hearing officer" means an individual-

(i) who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(ii) who is not a member of the State Rehabilitation Council described in section 725 of this title;

(iii) who has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(iv) who has knowledge of the delivery of vocational rehabilitation services, the State plan under section 721 of this title, and

the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and

(v) who has no personal or financial interest that would be in conflict with the objectivity of the individual.

(B) Construction

An individual shall not be considered to be an employee of a public agency for purposes of subparagraph (A)(i) solely because the individual is paid by the agency to serve as a hearing officer.

(17) Independent living core services

The term "independent living core services" means-

(A) information and referral services;

(B) independent living skills training;

(C) peer counseling (including cross-disability peer counseling);

(D) individual and systems advocacy; and

(E) services that-

(i) facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services;

(ii) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community; and

(iii) facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to post-secondary life.

(18) Independent living services

The term "independent living services" includes-

(A) independent living core services; and

(B)

(i) counseling services, including psychological, psychotherapeutic, and related services;

(ii) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this chapter and of the subchapters of this chapter, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) rehabilitation technology;

(iv) mobility training;

(v) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) personal assistance services, including attendant care and the training of personnel providing such services;

(vii) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) consumer information programs on rehabilitation and independent living services available under this chapter, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this chapter;

(ix) education and training necessary for living in a community and participating in community activities;

(x) supported living;

(xi) transportation, including referral and assistance for such transportation and training in the use of public transportation vehicles and systems;

(xii) physical rehabilitation;

(xiii) therapeutic treatment;

(xiv) provision of needed prostheses and other appliances and devices;

(xv) individual and group social and recreational services;

(xvi) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) services for children;

(xviii) services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xix) appropriate preventive services to decrease the need of individuals assisted under this chapter for similar services in the future;

(xx) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and

(xxi) such other services as may be necessary and not inconsistent with the provisions of this chapter.

(19) Indian; American Indian; Indian American; Indian tribe

(A) In general

The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe and includes a Native and a descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(B) Indian tribe

The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) and a tribal organization (as defined in section 5304(l) of Title 25).

(20) Individual with a disability

(A) In general

Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who-

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to subchapter I, III, or VI.

(B) Certain programs; limitations on major life activities

Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 701, 711, and 712 of this title and subchapters II, IV, V, and VII of this chapter, any person who has a disability as defined in section 12102 of Title 42.

(C) Rights and advocacy provisions

(i) In general; exclusion of individuals engaging in drug use

For purposes of subchapter V, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Exception for individuals no longer engaging in drug use

Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who-

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

(iii) Exclusion for certain services

Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under subchapters I, II, and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

(iv) Disciplinary action

For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, the due process procedures at section 104.36 of title 34,

Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.

(v) Employment; exclusion of alcoholics

For purposes of sections 793 and 794 of this title as such sections relate to employment, the term "individual with a disability" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) Employment; exclusion of individuals with certain diseases or infections

For the purposes of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(E) Rights provisions; exclusion of individuals on basis of homosexuality or bisexuality

For the purposes of sections 791, 793, and 794 of this title-

(i) for purposes of the application of subparagraph (B) to such sections, the term "impairment" does not include homosexuality or bisexuality; and

(ii) therefore the term "individual with a disability" does not include an individual on the basis of homosexuality or bisexuality.

(F) Rights provisions; exclusion of individuals on basis of certain disorders

For the purposes of sections 791, 793, and 794 of this title, the term "individual with a disability" does not include an individual on the basis of-

(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

(G) Individuals with disabilities

The term "individuals with disabilities" means more than one individual with a disability.

(21) Individual with a significant disability

(A) In general

Except as provided in subparagraph (B) or (C), the term "individual with a significant disability" means an individual with a disability-

(i) who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (B) of paragraph (2) to cause comparable substantial functional limitation.

(B) Independent living services and centers for independent living

For purposes of subchapter VII, the term "individual with a significant disability" means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

(C) Research and training

For purposes of subchapter II, the term "individual with a significant disability" includes an individual described in subparagraph (A) or (B).

(D) Individuals with significant disabilities

The term "individuals with significant disabilities" means more than one individual with a significant disability.

(E) Individual with a most significant disability

(i) In general

The term "individual with a most significant disability", used with respect to an individual in a State, means an individual with a significant disability who meets criteria established by the State under section 721(a)(5)(C) of this title.

(ii) Individuals with the most significant disabilities

The term "individuals with the most significant disabilities" means more than one individual with a most significant disability.

(22) Individual's representative; applicant's representative

The terms "individual's representative" and "applicant's representative" mean a parent, a family member, a guardian, an advocate, or an authorized representative of an individual or applicant, respectively.

(23) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1002 of Title 20.

(24) Local agency

The term "local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of such units or tribes) which has an agreement with the designated State agency to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from arranging to utilize another local public or nonprofit agency to provide vocational rehabilitation services if such an arrangement is made part of the agreement specified in this paragraph.

(25) Local workforce development board

The term "local workforce development board" means a local board, as defined in section 3 of the Workforce Innovation and Opportunity Act [29 U.S.C. 3102].

(26) Nonprofit

The term "nonprofit", when used with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of Title 26.

(27) Ongoing support services

The term "ongoing support services" means services-

(A) provided to individuals with the most significant disabilities;

(B) provided, at a minimum, twice monthly-

(i) to make an assessment, regarding the employment situation, at the worksite of each such individual in supported employment, or, under special circumstances, especially at the request of the client, off site; and

(ii) based on the assessment, to provide for the coordination or provision of specific intensive services, at or away from the worksite, that are needed to maintain employment stability; and

(C) consisting of-

(i) a particularized assessment supplementary to the comprehensive assessment described in paragraph (2)(B);

(ii) the provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(iii) job development, job retention, and placement services;

(iv) social skills training;

(v) regular observation or supervision of the individual;

(vi) followup services such as regular contact with the employers, the individuals, the individuals' representatives, and other appropriate individuals, in order to reinforce and stabilize the job placement;

(vii) facilitation of natural supports at the worksite;

(viii) any other service identified in section 723 of this title; or

(ix) a service similar to another service described in this subparagraph.

(28) Personal assistance services

The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(30)[2] Pre-employment transition services

The term "pre-employment transition services" means services provided in accordance with section 733 of this title.

(31) Public or nonprofit

The term "public or nonprofit", used with respect to an agency or organization, includes an Indian tribe.

(32) Rehabilitation technology

The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(33) Secretary

Unless where the context otherwise requires, the term "Secretary"-

(A) used in subchapter I, III, IV, V, VI, or part B of subchapter VII, means the Secretary of Education; and

(B) used in subchapter II or part A of subchapter VII, means the Secretary of Health and Human Services.

(34) State

The term "State" includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(35) State workforce development board

The term "State workforce development board" means a State board, as defined in section 3 of the Workforce Innovation and Opportunity Act [29 U.S.C. 3102].

(36) Statewide workforce development system

The term "statewide workforce development system" means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act [29 U.S.C. 3102].

(37) Student with a disability

(A) In general

The term "student with a disability" means an individual with a disability who-

(i)

(I)

(aa) is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(bb) if the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this chapter, is not younger than that minimum age; and

(II)

(aa) is not older than 21 years of age; or

(bb) if the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and

(ii)

(I) is eligible for, and receiving, special education or related services under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

(II) is an individual with a disability, for purposes of section 794 of this title.

(B) Students with disabilities

The term "students with disabilities" means more than 1 student with a disability.

(38) Supported employment

The term "supported employment" means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most significant disabilities-

(A)

(i) for whom competitive integrated employment has not historically occurred; or

(ii) for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition described in paragraph (13)(C), in order to perform the work involved.

(39) Supported employment services

The term "supported employment services" means ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability in supported employment, that-

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive integrated employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by the designated State unit for a period of not more than 24 months, except that period may be extended, if necessary, in order to achieve the employment outcome identified in the individualized plan for employment.

29 U.S.C. § 794. Nondiscrimination under Federal grants and programs.

3. 29 U.S.C. § 794 provides:

794. Nondiscrimination under Federal grants and programs.

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of-

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of Title 20), system of career and technical education, or other school system;

(3)

(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the

case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

29 U.S.C. § 794a. Remedies and attorney fees.

4. 29 U.S.C. § 794a provides:

794a. Remedies and attorney fees.

(a)

(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e–5(f) through (k)) (and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. § 2000a-3. Civil actions for injunctive relief

5. 42 U.S.C. § 2000a-3 provides:

2000a-3. Civil actions for injunctive relief.

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) Attorney's fees; liability of United States for costs

In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a

reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): Provided, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: Provided further, That upon

expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

42 U.S.C. § 12101. Findings and purpose.

6. 42 U.S.C. § 12101 provides:

12101. Findings and purpose.

(a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of

dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12102. Definition of disability.

7. 42 U.S.C. § 12102 provides:

12102. Definition of disability.

As used in this chapter:

(1) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has

been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

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

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

42 U.S.C. § 12181. Definitions.

8. 42 U.S.C. § 12181 provides:

12181. Definitions.

As used in this subchapter:

(1) Commerce

The term "commerce" means travel, trade, traffic, commerce, transportation, or communication-

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term "commercial facilities" means facilities-

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system

The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system

The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus

The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity

The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce-

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102(1) of Title 49.

(9) Readily achievable

The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include-

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general

public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

42 U.S.C. § 12182. Prohibition of discrimination by public accommodations.

9. 42 U.S.C. § 12182 provides:

12182. Prohibition of discrimination by public accommodations.

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the

opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration-

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a), discrimination includes-

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges,

advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily

accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a), discrimination includes-

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals

who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others

that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

42 U.S.C. § 12188. Enforcement

10. 42 U.S.C. § 12188 provides:

12188. Enforcement.

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a–3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section[1] 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the

provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable

evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that--

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court-

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter-

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount-

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed

to accommodate the unique needs of a particular individual with a disability.

[1] *So in original. The word "section" probably should not appear.*

28 C.F.R. § 36.104. Definitions. (2017-2024)

11. 28 C.F.R. § 36.104 (2017-2024) provides:

36.104. Definitions.

For purposes of this part, the term—

1991 Standards means requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to this part.

2004 ADAAG means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in subpart D of this part.

Act means the Americans with Disabilities Act of 1990 (Pub.L. 101–336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Commerce means travel, trade, traffic, commerce, transportation, or communication—

(1) Among the several States;

(2) Between any foreign country or any territory or possession and any State; or

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 4:

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JAMES GREGORY HOWELL, JR.
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(3) Between points in the same State but through another State or foreign country.

Commercial facilities means facilities—

(1) Whose operations will affect commerce;

(2) That are intended for nonresidential use by a private entity; and

(3) That are not—

(i) Facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601-3631);

(ii) Aircraft; or

(iii) Railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food service cars), any other railroad cars described in section 242 of the Act or covered under title II of the Act, or railroad rights-of-way. For purposes of this definition, "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services, as provided in § 36.208.

Disability. The definition of disability can be found at § 36.105.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Existing facility means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Housing at a place of education means housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional,

or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the private entity acts on the basis of such use.

Other power-driven mobility device means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

Place of public accommodation means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories—

(1) Place of lodging, except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the

proprietor. For purposes of this part, a facility is a "place of lodging" if it is—

(i) An inn, hotel, or motel; or

(ii) A facility that—

(A) Provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and

(B) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following—

(1) On- or off-site management and reservations service;

(2) Rooms available on a walk-up or call-in basis;

(3) Availability of housekeeping or linen service; and

(4) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Private club means a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)).

Private entity means a person or entity other than a public entity.

Public accommodation means a private entity that owns, leases (or leases to), or operates a place of public accommodation.

Public entity means—

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). (45 U.S.C. 541)

Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Religious entity means a religious organization, including a place of worship.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a

physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 36.303(f).

Wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

28 C.F.R. § 36.105. Definition of "disability." (2017-2024)

12. 28 C.F.R. § 36.105 (2017-2024) provides:

36.105. Definition of "disability."

(a)

(1) ***Disability*** means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (f) of this section.

(2) ***Rules of construction.***

(i) The definition of "disability" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

(ii) An individual may establish coverage under any one or more of the three prongs of the definition of "disability" in paragraph (a)(1) of this section, the "actual disability" prong in paragraph (a)(1)(i) of this section, the "record of" prong in paragraph (a)(1)(ii) of this section, or the "regarded as" prong in paragraph (a)(1)(iii) of this section.

(iii) Where an individual is not challenging a public accommodation's failure to provide reasonable modifications under § 36.302, it is generally unnecessary to proceed under the "actual disability" or "record of" prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the "regarded as" prong of the definition of "disability," which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the "actual disability" or "record of" prong regardless of

whether the individual is challenging a public accommodation's failure to provide reasonable modifications.

(b)

(1) Physical or mental impairment means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

(2) ***Physical or mental impairment*** includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(3) ***Physical or mental impairment*** does not include homosexuality or bisexuality.

(c)

(1) ***Major life activities*** include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(2) ***Rules of construction.***

(i) In determining whether an impairment substantially limits a major life activity, the term major shall not be interpreted strictly to create a demanding standard.

(ii) Whether an activity is a major life activity is not determined by reference to whether it is of central importance to daily life.

(d) ***Substantially limits*** —

(1) ***Rules of construction.*** The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity.

(i) The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard.

(ii) The primary object of attention in cases brought under title III of the ADA should be whether public accommodations have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

(iii) An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment.

(iv) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(v) An impairment is a disability within the meaning of this part if it substantially limits the ability of an individual to perform a

major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(vi) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for substantially limits applied prior to the ADA Amendments Act.

(vii) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph (d)(1) is intended, however, to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.

(viii) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the

ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(ix) The six-month "transitory" part of the "transitory and minor" exception in paragraph (f)(2) of this section does not apply to the "actual disability" or "record of" prongs of the definition of "disability." The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this section for establishing an actual disability or a record of a disability.

(2) ***Predictable assessments.***

(i) The principles set forth in the rules of construction in this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA.

(ii) Applying these principles, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (a)(1)(i) of this section

(the "actual disability" prong) or paragraph (a)(1)(ii) of this section (the "record of" prong). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying these principles it should easily be concluded that the types of impairments set forth in paragraphs (d)(2)(iii)(A) through (K) of this section will, at a minimum, substantially limit the major life activities indicated. The types of impairments described in this paragraph may substantially limit additional major life activities (including major bodily functions) not explicitly listed in paragraphs (d)(2)(iii)(A) through (K).

(A) Deafness substantially limits hearing;

(B) Blindness substantially limits seeing;

(C) Intellectual disability substantially limits brain function;

(D) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;

(E) Autism substantially limits brain function;

(F) Cancer substantially limits normal cell growth;

(G) Cerebral palsy substantially limits brain function;

(H) Diabetes substantially limits endocrine function;

(I) Epilepsy, muscular dystrophy, and multiple sclerosis each substantially limits neurological function;

(J) Human Immunodeficiency Virus (HIV) infection substantially limits immune function; and

(K) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.

(3) ***Condition, manner, or duration.***

(i) At all times taking into account the principles set forth in the rules of construction, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the major life activity; the manner in which the individual performs the major life activity; or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

(ii) Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(iii) In determining whether an individual has a disability under the "actual disability" or "record of" prongs of the definition of "disability," the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

(iv) Given the rules of construction set forth in this section, it may often be unnecessary to conduct an analysis involving most or all of the facts related to condition, manner, or duration. This is particularly true with respect to impairments such as those described in paragraph (d)(2)(iii) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a major life activity, and for which the individualized assessment should be particularly simple and straightforward.

(4) ***Mitigating measures*** include, but are not limited to:

(i) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable modifications or auxiliary aids or services as defined in this regulation;

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(e) ***Has a record of such an impairment.***

(1) An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(2) ***Broad construction.*** Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of "disability" if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (d)(1) of this section apply.

(3) ***Reasonable modification.*** An individual with a record of a substantially limiting impairment may be entitled to a reasonable modification if needed and related to the past disability.

(f) ***Is regarded as having such an impairment.*** The following principles apply under the "regarded as" prong of the definition of "disability" (paragraph (a)(1)(iii) of this section):

(1) Except as set forth in paragraph (f)(2) of this section, an individual is "regarded as having such an impairment" if the individual is subjected

to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, even if the public accommodation asserts, or may or does ultimately establish, a defense to the action prohibited by the ADA.

(2) An individual is not "regarded as having such an impairment" if the public accommodation demonstrates that the impairment is, objectively, both "transitory" and "minor." A public accommodation may not defeat "regarded as" coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the public accommodation must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment), objectively, both "transitory" and "minor." For purposes of this section, "transitory" is defined as lasting or expected to last six months or less.

(3) Establishing that an individual is "regarded as having such an impairment" does not, by itself, establish liability. Liability is established under title III of the ADA only when an individual proves that a public accommodation discriminated on the basis of disability within the meaning of title III of the ADA, 42 U.S.C. 12181-12189.

(g) ***Exclusions.*** The term "disability" does not include—

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

28 C.F.R. § 36.202. Activities. (2017-2024)

13. 28 C.F.R. § 36.202 (2017-2024) provides:

36.202. Activities.

(a) ***Denial of participation.*** A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) ***Participation in unequal benefit.*** A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(c) ***Separate benefit.*** A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(d) ***Individual or class of individuals.*** For purposes of paragraphs (a) through (c) of this section, the term "individual or class of individuals" refers to the clients or customers of the public accommodation that enters into the contractual, licensing, or other arrangement.

28 C.F.R. § 36.203. Integrated settings. (2017-2024)

14. 28 C.F.R. § 36.203 (2017-2024) provides:

36.203. Integrated settings.

(a) ***General.*** A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) ***Opportunity to participate.*** Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a disability an

opportunity to participate in such programs or activities that are not separate or different.

(c) ***Accommodations and services.***

(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

28 C.F.R. § 36.302. Modifications in policies, practices, or procedures. (2017-2024)

15. 28 C.F.R. § 36.302 (2017-2024) provides:

36.302. Modifications in policies, practices, or procedures.

(a) ***General.*** A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) ***Specialties*** —

(1) ***General.*** A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking,

or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

(2) ***Illustration—medical specialties.*** A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) ***Service animals*** —

(1) ***General.*** Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) ***Exceptions.*** A public accommodation may ask an individual with a disability to remove a service animal from the premises if:

(i) The animal is out of control and the animal's handler does not take effective action to control it; or

(ii) The animal is not housebroken.

(3) ***If an animal is properly excluded.*** If a public accommodation properly excludes a service animal under § 36.302(c)(2), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.

(4) ***Animal under handler's control.*** A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

(5) ***Care or supervision.*** A public accommodation is not responsible for the care or supervision of a service animal.

(6) ***Inquiries.*** A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(7) ***Access to areas of a public accommodation.*** Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.

(8) ***Surcharges.*** A public accommodation shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

(9) ***Miniature horses.***

(i) A public accommodation shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature

horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(ii) ***Assessment factors.*** In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public accommodation shall consider—

(A) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(B) Whether the handler has sufficient control of the miniature horse;

(C) Whether the miniature horse is housebroken; and

(D) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(iii) ***Other requirements.*** Sections 36.302(c)(3) through (c)(8), which apply to service animals, shall also apply to miniature horses.

(d) ***Check-out aisles.*** A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is

generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

(e)

(1) ***Reservations made by places of lodging.*** A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party—

(i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

(ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;

(iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

(iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

(v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

(2) ***Exception.*** The requirements in paragraphs (iii), (iv), and (v) of this section do not apply to reservations for individual guest rooms or other units not owned or substantially controlled by the entity that owns, leases, or operates the overall facility.

(3) ***Compliance date.*** The requirements in this section will apply to reservations made on or after March 15, 2012.

(f) ***Ticketing.***

(1)

(i) For the purposes of this section, "accessible seating" is defined as wheelchair spaces and companion seats that comply with sections 221 and 802 of the 2010 Standards along with any other seats required to be offered for sale to the individual with a disability pursuant to paragraph (4) of this section.

(ii) ***Ticket sales.*** A public accommodation that sells tickets for a single event or series of events shall modify its policies, practices,

or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating—

(A) During the same hours;

(B) During the same stages of ticket sales, including, but not limited to, pre-sales, promotions, lotteries, wait-lists, and general sales;

(C) Through the same methods of distribution;

(D) In the same types and numbers of ticketing sales outlets, including telephone service, in-person ticket sales at the facility, or third-party ticketing services, as other patrons; and

(E) Under the same terms and conditions as other tickets sold for the same event or series of events.

(2) ***Identification of available accessible seating.*** A public accommodation that sells or distributes tickets for a single event or series of events shall, upon inquiry—

(i) Inform individuals with disabilities, their companions, and third parties purchasing tickets for accessible seating on behalf of individuals with disabilities of the locations of all unsold or otherwise available accessible seating for any ticketed event or events at the facility;

(ii) Identify and describe the features of available accessible seating in enough detail to reasonably permit an individual with a disability to assess independently whether a given accessible seating location meets his or her accessibility needs; and

(iii) Provide materials, such as seating maps, plans, brochures, pricing charts, or other information, that identify accessible seating and information relevant thereto with the same text or visual representations as other seats, if such materials are provided to the general public.

(3) ***Ticket prices.*** The price of tickets for accessible seating for a single event or series of events shall not be set higher than the price for other tickets in the same seating section for the same event or series of events. Tickets for accessible seating must be made available at all price levels for every event or series of events. If tickets for accessible seating at a particular price level cannot be provided because barrier removal in an existing facility is not readily achievable, then the percentage of tickets for accessible seating that should have been available at that price level but for the barriers (determined by the ratio of the total number of tickets at that price level to the total number of tickets in the assembly area) shall be offered for purchase, at that price level, in a nearby or similar accessible location.

(4) ***Purchasing multiple tickets.***

(i) ***General.*** For each ticket for a wheelchair space purchased by an individual with a disability or a third-party purchasing such a ticket at his or her request, a public accommodation shall make available for purchase three additional tickets for seats in the same row that are contiguous with the wheelchair space, provided that at the time of purchase there are three such seats available. A public accommodation is not required to provide more than three contiguous seats for each wheelchair space. Such seats may include wheelchair spaces.

(ii) ***Insufficient additional contiguous seats available.*** If patrons are allowed to purchase at least four tickets, and there are fewer than three such additional contiguous seat tickets available for purchase, a public accommodation shall offer the next highest number of such seat tickets available for purchase and shall make up the difference by offering tickets for sale for seats that are as close as possible to the accessible seats.

(iii) ***Sales limited to fewer than four tickets.*** If a public accommodation limits sales of tickets to fewer than four seats per patron, then the public accommodation is only obligated to offer as many seats to patrons with disabilities, including the ticket for the wheelchair space, as it would offer to patrons without disabilities.

(iv) ***Maximum number of tickets patrons may purchase exceeds four.*** If patrons are allowed to purchase more than four tickets, a public accommodation shall allow patrons with disabilities to purchase up to the same number of tickets, including the ticket for the wheelchair space.

(v) ***Group sales.*** If a group includes one or more individuals who need to use accessible seating because of a mobility disability or because their disability requires the use of the accessible features that are provided in accessible seating, the group shall be placed in a seating area with accessible seating so that, if possible, the group can sit together. If it is necessary to divide the group, it should be divided so that the individuals in the group who use wheelchairs are not isolated from their group.

(5) ***Hold and release of tickets for accessible seating.***

(i) ***Tickets for accessible seating may be released for sale in certain limited circumstances.*** A public accommodation may release unsold tickets for accessible seating for sale to individuals without disabilities for their own use for a single event or series of events only under the following circumstances—

(A) When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;

(B) When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or

(C) When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

(ii) ***No requirement to release accessible tickets.*** Nothing in this paragraph requires a facility to release tickets for accessible seating to individuals without disabilities for their own use.

(iii) ***Release of series-of-events tickets on a series-of-events basis.***

(A) ***Series-of-events tickets sell-out when no ownership rights are attached.*** When series-of-events tickets are sold out and a public accommodation releases and sells accessible seating to individuals without disabilities for a series of events, the public accommodation shall establish a process that prevents the automatic reassignment of the accessible seating to such ticket holders for future seasons, future years, or future series, so that individuals with disabilities who require the features of accessible seating and who become newly eligible to purchase tickets when these

series-of-events tickets are available for purchase have an opportunity to do so.

(B) ***Series-of-events tickets when ownership rights are attached.*** When series-of-events tickets with an ownership right in accessible seating areas are forfeited or otherwise returned to a public accommodation, the public accommodation shall make reasonable modifications in its policies, practices, or procedures to afford individuals with mobility disabilities or individuals with disabilities that require the features of accessible seating an opportunity to purchase such tickets in accessible seating areas.

(6) ***Ticket transfer.*** Individuals with disabilities who hold tickets for accessible seating shall be permitted to transfer tickets to third parties under the same terms and conditions and to the same extent as other spectators holding the same type of tickets, whether they are for a single event or series of events.

(7) ***Secondary ticket market.***

(i) A public accommodation shall modify its policies, practices, or procedures to ensure that an individual with a disability may use a ticket acquired in the secondary ticket market under the same terms and conditions as other individuals who hold a ticket

acquired in the secondary ticket market for the same event or series of events.

(ii) If an individual with a disability acquires a ticket or series of tickets to an inaccessible seat through the secondary market, a public accommodation shall make reasonable modifications to its policies, practices, or procedures to allow the individual to exchange his ticket for one to an accessible seat in a comparable location if accessible seating is vacant at the time the individual presents the ticket to the public accommodation.

(8) ***Prevention of fraud in purchase of tickets for accessible seating.*** A public accommodation may not require proof of disability, including, for example, a doctor's note, before selling tickets for accessible seating.

(i) ***Single-event tickets.*** For the sale of single-event tickets, it is permissible to inquire whether the individual purchasing the tickets for accessible seating has a mobility disability or a disability that requires the use of the accessible features that are provided in accessible seating, or is purchasing the tickets for an individual who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.

(ii) ***Series-of-events tickets.*** For series-of-events tickets, it is permissible to ask the individual purchasing the tickets for accessible seating to attest in writing that the accessible seating is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.

(iii) ***Investigation of fraud.*** A public accommodation may investigate the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.

(g) ***Reasonable modifications for individuals "regarded as" having a disability.*** A public accommodation is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at § 36.105(a)(1)(iii).

28 C.F.R. § 36.303. Auxiliary aids and services. (2017-2024)

16. 28 C.F.R. § 36.303 (2017-2024) provides:

36.303. Auxiliary aids and services.

(a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature

of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) ***Examples.*** The term "auxiliary aids and services" includes -

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) ***Effective communication.***

(1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.

(i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.

(ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation,

provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.

(3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except—

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) ***Telecommunications.***

(1) When a public accommodation uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and all forms of FCC–approved telecommunications relay systems, including Internet-based relay systems.

(2) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using the public accommodation's equipment on more than an incidental convenience basis shall make available accessible public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

(4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

(5) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations.

(e) ***Closed caption decoders.*** Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

(f) ***Video remote interpreting (VRI) services.*** A public accommodation that chooses to provide qualified interpreters via VRI service shall ensure that it provides -

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

(g) ***Movie theater captioning and audio description*** -

(1) ***Definitions.*** For the purposes of this paragraph (g) -

(i) ***Analog movie*** means a movie exhibited in analog film format.

(ii) ***Audio description*** means the spoken narration of a movie's key visual elements, such as the action, settings, facial expressions, costumes, and scene changes. Audio description generally requires the use of an audio description device for delivery to a patron.

(iii) ***Audio description device*** means the individual device that a patron may use at any seat to hear audio description.

(iv) ***Captioning device*** means the individual device that a patron may use at any seat to view closed movie captioning.

(v) ***Closed movie captioning*** means the written display of a movie's dialogue and non-speech information, such as music, the identity of the character who is speaking, and other sounds or sound effects. Closed movie captioning generally requires the use of a captioning device for delivery of the captions to the patron.

(vi) ***Digital movie*** means a movie exhibited in digital cinema format.

(vii) ***Movie theater*** means a facility, other than a drive-in theater, that is owned, leased by, leased to, or operated by a public accommodation and that contains one or more auditoriums that are used primarily for the purpose of showing movies to the public for a fee.

(viii) ***Open movie captioning*** means the written on-screen display of a movie's dialogue and non-speech information, such as music, the identity of the character who is speaking, and other sounds and sound effects.

(2) ***General.*** A public accommodation shall ensure that its movie theater auditoriums provide closed movie captioning and audio description whenever they exhibit a digital movie that is distributed with such features. Application of the requirements of paragraph (g) of this section is deferred for any movie theater auditorium that exhibits analog movies exclusively, but may be addressed in a future rulemaking.

(3) ***Minimum requirements for captioning devices.*** A public accommodation shall provide a minimum number of fully operational captioning devices at its movie theaters in accordance with the following Table:

Number of movie theater auditoriums exhibiting digital movies	Minimum required number of captioning devices
1	4
2-7	6
8-15	8
16 +	12

(4) ***Minimum requirements for audio description devices.***

(i) A public accommodation shall provide at its movie theaters a minimum of one fully operational audio description device for

every two movie theater auditoriums exhibiting digital movies and no less than two devices per movie theater. When calculation of the required number of devices results in a fraction, the next greater whole number of devices shall be provided.

(ii) A public accommodation may comply with the requirements in paragraph (g)(4)(i) of this section by using the existing assistive listening receivers that the public accommodation is already required to provide at its movie theaters in accordance with Table 219.3 of the 2010 Standards, if those receivers have a minimum of two channels available for sound transmission to patrons.

(5) ***Performance requirements for captioning devices and audio description devices.*** Each captioning device and each audio description device must be properly maintained by the movie theater to ensure that each device is fully operational, available to patrons in a timely manner, and easily usable by patrons. Captioning devices must be adjustable so that the captions can be viewed as if they are on or near the movie screen, and must provide clear, sharp images in order to ensure readability of captions.

(6) ***Alternative technologies.***

(i) A public accommodation may meet its obligation to provide captioning and audio description in its movie theaters to persons with disabilities through any technology so long as that

technology provides communication as effective as that provided to movie patrons without disabilities.

(ii) A public accommodation may use open movie captioning as an alternative to complying with the requirements specified in paragraph (g)(3) of this section, either by providing open movie captioning at all showings of all movies available with captioning, or whenever requested by or for an individual who is deaf or hard of hearing prior to the start of the movie.

(7) ***Compliance date for providing captioning and audio description.***

(i) A public accommodation must comply with the requirements in paragraphs (g)(2)-(6) of this section in its movie theaters that exhibit digital movies by June 2, 2018.

(ii) If a public accommodation converts a movie theater auditorium from an analog projection system to a system that allows it to exhibit digital movies after December 2, 2016, then that auditorium must comply with the requirements in paragraph (g) of this section by December 2, 2018, or within 6 months of that auditorium's complete installation of a digital projection system, whichever is later.

(8) ***Notice.*** On or after January 17, 2017, whenever a public accommodation provides captioning and audio description in a movie theater

auditorium exhibiting digital movies, it shall ensure that all notices of movie showings and times at the box office and other ticketing locations, on Web sites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description. This paragraph does not impose any obligation on third parties that provide information about movie theater showings and times, so long as the third party is not part of or subject to the control of the public accommodation.

(9) ***Operational requirements.*** On or after January 17, 2017, whenever a public accommodation provides captioning and audio description in a movie theater auditorium exhibiting digital movies, it shall ensure that at least one employee is available at the movie theater to assist patrons seeking or using captioning or audio description whenever a digital movie is exhibited with these features. Such assistance includes the ability to -

(i) Locate all necessary equipment that is stored and quickly activate the equipment and any other ancillary systems required for the use of the captioning devices and audio description devices;

(ii) Operate and address problems with all captioning and audio description equipment prior to and during the movie;

(iii) Turn on open movie captions if the movie theater is relying on open movie captioning to meet the requirements of paragraph (g)(3) of this section; and

(iv) Communicate effectively with individuals with disabilities, including those who are deaf or hard of hearing or who are blind or have low vision, about how to use, operate, and resolve problems with captioning devices and audio description devices.

(10) This section does not require the use of open movie captioning as a means of compliance with paragraph (g) of this section, even if providing closed movie captioning for digital movies would be an undue burden.

(h) ***Alternatives.*** If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

28 C.F.R. § 36.501. Private suits. (2017-2024)

17. 28 C.F.R. § 36.501 (2017-2024) provides:

36.501. Private suits.

(a) General. Any person who is being subjected to discrimination on the basis of disability in violation of the Act or this part or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 of the Act or subpart D of this part may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a person with a disability to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the Act or this part does not intend to comply with its provisions.

(b) Injunctive relief. In the case of violations of §§ 36.304, 36.308, 36.310(b), 36.401, 36.402, 36.403, and 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the

provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

34 C.F.R. § 104.3. Definitions. (January 1, 2017, to August 9, 2017)

18. 34 C.F.R. § 104.3 (January 1, 2017, to August 9, 2017) provides:

104.3. Definitions.

As used in this part, the term:

(a) ***The Act*** means the Rehabilitation Act of 1973, Pub.L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub.L. 93–516, 29 U.S.C. 794.

(b) ***Section 504*** means section 504 of the Act.

(c) ***Education of the Handicapped Act*** means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub.L. 94–142, 20 U.S.C. 1401 et seq.

(d) ***Department*** means the Department of Education.

(e) ***Assistant Secretary*** means the Assistant Secretary for Civil Rights of the Department of Education.

(f) ***Recipient*** means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) ***Applicant for assistance*** means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) ***Federal financial assistance*** means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) ***Facility*** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) ***Handicapped person*** -

(1) ***Handicapped persons*** means any person who

(i) has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) ***Physical or mental impairment*** means

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) ***Major life activities*** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) ***Has a record of such an impairment*** means has a history of, or has been misclassified as having, a mental or

physical impairment that substantially limits one or more major life activities.

(iv) ***Is regarded as having an impairment*** means

(A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) ***Program or activity*** means all of the operations of -

(1)

(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to

which the assistance is extended, in the case of assistance to a State or local government;

(2)

(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)

(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship -

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) ***Qualified handicapped person*** means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) ***Handicap*** means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

34 C.F.R. § 104.3. Definitions. (August 10, 2017 - 2024)

19. 34 C.F.R. § 104.3 (August 10, 2017 – 2024) provides:

104.3. Definitions.

As used in this part, the term:

(a) ***The Act*** means the Rehabilitation Act of 1973, Pub.L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub.L. 93–516, 29 U.S.C. 794.

(b) ***Section 504*** means section 504 of the Act.

(c) ***Education of the Handicapped Act*** means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub.L. 94–142, 20 U.S.C. 1401 et seq.

(d) ***Department*** means the Department of Education.

(e) ***Assistant Secretary*** means the Assistant Secretary for Civil Rights of the Department of Education.

(f) ***Recipient*** means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) ***Applicant for assistance*** means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) ***Federal financial assistance*** means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) ***Facility*** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) ***Handicapped person*** -

(1) ***Handicapped persons*** means any person who

(i) has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) ***Physical or mental impairment*** means

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) ***Major life activities*** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) ***Has a record of such an impairment*** means has a history of, or has been misclassified as having, a mental or

physical impairment that substantially limits one or more major life activities.

(iv) ***Is regarded as having an impairment*** means

(A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) ***Program or activity*** means all of the operations of -

(1)

(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to

which the assistance is extended, in the case of assistance to a State or local government;

(2)

(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)

(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship -

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) ***Qualified handicapped person*** means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) ***Handicap*** means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

34 C.F.R. § 104.4. Discrimination prohibited. (2017-2024)

20. 34 C.F.R. § 104.4 (2017-2024) provides:

104.4. Discrimination prohibited.

(a) ***General.*** No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) ***Discriminatory actions prohibited.***

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons

unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 5:

261a – 325a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration

(i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or

(iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections

(i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or

(ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) ***Aid, benefits, or services limited by Federal law.*** The exclusion of non-handicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

34 C.F.R. § 104.43. Treatment of students; general. (2017-2024)

21. 34 C.F.R. § 104.43 (2017-2024) provides:

104.43. Treatment of students; general.

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

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the

recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

34 C.F.R. § 104.44. Academic adjustments. (2017-2024)

22. 34 C.F.R. § 104.44 (2017-2024) provides:

104.44. Academic adjustments.

(a) ***Academic requirements.*** A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific

courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) ***Other rules.*** A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) ***Course examinations.*** In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) ***Auxiliary aids.***

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., Plaintiff,	}	Civil Action No.
vs.	}	1:20-cv-03389-MHC
THE MOREHOUSE SCHOOL OF MEDICINE, INC., Defendant,	}	JURY DEMAND

AMENDED COMPLAINT

COMES NOW, JAMES GREGORY HOWELL, JR., (hereafter referred to as "Plaintiff"), in the above-styled case, and files this Amended Complaint against THE MOREHOUSE SCHOOL OF MEDICINE, INC. (hereafter referred to as "MSM" or "Defendant"), and shows this Honorable Court the following:

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PARTIES

1.

Plaintiff is a resident of Gwinnett County, Georgia.

2.

MSM is a non-profit Georgia Corporation and is, and has at all relevant times been, located at 720 Westview Drive SW, Atlanta, Georgia (Fulton County).

3.

Process may be served upon MSM via registered agent Michael A. Rambert at 720 Westview Dr. SW, Suite 412, Atlanta, Georgia 30310-1458 in Fulton County.

JURISDICTION AND VENUE

4.

Pursuant to 28 U.S.C. § 1331 [federal question] and 28 U.S.C. § 1343 [civil rights], this Court has original jurisdiction over the claims set forth in Counts I-VI of Plaintiff's Complaint about discrimination and retaliation which arise under Section 504 of the Rehabilitation Act of 1973, *as amended* 29 U.S.C. § 701, *et seq.* (hereafter referred to as "Rehabilitation Act"), and its implementing regulations, 34 C.F.R. § 104.1, *et seq.*, and the Americans with Disabilities Act of 1990 (hereafter

referred to as "ADA"), *as amended*, 42 U.S.C. § 12101 *et seq*. (including the American with Disabilities Act Amendments Act of 2008), and its implementing regulations, 28 C.F.R. § 36.101, *et seq*.

5.

Pursuant to 28 U.S.C. § 1367 [supplemental jurisdiction] and 28 U.S.C. § 1391 [venue], this Court has supplemental jurisdiction over the state law claims set forth in Counts VII-XI of Plaintiff's Complaint about willful misrepresentation and concealment of fact; fraudulent or reckless misrepresentation and concealment of fact; negligent misrepresentation; breach of contract; and punitive damages, respectively.

6.

Jurisdiction and venue are therefore proper in this action.

FACTS AS TO MOREHOUSE SCHOOL OF MEDICINE

7.

MSM is a medical educational institution located in Atlanta, Georgia (Fulton County).

8.

MSM is a program or activity receiving Federal financial assistance under the Rehabilitation Act.

9.

MSM is a private entity under the ADA, Title III.

10.

MSM is both a privately and federally funded medical educational institution.

11.

MSM benefits from Federal financial assistance, including but not limited to those under Title IV of the Higher Education Act, Federal student financial aid in the form of tuition payments, loans, grants, subsidies, and other funds.

12.

MSM is required to comply with the Rehabilitation Act.

13.

MSM is required to comply with the regulations issued by the United States Department of Education under the Rehabilitation Act.

14.

MSM has signed and filed assurances of compliance with the Department of Education conditioning the receipt of Federal financial assistance on continued compliance with the Rehabilitation Act.

15.

MSM is required to comply with the ADA.

16.

MSM is required to comply with the regulations issued by the United States Department of Justice under the ADA.

17.

MSM employs fifteen or more persons.

18.

MSM is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), Liaison Committee on Medical Education (LCME), Accreditation Council for Continuing Medical Education (ACCME), Accreditation Council for Graduate Medical Education (ACGME), and Council on Education for Public Health (CEPH).

19.

At all times material herein, MSM operated a place of education and research, and was a degree granting institution.

20.

MSM's Office of Disability Services' (hereafter referred to as "ODS") website, https://msm.edu/Administration/HumanResources/disabilityservices/index.php, states,

> "It is the policy and practice of [MSM] to comply with the *Americans with Disabilities Act of 1990*, as amended, 'Section 504' of the *Rehabilitation Act of 1973* and state and local requirements regarding individuals with disabilities. Under these laws, no qualified individual shall be denied access to or participation in events, programs or services at the School. Through outreach and education, our office will promote access and awareness to all members of our MSM community" See Orig. Complaint's Exhibit AA, Doc. 1-1, Page 1.

21.

According to MSM's ODS website, https://msm.edu/Administration/HumanResources/disabilityservices/disability-policy.php, MSM's Disability Policy Statement is as follows,

> "Morehouse School of Medicine (MSM) is committed to providing equal access to employment and educational opportunities for all individuals, including persons with disabilities, MSM recognizes that individuals with disabilities, may need reasonable accommodations to have equally effective opportunities to participate in or benefit from educational programs,

services, and activities, and to have equal employment opportunities. MSM shall adhere to all applicable federal and state laws, regulations, and guidelines with respect to providing reasonable accommodations, including academic adjustments, as necessary to afford equal employment opportunity and equal access to programs for qualified persons with disabilities." See Orig. Complaint's Exhibit AB, Doc. 1-2.

A. KEY EMPLOYEES OF MOREHOUSE SCHOOL OF MEDICINE

22.

Marla Thompson, Title IX Coordinator and Manager for the ODS at MSM, was at all times in charge of determining Plaintiff's eligibility for accommodations, granting accommodations, and managing their implementation.

23.

Marla Thompson at all relevant times had complete discretion at key decision points in the administrative process regarding Plaintiff's accommodations, including, but not limited to, Plaintiff's note-taking accommodations.

24.

Marla Thompson worked closely with Dr. Brandi Knight, Director of the Office of Student Learning and Educational Resources (hereafter referred to as "OSLER").

25.

Marla Thompson placed Dr. Brandi Knight in charge of Plaintiff's note-taking accommodation.

26.

Marla Thompson communicated to Dr. Brandi Knight that Plaintiff's note-taking accommodation came with a 24-48-hour turnaround time goal for every class Plaintiff was taking.

27.

Until her departure from MSM on or around the end of March of 2019, Dr. Brandi Knight was at all relevant times in charge of Plaintiff's note-taking accommodation.

28.

Until her departure from MSM on or around the end of March of 2019, Dr. Brandi Knight had at all relevant times complete discretion at key decision points in the administrative process regarding Plaintiff's note-taking accommodation.

29.

Until her departure from MSM on or around the end of March of 2019, Dr. Brandi Knight was at all relevant times in charge of identifying and hiring

34.

Until her departure from MSM on or around the end of March of 2019, Dr. Brandi Knight was at all relevant times in charge of attempting to involve other staff in the management of Plaintiff's note-taking accommodation in order to help with the untimeliness of Plaintiff's note-taking accommodation.

35.

Marla Thompson and Dr. Brandi Knight enjoyed substantial if not complete supervisory authority within MSM's chain of command and the ability to institute corrective measures with regards to Plaintiff's note-taking accommodation.

36.

The dismissal hearing committee members were at all times acting within the roles of officials and enjoyed substantial supervisory authority over whether Plaintiff was dismissed or not, thus they had complete discretion at a key decision point.

FACTS AS TO PLAINTIFF

37.

Plaintiff has a disability under the Rehabilitation Act and the ADA.

38.

Plaintiff has a life-long diagnosed history of a learning disorder, most recently diagnosed in 2019 as Severe Attention-Deficit/Hyperactivity Disorder - combined type (ADHD) and Other Specified Anxiety Disorder - Intermittent Obsessive Anxiety, and prior to medical school has received academic accommodations in primary, secondary, and post-secondary school, as well as on the Medical College Admission Test (MCAT).

39.

Plaintiff has mental impairments that substantially limits and significantly restricts major life activities of Plaintiff including, but not limited to, learning, concentrating, and thinking. 42 U.S.C. § 12102, 28 C.F.R. § 36.105, 29 U.S.C. § 705(9), 29 U.S.C. § 705(20), 29 U.S.C. § 705(37)(A)(ii)(II), and 34 C.F.R. § 104.3(j).

40.

In Plaintiff's 2019 psychological evaluation, the examiner stated,

> "[Plaintiff] continues to meet criteria for *Attention-Deficit/Hyperactivity Disorder - Combined Presentation, Severe (ADHD, Combined Presentation)*."

41.

In Plaintiff's 2019 psychological evaluation, Plaintiff's Total ADHD rating was in the 99th+(percentile) using the Barkley Adult ADHD Rating Scale-IV (BAARS-IV).

42.

In Plaintiff's 2019 psychological evaluation, the examiner stated,

> "[Plaintiff] meets criteria for *Other Specific Anxiety Disorder, Intermittent Obsessive Anxiety.*"

43.

Plaintiff is a qualified individual, under the Rehabilitation Act, who meets the academic and technical standards requisite to admission or participation in MSM's medical school program. 34 C.F.R. § 104.3(l)(3).

44.

Plaintiff is a qualified individual, under the ADA, "who, with or without reasonable modifications to rules, policies, or practices…or the provision of auxiliary aids and services, meets the essential eligibility requirements" to attend and study at MSM. 42 U.S.C. § 12131(2).

45.

On or around March 1, 2017, Plaintiff was accepted by MSM as a medical school student for its prospective class of 2021, which classes for first year medical school students began on or around July 3, 2017.[1]

A. INTERACTIVE ACCOMMODATION REVIEW PROCESS

46.

On March 3, 2017, approximately four (4) months prior to the beginning of classes for first-year medical school students at MSM on July 3, 2017, Plaintiff alerted MSM about Plaintiff's disability and recommended academic accommodations (hereafter referred to as "educational auxiliary aid(s)," "auxiliary aid(s)," "academic accommodation(s)," and "accommodation(s)").

47.

Plaintiff attempted to initiate the interactive accommodation review process with MSM's ODS via phone in early January of 2017, and then via email on March 3, 2017, March 12, 2017, March 21, 2017, and April 5, 2017, (See Orig. Complaint's Exhibit AC, Doc. 1-3), wherein Plaintiff asked to speak with someone at ODS, attached Plaintiff's 2014 psychological evaluation, which included, but is

[1] Plaintiff was also offered admission into Mercer University's School of Medicine and to Philadelphia College of Osteopathic Medicine's Georgia campus.

not limited to, Plaintiff's medical history, diagnosis, and recommended accommodations, and asked if MSM's ODS would accept Plaintiff's 2014 psychological evaluation.[2]

48.

On or around April 7, 2017, Marla Thompson, finally responded to Plaintiff's attempts and began the interactive accommodation review process with Plaintiff.

49.

On or around April 12, 2017, during one of the first phone communications Plaintiff had with Marla Thompson, during the interactive accommodation review process, upon Marla Thompson first congratulating Plaintiff for Plaintiff's acceptance to MSM and subsequently asking if Plaintiff was planning on choosing MSM to matriculate to, Plaintiff expressed his dissatisfaction with the poor communication, being it took four (4) emails in the span of over 30 days for MSM's ODS to even respond to Plaintiff's inquiry about academic accommodations and if MSM's ODS would accept Plaintiff's 2014 psychological evaluation being that its three (3) year lifespan had lapsed on January 11, 2017,

[2] See Orig. Complaint's Exhibit AG, Doc. 1-7, Page 12, which states: "Documentation should be within the last three years."

seven (7) weeks before Plaintiff was accepted by MSM, and Plaintiff expressed he was not sure matriculating to MSM was a good choice.

50.

During the said phone call with Marla Thompson on or around April 12, 2017, Marla Thompson subsequently apologized for her lack of communication and assured Plaintiff that MSM was a fantastic school and Plaintiff would have a great experience if he chose to matriculate to MSM.

51.

During the aforementioned phone call with Marla Thompson on or around April 12, 2017, because Plaintiff attempted to start the interactive accommodation review process in early January of 2017, before the three (3) year lifespan of Plaintiff's 2014 psychological evaluation lapsed; because of the delay in Marla Thompson responding to Plaintiff's emails and because Plaintiff felt it would be very unlikely that he could be retested in time before school began on or around July 3, 2017; because the three (3) year lifespan of Plaintiff's 2014 psychological evaluation had just recently lapsed; and because Mercer University's School of Medicine was willing to accept Plaintiff's 2014 psychological evaluation despite its three (3) year lifespan had lapsed immediately prior to Plaintiff being accepted by Mercer University's School of Medicine, Marla Thompson said she would

accept Plaintiff's 2014 psychological evaluation for the current academic year and that Plaintiff would need to get an updated psychological evaluation for the next academic year.

52.

During the interactive accommodation review process, including but not limited to the phone call with Marla Thompson on or around April 12, 2017, Marla Thompson verbally communicated that MSM could accommodate Plaintiff.

53.

During the interactive accommodation review process, including but not limited to the phone call with Marla Thompson on or around April 12, 2017, Marla Thompson verbally communicated that MSM could satisfy Plaintiff's recommended and requested accommodations, including but not limited to Plaintiff's note-taking accommodation.

54.

During the interactive accommodation review process, including but not limited to the phone call with Marla Thompson on or around April 12, 2017, Marla Thompson verbally communicated to Plaintiff that there was a system in place at MSM to satisfy his note-taking accommodation and provide notes for Plaintiff, as a student with a disability.

55.

During the interactive accommodation review process, including but not limited to the phone call with Marla Thompson on or around April 12, 2017, Marla Thompson verbally communicated that Plaintiff's requested note-taking accommodation would come with a 24-48-hour turnaround time goal for any class Plaintiff was taking.

56.

The note-taking accommodation was listed as a requestable academic accommodation in the Registration and Information Packet sent to Plaintiff from Marla Thompson on or around April 12, 2017. See Orig. Complaint's Exhibit AG, Doc. 1-7, Page 7.

57.

At all relevant times while Plaintiff has been accepted as student at MSM, a confidential relationship existed between Plaintiff and both Marla Thompson and MSM.

58.

At all relevant times while Plaintiff has been a student at MSM, a confidential relationship existed between Plaintiff and both Marla Thompson and Dr. Brandi Knight.

59.

Plaintiff, as a student with a disability, reached out to MSM's ODS well before classes began to see if Plaintiff would be well accommodated at MSM or if Plaintiff would be better served by attending a different medical school that Plaintiff was accepted to.

60.

Plaintiff, as a student with a disability, relied upon the representations about MSM's ability to satisfy Plaintiff's requested and recommended accommodations, including but not limited to a purported existing system in place to satisfy Plaintiff's note-taking accommodation, made by Marla Thompson during the interactive accommodation review process, including the phone call conversation on or around April 12, 2017, in determining that Plaintiff would attend MSM to study medicine on or around May 15, 2017, which was the deadline for students who had been accepted into multiple medical schools, to choose what medical school to which they would matriculate.

61.

Plaintiff, as a student with a disability, justifiably relied on the information provided by Marla Thompson, including the phone call conversation on or around

April 12, 2017, because she was the person in charge of determining Plaintiff's eligibility for accommodations, granting accommodations, and managing their implementation.

62.

Plaintiff, as a student with a disability, could not determine the falsity of any statement or representation made by Marla Thompson because the capabilities of MSM to accommodate students are confidential in nature, as are the communications between MSM's ODS and any student with disabilities registered with MSM's ODS.

63.

Plaintiff, as a student with a disability, reposed a special and great confidence in Marla Thompson to communicate to Plaintiff the accurate and honest capabilities of MSM in accommodating Plaintiff, because she was the person in charge of determining Plaintiff's eligibility for accommodations, granting accommodations, and managing their implementation.

64.

Plaintiff, as a student with a disability, relied upon his relationships with Marla Thompson and MSM to provide the academic accommodations that Plaintiff requested from MSM, and that MSM granted to Plaintiff, so that Plaintiff had

meaningful participation and access to MSM's medical school program, and so that Plaintiff could achieve Plaintiff's academic potential on a level playing field with Plaintiff's peers.

65.

MSM's ODS had a controlling influence over Plaintiff's will, conduct, and interest in that:

> "Morehouse School of Medicine's Office of Disability Services (ODS) serves as the primary resource for students with documented disabilities, disability concerns, and making requests for reasonable academic adjustments and accommodations. The ODS works in collaboration with faculty, staff and departments throughout MSM to develop successful strategies for maximizing students' academic achievement and participation in extracurricular activities and programs. Services and reasonable accommodations are designed to meet the individual needs of each student in accordance with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by ADAAA. These regulations require that any qualified person receive academic adjustments that are necessary and effective, and which do not compromise the academic standards of the School, to ensure equal access to educational opportunities, services, programs and activities at the school." See MSM's 2017-2018 Student Handbook (Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 34-35), MSM's 2018-2019 Student Handbook (Orig. Complaint's Exhibit AE, Doc. 1-5, Page 37), and MSM's 2019-2020 Student Handbook (Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 39-40).

66.

During the interactive accommodation review process prior to school starting on or around July 3, 2017, Plaintiff requested accommodations including,

but not limited to, a notetaker, extra time on exams and class assignments, and testing in a distraction-reduced environment.

67.

During the interactive accommodation review process, by on or around May 3, 2017, Plaintiff provided all the paperwork and documentation required for qualification as a student with a disability including, but not limited to, Plaintiff's 2014 psychological evaluation (Orig. Complaint's Exhibit AC, Doc. 1-3), a summary letter from Plaintiff's psychiatrist (MSM's ODS refers to student's doctors as "providers") which referenced the recommended accommodations in the 2014 psychological evaluation (Amended Complaint's Exhibit AG-1), and the completed Registration and Information Packet from MSM's ODS (Amended Complaint's Exhibit AH-1).

68.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 35), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 38), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 40), has stated, under the "Disability Services" heading, that,

> "The Office of Disability Services has been designated to review disability documentation and to determine eligibility for appropriate accommodations."

69.

On or around May 4, 2017, Marla Thompson communicated to Plaintiff via email that as of May 3, 2017, she had received Plaintiff's provider's summary letter and over the next week would review and reach out if she had questions or if clarification was needed about the documentation she had received from Plaintiff. See Amended Complaint's Exhibit AG-1.

70.

The Registration and Information Packet sent to Plaintiff from Marla Thompson on or around April 12, 2017, (See Orig. Complaint's Exhibit AG, Doc. 1-7, Page 4), under the "Notification of Decision Regarding Request for Reasonable Academic Adjustment" heading, states: "Initial determination of eligibility will take up to seven (7) working days."

71.

Despite receiving all of Plaintiff's documentation, and the policy of initial determination of eligibility taking only up to seven (7) working days, Marla

Thompson asked for an extension on or around May 16, 2017, nine (9) working days after receiving all of Plaintiff's documentation on May 3, 2017.[3]

72.

On or around June 7, 2017, 25 working days after Plaintiff submitted all required documentation, Marla Thompson asked for an electronic copy of the summary letter from Plaintiff's psychiatrist (MSM's ODS refers to student's doctors as "providers"), despite already having a copy that was faxed to her on May 3, 2017. See Orig. Complaint's Exhibit AH, Doc. 1-8, Page 1. Plaintiff provided the requested electronic copy to Marla Thompson the day of her request. See Amended Complaint's Exhibit AH-1.

73.

Not until on or around June 16, 2017, when Plaintiff asked for an update on the status of the requested accommodations, did Marla Thompson confirm to Plaintiff via email that Plaintiff's requested accommodations were approved and would be available upon Plaintiff's arrival to MSM, 32 working days after receiving all of Plaintiff's documentation on May 3, 2017, when the policy said it

[3] On or around May 15, 2017, was the deadline for students, who had been accepted into multiple medical schools, to choose what medical school to which they would matriculate.

would take only seven (7) days (See Orig. Complaint's Exhibit AG, Doc. 1-7, Page 4). See Orig. Complaint's Exhibit AH, Doc. 1-8, Page 1.

74.

For the entirety of Plaintiff's medical school education at MSM, Plaintiff has been registered with MSM's ODS as a student with a disability. See Orig. Complaint's Exhibit AI, Doc. 1-9, Pages 1-3.

75.

For the entirety of Plaintiff's medical school education at MSM, Plaintiff's note-taking accommodation was approved and granted by MSM. See Orig. Complaint's Exhibit AI, Doc. 1-9, Pages 1-3.

76.

Plaintiff's note-taking accommodation, granted and approved by MSM's ODS, was by MSM's own admission a reasonable accommodation. See Orig. Complaint's Exhibit AI, Doc. 1-9, Pages 1-3.

77.

MSM by its own admission found Plaintiff to be a qualified individual in that the note-taking accommodation was granted to Plaintiff, and the note-taking accommodation was only available for "qualified students." See Orig. Complaint's

Exhibit AI, Doc. 1-9, Pages 1-3, and Orig. Complaint's Exhibit AJ, Doc. 1-10, Page 2.

78.

The note-taking accommodation granted to Plaintiff by MSM was recommended in Plaintiff's 2014 and 2019 psychological evaluations provided to MSM's ODS, as well as in prior evaluations not requested by MSM's ODS.

79.

The note-taking accommodation was recommended in Plaintiff's 2014 psychological evaluation, provided to MSM's ODS, due to "weaknesses in switching between tasks, and working memory make note-taking difficult for [Plaintiff]".

80.

The note-taking accommodation was recommended in Plaintiff's 2019 psychological evaluation, provided to MSM's ODS, due to "difficulties with inattention and frequent distraction making it challenging for [Plaintiff] to listen to large amounts of information and take effective notes."

81.

Plaintiff's note-taking accommodation was necessary to ameliorate Plaintiff's disability's effect of preventing meaningful access to the benefits of, or

participation in, MSM's medical school program, allow Plaintiff to meet the essential requirements of MSM's MD Program, and would have enabled Plaintiff to develop mastery of the concepts necessary for the prevention, diagnosis, treatment, and management of common medical problems.

82.

For the entirety of time Plaintiff has been a student at MSM, Plaintiff's 2014 and 2019 psychological evaluations, annual summary letters from Plaintiff's psychiatrists (MSM's ODS refers to student's doctors as "providers"), and the completed Registration and Information Packets from MSM's ODS were used by MSM's ODS as a basis for granting Plaintiff's academic accommodations.

83.

Plaintiff's 2014 and 2019 psychological evaluations, annual summary letters from Plaintiff's psychiatrists (MSM's ODS refers to student's doctors as "providers"), and the completed Registration and Information Packets from MSM's ODS were used by MSM's ODS as a basis for granting Plaintiff's note-taking accommodation for the entirety of Plaintiff's current medical school education.

84.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 34), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 37), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 39) has stated, under the "Disability Services" heading, that

> "Morehouse School of Medicine's Office of Disability Services (ODS) serves as the primary resource for students with documented disabilities, disability concerns, and making requests for reasonable academic adjustments and accommodations. The ODS works in collaboration with faculty, staff and departments throughout MSM to develop successful strategies for maximizing students' academic achievement and participation in extracurricular activities and programs."

85.

The paragraphs in this Complaint will show that no successful strategies were developed regarding Plaintiff's academic achievement by MSM's ODS, and neither Plaintiff's disability concerns nor note-taking accommodation were of any meaningful importance to MSM's ODS.

86.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages

34-35), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 37), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 39-40) has stated, under the "Disability Services" heading, that,

> "Services and reasonable accommodations are designed to meet the individual needs of each student in accordance with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the ADAAA. These regulations require that any qualified person receive academic adjustments that are necessary and effective, and which do not compromise the academic standards of the School, to ensure equal access to educational opportunities, services, programs and activities at the School."

B. 2017-2018 ACADEMIC SCHOOL YEAR

87.

For the 2017-2018 academic school year (here and hereafter accounts for the time period from July 3, 2017 to May 25, 2018), MSM's ODS granted Plaintiff the following accommodations: Private and/or distraction-reduced testing room; Designated note-taker in classes; Access to audio taped lectures; and, Double time for examinations and in-class assignments. See Orig. Complaint's Exhibit AI, Doc. 1-9, Page 1.

88.

On or around from June 28, 2017 to June 30, 2017, the note-taking accommodation was also advertised as one of the academic accommodations available to qualified students in the Student Information Guide, provided by MSM's ODS, which was distributed to students during Plaintiff's new student orientation for first year medical students at MSM. See Orig. Complaint's Exhibit AJ, Doc. 1-10, Page 2.

89.

On or around July 3, 2017, Plaintiff started classes as a first-year medical school student at MSM for the 2017-2018 academic school year.

90.

Upon Plaintiff beginning medical school at MSM, on or around July 3, 2017, no system was already in place to provide Plaintiff with notes, per Plaintiff's note-taking accommodation.

91.

The classes for Plaintiff's 2017-2018 academic school year were taught with a heavy emphasis on lectures, with variable use of textbooks and classes that built upon previous classes (See Amended Complaint's Exhibit AJ-1, with respiratory physiology 1 through respiratory physiology 8 taught on eight (8) out of ten (10)

consecutive days during week 17 and week 18), and students were reliant on lectures, and taking notes, for obtaining all the necessary information they needed to know for their classes.

92.

During Plaintiff's 2017-2018 academic school year, the typical school day consisted on average of either three (3) one-and-a-half (1.5) hour long lectures or two (2) one-and-a-half (1.5) hour long lectures and a three (3) hour long laboratory session.

93.

During the interactive accommodation review process prior to medical school starting for Plaintiff, Marla Thompson never warned Plaintiff that the note-taking accommodation would be a new school process for providing notes for medical school students with accommodations; Marla Thompson never warned Plaintiff that the note-taking accommodation would be a service which had not been previously provided by Marla Thompson; Marla Thompson never warned Plaintiff that the note-taking accommodation was not an established service.

94.

One of Plaintiff's initial written complaints to Marla Thompson via email on or around August 1, 2017, stated that, "to this day, at the start of the fifth week of

class, I still do not have a notetaker. I have been behind since the first week," that Plaintiff has "always been behind," that the people put in charge of Plaintiff's note-taking accommodation were not answering Plaintiff's emails about what was going on with the process, that "while I have tried to be patient, these past 3 weeks have been very frustrating because I tried to get you my application for accommodations in March [of 2017] so as to get everything ironed out before class started," and that Plaintiff would prefer if Marla Thompson was more involved in all the processes regarding Plaintiff's accommodations. See Orig. Complaint's Exhibit AK, Doc. 1-11, Pages 1-3.

95.

On or around August 1, 2017, Marla Thompson subsequently responded to Plaintiff via email stating that she would look into Plaintiff's issues, that MSM was "ready to ensure [Plaintiff's] accommodations would be implemented seamlessly" upon the start of Plaintiff's medical school education, but that "[t]his particular accommodation has required us to pivot and rethink the best and multiple ways we can accommodate this request" (though Marla Thompson never communicated any intention of MSM pivoting or rethinking Plaintiff's note-taking accommodation until Plaintiff submitted this written complaint at the start of Plaintiff's fifth week of class), and that she would reiterate to the group of people involved with

Plaintiff's accommodations, including but not limited to Dr. Brandi Knight, to make sure updates were provided to her even if it was just a notification. See Orig. Complaint's Exhibit AK, Doc. 1-11, Page 1.

96.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 35), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 37), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 40) has stated, under the "Disability Services" heading, that,

> "Any applicant, student, resident, or employee who believes he or she has been denied any service or benefit or otherwise discriminated against or harassed due to a disability may contact the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator."

97.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 65), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 70), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 71) has stated, under the "General

Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "Morehouse School of Medicine is committed to providing academic and employment environments that are free from unlawful discrimination, including harassment, on the basis of protected characteristics, including race, color, national or ethnic origin, sex, age, disability, religion, veteran status, sexual orientation, genetic information, gender identity, or any other characteristic protected by applicable law in the administration of the School's programs and activities. The School encourages any individual who feels he or she has been discriminated against or harassed on any legally protected characteristic to promptly report the incident to the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator[.]"

98.

Failing to provide for Plaintiff's note-taking accommodation, that MSM granted to Plaintiff, is discrimination. 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a), 34 C.F.R. § 104.44, and 34 C.F.R. § 104.4

99.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 66), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 70), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 71) has stated, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "MSM's general policy against discrimination, harassment and retaliation applies to conduct by and perpetrated against all faculty, staff, administration, supervisors, employees, residents, students, applicants, volunteers, patients and visitors to campus, including guests, patrons, independent contractors or clients of MSM ("Person(s)") that is prohibited by Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (including ADAAA amendments), and the Age Discrimination Act of 1975."

100.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 66), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 71), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 72) has stated, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "Under MSM's general policy against discrimination, harassment and retaliation, if a complainant is able and feels safe, he or she should clearly explain to the alleged offender that the behavior is objectionable and request that it cease. Additionally, if the complainant is not able or does not feel safe confronting the alleged offender, or the behavior does not stop, or if the complainant believes some adverse employment or educational consequences may result from the discussion, he or she should contact the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator to make a complaint."

101.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 67), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 71), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 72) has stated, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "Any Person or non-MSM visitor, guest, patron, independent contractor, or client who fails to address or report any form of discrimination, harassment and/or retaliation allegedly perpetrated by or against MSM administrators, faculty, staff, supervisors, volunteers, students or employees of which they know or should have known may be subjected to sanctions."

102.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 67), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 71), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 72) has stated, under the "Complaint Procedures" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "Complaints filed with the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator[4] must be in writing and, specifically in cases involving incidents of sex discrimination, sexual harassment or sexual violence, provide the following information: (i) name of and contact information for the complaining Person(s) ("Complainant(s)"); (ii) nature, location and date of alleged violation; (iii) names of and contact information for the Person(s) accused of the alleged violation (where known) ("Respondent(s)"); (iv) requested relief or corrective action (specification of desired relief shall be the option of the Complainant); and (v) any other background or supplemental information that the Complainant believes to be relevant (e.g., names of other persons affected by the violation, etc.)."

103.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 67), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 73) has stated, under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "All reports and complaints of discrimination and harassment will be promptly investigated, and appropriate corrective action will be taken as expeditiously as possible. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to an impartial investigator. MSM will make reasonable efforts to protect the rights of both the Complainant and the Respondent. MSM will respect the privacy of the Complainant(s), Respondent(s), and

[4] Both of MSM's 2018-2019 and 2019-2020 Student Handbooks do not include the phrase "or the Deputy Title IX Coordinator" in this statement.

> any witnesses in a manner consistent with the School's legal obligations to investigate, take appropriate corrective action, and comply with any discovery or disclosure obligations required by law. Any and all requests for confidentiality will be evaluated on a case-by-case basis and in the context of the school's responsibility to provide a safe and nondiscriminatory environment for the MSM community."

104.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 73) has stated, under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "The amount of time needed to conduct an investigation will depend in part on the nature of the allegation(s) and the evidence to be investigated (e.g., the number and/or availability of witnesses involved). Within 60 days of receipt of the complaint, the Title IX Coordinator [Marla Thompson] or Deputy Title IX Coordinator will provide an interim notice of the outcome of the investigation or will advise the parties of the additional estimated amount of time needed for the investigation. Within 10 business days following the completion of an investigation, the Title IX Coordinator [Marla Thompson] or Deputy Title IX Coordinator will simultaneously provide written notification to the Complainant and Respondent of the results of the investigation. If the investigation reveals that, by application of the preponderance of evidence standard, harassment, discrimination (or other inappropriate or unprofessional conduct even if not unlawful), or retaliation has occurred, disciplinary action may be taken by MSM. Written notice to the appropriate parties relating to discipline, resolutions, and/or

> final dispositions is deemed to be official correspondence from the School. Disciplinary sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator. MSM will take the appropriate corrective action based on results of the investigation and will follow up as appropriate to ensure that the remedial action is effective. Complainants are encouraged to report any reoccurrences of conduct that were found to violate MSM's nondiscrimination and anti-harassment policies or any other related concerns."

105.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AK, Doc. 1-11, Pages 1-3) sent to Marla Thompson, MSM's Title IX Coordinator, was not promptly investigated.

106.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AK, Doc. 1-11, Pages 1-3) sent to Marla Thompson, MSM's

Title IX Coordinator, MSM never provided Plaintiff with any written notification regarding the results of any investigation.

107.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AK, Doc. 1-11, Pages 1-3) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not take any appropriate corrective actions.

108.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AK, Doc. 1-11, Pages 1-3) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

109.

On or around October 31, 2017, Dr. Brandi Knight revealed to Plaintiff via email that providing notes, per Plaintiff's note-taking accommodation, was a "totally new process for us and there [was] nothing set to work seamlessly and quickly," and Marla Thompson was cc-ed on this email. See Orig. Complaint's Exhibit AL, Doc. 1-12, Page 1.

110.

Despite Plaintiff beginning medical school on or around July 3, 2017, the first time Plaintiff received notes for Plaintiff's note-taking accommodation was on or around August 10, 2017, thirty-eight (38) days after school started, and those notes were for classes nine (9) and ten (10) days prior.

111.

During the interactive accommodation review process prior to medical school starting on or around July 3, 2017, Marla Thompson never warned Plaintiff that there would be an initial delay in providing notes to Plaintiff.

112.

Plaintiff stressed to Dr. Brandi Knight via email on or around July 24, 2017, that the note-taking accommodation was critical for Plaintiff's success and that Plaintiff felt like Plaintiff was going to fail Plaintiff's upcoming exam because

Plaintiff was not able to study all of the material due to not having timely notes per Plaintiff's note-taking accommodation. See Orig. Complaint's Exhibit AM, Doc. 1-13.

113.

In an attempt to help in providing timely notes to Plaintiff during Plaintiff's first year of medical school, MSM asked Plaintiff to give up Plaintiff's anonymity as a person with a disability, which Plaintiff agreed to, but ultimately this never happened. See Orig. Complaint's Exhibit AL, Doc. 1-12.

114.

On or around October 31, 2017, Dr. Brandi Knight explained the supposed bottleneck causing the untimeliness of Plaintiff's note-taking accommodation was the notetakers themselves in that Dr. Brandi Knight stated she could only give Plaintiff notes when student notetakers sent them to her. See Orig. Complaint's Exhibit AL, Doc. 1-12, Page 1.

115.

On or around October 31, 2017, Dr. Brandi Knight stated to Plaintiff via email that she had secured an additional notetaker for Plaintiff's anatomy class to help with the untimeliness of Plaintiff's note-taking accommodation, and Marla

Thompson was cc-ed on this email. See Orig. Complaint's Exhibit AL, Doc. 1-12, Page 1.

116.

Plaintiff was never provided an additional notetaker for anatomy class.

117.

Problems persisted in satisfying Plaintiff's note-taking accommodation for the entire 2017-2018 academic school year.

118.

Throughout the 2017-2018 academic school year, Plaintiff complained to Marla Thompson and Dr. Brandi Knight about the untimeliness of Plaintiff's note-taking accommodation.

119.

For the 2017-2018 academic school year at MSM, the average turnaround time of notes received—not all notes were ever received—for any class was 4.17 days for Plaintiff's note-taking accommodation.

120.

For the 2017-2018 academic school year at MSM, Plaintiff received notes for only sixty-one percent (61%) of classes for Plaintiff's note-taking accommodation.

121.

For the 2017-2018 academic school year at MSM, Plaintiff struggled and received a 2.49/4.00 GPA (Passing is 2.00/4.00), and residency programs take grades into consideration when deciding to accept medical school graduates or not. See Orig. Complaint's Exhibit AN, Doc. 1-14, Pages 1-2.

122.

MSM failed in its duty to coordinate and manage the implementation of Plaintiff's note-taking accommodation prior to classes beginning for the 2017-2018 academic school year.

123.

MSM failed in its duty to coordinate and manage the implementation of Plaintiff's note-taking accommodation after classes began for the 2017-2018 academic school year.

124.

The 24-48-hour turnaround time goal for notes per Plaintiff's note-taking accommodation was never measured or evaluated by either Marla Thompson or Dr. Brandi Knight during the 2017-2018 academic school year at MSM.

125.

One class of note for the 2017-2018 academic school year was from on or around February 26, 2018, to on or around May 10, 2018, when Plaintiff was taking the course Organ Systems 3 (hereafter referred to as "OS3").

126.

During OS3, Plaintiff received only 68.60% of notes for all classes during OS3 (Plaintiff was missing 31.40% of notes).

127.

During OS3, the average time it took to receive the 68.60% of notes for OS3 was 5.31 days.

128.

On or around May 22, 2018, Plaintiff was notified that Plaintiff failed OS3 and according to the handbook, Plaintiff would have to remediate the course by passing a 126-question comprehensive exam by June 30, 2018. See Amended Complaint's Exhibit AN-1, Pages 1-3.

129.

During Plaintiff's independent study program for Plaintiff's remediation of OS3, MSM still failed to provide Plaintiff the remaining 31.40% of missing notes per Plaintiff's note-taking accommodation.

130.

On or around June 25, 2018, Plaintiff took the remediation exam, albeit without MSM providing Plaintiff the remaining 31.40% of missing notes per Plaintiff's note-taking accommodation.

131.

On or around June 26, 2018, Plaintiff was notified that he passed the OS3 remediation comprehensive exam, with the lowest score possible to pass, a 70% (MSM's Grading System: See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 94; See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 100; and See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 100). See Amended Complaint's Exhibit AN-1, Page 4.

132.

Plaintiff's transcript permanently reflects Plaintiff's failing and remediation of OS3 with a "D/C," which demonstrates the student initially failed, during which time MSM failed to adequately provide for Plaintiff's note-taking accommodation, and residency programs, as Plaintiff was told by Dr. Ngozi Anachebe, Associate Dean of Admissions and Student Affairs at MSM, take grades into consideration when deciding to accept medical school graduates or not, and any failing grades

are looked upon very unfavorably. See Orig. Complaint's Exhibit AN, Doc. 1-14, Page 2.

133.

Toward the end of the 2017-2018 academic school year, on or around May 7, 2018, Plaintiff emailed Marla Thompson again with a written complaint about the untimeliness of Plaintiff's note-taking accommodation (discrimination), stressing the importance of the note-taking accommodation with requests including, but not limited to, a more proactive approach on her end, more accountability from Dr. Brandi Knight, and better communication in making sure MSM timely provided notes per Plaintiff's note-taking accommodation. See Orig. Complaint's Exhibit AO, Doc. 1-15.

134.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AO, Doc. 1-15) sent to Marla Thompson, MSM's Title IX Coordinator, was not promptly investigated.

135.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AO, Doc. 1-15) sent to Marla Thompson, MSM's Title IX Coordinator, MSM never provided Plaintiff with any written notification regarding the results of any investigation.

136.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AO, Doc. 1-15) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not take any appropriate corrective actions.

137.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AO, Doc. 1-15) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

C. ACADEMIC DECELERATION

138.

Prior to the start of the 2018-2019 academic school year (here and hereafter accounts for the time period from August 14, 2018 to May 17, 2019), MSM suggested that Plaintiff enter academic deceleration, thus splitting the classes taken in the normal second year medical curriculum into two separate years.

139.

According to MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 95), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 101), and MSM's 2019-2020 Student

Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 102), under the "Academic Deceleration" heading, Academic Deceleration is defined as,

> "Students enrolled in the basic science years at MSM have the option to decelerate. This essentially allows them to complete the basic science curriculum over a three-year period (as opposed to the standard two-year basic sciences curriculum)."

140.

Due to Plaintiff's mounting lack of faith in MSM's ability to provide for Plaintiff's note-taking accommodation, coupled with the poor grades (2.48/4.00 first year GPA), and emotional turmoil Plaintiff was experiencing, Plaintiff elected to enter the decelerated second year medical curriculum, though Plaintiff would have preferred graduating on time while receiving the accommodations that were granted to Plaintiff by MSM.

141.

Plaintiff's medical school education was prolonged because of MSM's failure in providing Plaintiff's note-taking accommodation, residency programs take the length of time it took for a medical school student to graduate into consideration when deciding to accept medical school graduates or not, and taking longer than the regular four years, as Plaintiff was told by Dr. Ngozi Anachebe, Associate Dean of Admissions and Student Affairs at MSM, is looked upon very

unfavorably and some residency programs will not even review your residency application.

D. 2018-2019 ACADEMIC SCHOOL YEAR

142.

For the 2018-2019 academic school year, MSM's ODS granted Plaintiff the following accommodations: Private and/or distraction-reduced testing room; Designated note-taker in classes; Access to audio taped lectures; and, Double time for examinations and in-class assignments. See Orig. Complaint's Exhibit AI, Doc. 1-9, Page 2.

143.

On or around August 14, 2018, Plaintiff started classes as a second-year, decelerated part one of two, student at MSM for the 2018-2019 academic school year.

144.

Problems continued to persist in satisfying Plaintiff's note-taking accommodation for almost the entirety of the 2018-2019 academic school year.

145.

The classes for Plaintiff's 2018-2019 academic school year were taught with a heavy emphasis on lectures, and students were reliant on lectures, and taking

notes, for obtaining all the necessary information they needed to know for their classes.

146.

Throughout the 2018-2019 academic school year, Plaintiff complained to Marla Thompson and Dr. Brandi Knight about the untimeliness of Plaintiff's note-taking accommodation.

147.

In or around late 2018 to early 2019, Dr. Brandi Knight spoke to Plaintiff about hiring a professional notetaker to help with the untimeliness of Plaintiff's note-taking accommodation, and in response Plaintiff inquired via email on or around January 7, 2019. See Orig. Complaint's Exhibit AP, Doc. 1-16.

148.

On or around January 17, 2019, ten days later, Dr. Brandi Knight responded to Plaintiff stating no one would be hired. See Orig. Complaint's Exhibit AQ, Doc. 1-17 and Orig. Complaint's Exhibit AR, Doc. 1-18.

149.

On or around January 22, 2019, Dr. Brandi Knight explained the now supposed bottleneck causing the untimeliness of Plaintiff's note-taking accommodation was Dr. Brandi knight herself in that Dr. Brandi Knight admitted

that students should receive their notes "in a 24-hour or less" turnaround time, but it was not feasible for her to accomplish herself because she was the sole person in charge of the note-taking accommodation. See Orig. Complaint's Exhibit AR, Doc. 1-18.

150.

On or around January 22, 2019, Dr. Brandi Knight communicated to Plaintiff via email about the intention to involve other MSM staff as the quickest improvement to the untimeliness of Plaintiff's note-taking accommodation. See Orig. Complaint's Exhibit AR, Doc. 1-18.

151.

Other staff at MSM were not involved with Plaintiff's note-taking accommodation until after Dr. Brandi Knight left MSM at or around the end of March of 2019, approximately two months later.

152.

On or around February 25, 2019, Plaintiff emailed Marla Thompson additional written complaints about poor communication regarding Marla Thompson and Dr. Brandi Knight not responding to Plaintiff's emails, and about continuing issues regarding the untimeliness of Plaintiff's note-taking

accommodation (discrimination). See Orig. Complaint's Exhibit AS, Doc. 1-19, Pages 1-5.

153.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AS, Doc. 1-19, Pages 1-5) sent to Marla Thompson, MSM's Title IX Coordinator, was not promptly investigated.

154.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AS, Doc. 1-19, Pages 1-5) sent to Marla Thompson, MSM's Title IX Coordinator, MSM never provided Plaintiff with any written notification regarding the results of any investigation.

155.

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156.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AS, Doc. 1-19, Pages 1-5) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

157.

For the 2018-2019 academic school year at MSM, the average turnaround time of notes received—not all notes were ever received—for any class was 14.61 days for Plaintiff's note-taking accommodation.

158.

For the 2018-2019 academic school year at MSM, Plaintiff received notes for only eighty-eight percent (88%) of classes for Plaintiff's note-taking accommodation, and for five out of the total six classes for Plaintiff's Nutrition Course, Plaintiff received zero notes before the Nutrition Final Exam.

159.

For the 2018-2019 academic school year at MSM, Plaintiff struggled and received a 2.68/4.00 GPA (Passing is 2.00/4.00), and residency programs take grades into consideration when deciding to accept medical school graduates or not. See Orig. Complaint's Exhibit AN, Doc. 1-14, Page 2.

160.

MSM failed in its duty to coordinate and manage Plaintiff's note-taking accommodation for the 2018-2019 academic school year.

161.

After Dr. Brandi Knight left MSM on or around the end of March of 2019, Dezarae Blossomgame, Dr. Brandi Knight's Program Manager at the OSLER,[5] took over some, if not all, of the duties of managing Plaintiff's note-taking accommodation.

162.

Only after Dr. Brandi Knight left MSM, on or around the end of March of 2019, was Marla Thompson purportedly then able to change the duties and responsibilities of Plaintiff's student notetakers, as she verbally stated to Plaintiff on or around February 19, 2020 and February 26, 2020.

163.

The 24-48-hour turnaround time goal for notes per Plaintiff's note-taking accommodation was never measured or evaluated by either Marla Thompson or Dr. Brandi Knight during the 2018-2019 academic school year at MSM.

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[5] Defined in Paragraph 24 as Office of Student Learning and Educational Resources

164.

On or around July 20, 2018, MSM's ODS requested that it needed an updated psychological evaluation from Plaintiff because the 2017 psychological evaluation was older than three years.

165.

In Plaintiff's 2019 psychological evaluation, the issue of Plaintiff's note-taking accommodation was even noted, stating:

> "[Plaintiff] reported that [Plaintiff] [h]as accommodations in medical school including [a] notetaker, but revealed that [Plaintiff's] medical school had not previously granted the accommodation [to other students], meaning that the implementation is inconsistent. [Plaintiff] explained that [Plaintiff] often must wait a week or more for a copy of notes from a given class, reducing [Plaintiff's] ability to use the notes in a timely manner."

166.

In Plaintiff's 2019 psychological evaluation, the examiner also stated,

> "Overall, [Plaintiff] exhibits many strengths from which to draw. In particular, [Plaintiff] demonstrated strong intellectual abilities. The prognosis for the academic success in medical school will be favorable if [Plaintiff] makes active use of appropriate academic accommodations and support services."

167.

MSM's ODS received and read Plaintiff's 2019 psychological evaluation and used this evaluation in its continuation of granting Plaintiff's academic accommodations.

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 6:

326a – 390a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

168.

MSM's ODS received and read Plaintiff's 2019 psychological evaluation, and yet the issues with Plaintiff's note-taking accommodation persisted.

E. 2019-2020 ACADEMIC SCHOOL YEAR

169.

For the 2019-2020 academic school year (here and hereafter accounts for the time period from August 13, 2019 to May 15, 2020), MSM's Office of Disability Services granted Plaintiff the following accommodations: Private and/or distraction-reduced testing room; Designated note-taker in classes; Access to audio and video taped lectures; Double time for examinations and in-class assignments; Breaks for examinations and in-class assignments; and, Preferential seating for class. See Orig. Complaint's Exhibit AI, Doc. 1-9, Page 3.

170.

On or around August 13, 2019, Plaintiff started classes as a second-year, decelerated part two of two, student at MSM for the 2019-2020 academic school year.

171.

For the 2019-2020 academic school year, MSM more or less adequately provided Plaintiff with notes per Plaintiff's note-taking accommodation.

172.

The classes in Plaintiff's first two years (2017-2018 and 2018-2019 academic school years) were necessary in developing Plaintiff's understanding of normal human physiology.

173.

The classes in Plaintiff's 2019-2020 academic school year were about developing Plaintiff's understanding of abnormal human physiology.

174.

Plaintiff was unable to properly learn and understand normal human physiology in the 2017-2018 and 2018-2019 academic school years due to the failings of MSM in providing for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years.

175.

Plaintiff was unable to properly learn abnormal human physiology in the 2019-2020 academic school year due to the failings of MSM in providing for Plaintiff's note-taking accommodation in the 2017-2018 and 2018-2019 academic school years.

179.

On or around February 18, 2020, Dr. Ngozi Anachebe responded to Plaintiff's email, cc-ing Marla Thompson to her response so that Marla Thompson was immediately privy to things Plaintiff said about Marla Thompson in Plaintiff's written complaint, stating that she did not handle accommodations and that Plaintiff should contact Marla Thompson. See Orig. Complaint's Exhibit AV, Doc. 1-22.

180.

On or around February 18, 2020, Plaintiff subsequently emailed Marla Thompson the same comprehensive written complaint, with an almost identical attachment as used in the email sent to Dr. Ngozi Anachebe about Plaintiff's experiences at MSM, regarding the concerns and problems Plaintiff had encountered, since Plaintiff has been a student at MSM, regarding Plaintiff's note-taking accommodation (discrimination) and that Plaintiff wished to meet for discussion. See Orig. Complaint's Exhibit AW, Doc. 1-23 and Orig. Complaint's Exhibit AX, Doc. 1-24.

181.

On or around February 19, 2020 and February 26, 2020, Plaintiff met with Marla Thompson who ultimately told Plaintiff that she could not address the

remedies Plaintiff was suggesting regarding the failures of MSM in providing for Plaintiff's note-taking accommodation for the 2017-2018 and 2018-2019 academic school years.

182.

Additionally, when Plaintiff met with Marla Thompson on or around February 19, 2020 and February 26, 2020, Marla Thompson informed Plaintiff that on or around March of 2019, Marla Thompson was informed by, and supposedly became first aware that, Dr. Brandi Knight, at all times during which Plaintiff had been a student at MSM, had access to notes from notetakers of previous years and chose not to provide these—or reveal her possession thereof to either Marla Thompson or Plaintiff—as supplemental help to Plaintiff, when Dr. Brandi Knight, at the same time, was providing untimely notes to Plaintiff for Plaintiff's note-taking accommodation.

183.

In other words, students not registered with ODS, who are performing poorly academically, can be mandated to join OSLER, and thus they would then have access to OSLER's resources such as notes from one of the OSLER student notetakers, and Dr. Brandi Knight, as OSLER's then Director, had access to notes from previous years of the same classes Plaintiff was taking.

184.

On or around February 19, 2020 and February 26, 2020, Marla Thompson told Plaintiff during their meeting that she needed to meet with Dr. Ngozi Anachebe to discuss Plaintiff's concerns.

185.

On or around March 5, 2020, Marla Thompson notified Plaintiff via email that she had completed her discussion with Dr. Ngozi Anachebe about Plaintiff's concerns, that Dr. Ngozi Anachebe confirmed she understood Plaintiff's concerns correctly, and that Plaintiff should schedule a meeting with Dr. Ngozi Anachebe. See Orig. Complaint's Exhibit AY, Doc. 1-25, Pages 2-3.

186.

On or around March 13, 2020, Plaintiff met with Dr. Ngozi Anachebe wherein, after she asked if Plaintiff was recording their conversation, she repeated that she did not handle accommodations and had not, and would not, hear Plaintiff's concerns regarding Plaintiff's note-taking accommodation. See Orig. Complaint's Exhibit AZ, Doc. 1-26.

187.

On or around March 13, 2020, during Plaintiff's meeting with Dr. Ngozi Anachebe, despite Plaintiff explaining the depression, anxiety, and emotional

turmoil Plaintiff was experiencing, Dr. Ngozi Anachebe stated she did not want to discuss Plaintiff's medical situation. See Orig. Complaint's Exhibit AZ, Doc. 1-26.

188.

On or around March 13, 2020, during Plaintiff's meeting with Dr. Ngozi Anachebe, Plaintiff was informed that any leave of absence taken would only freeze Plaintiff's current progress and grades in Plaintiff's current classes, and Plaintiff would pick back up in the following academic year exactly where Plaintiff left off in the current academic year, to the date, with the same grades in place for the same classes Plaintiff would be continuing. See Orig. Complaint's Exhibit AZ, Doc. 1-26.

189.

On or around March 13, 2020, during Plaintiff's meeting with Dr. Ngozi Anachebe, Dr. Ngozi Anachebe also provided Plaintiff with the email address of MSM's Chief Compliance Officer, Keith Henderson. See Orig. Complaint's Exhibit AZ, Doc. 1-26.

190.

Plaintiff concluded that taking a leave of absence would not solve Plaintiff's problems because Plaintiff's grades would not be fixed in that Plaintiff has

know who could help Plaintiff, and sought answers about why the meeting turned out the way it did. See Orig. Complaint's Exhibit AY, Doc. 1-25, Page 1.

192.

On or around March 16, 2020, Marla Thompson responded to Plaintiff via email repeating that Plaintiff's concerns were shared with Dr. Ngozi Anachebe and stated that Plaintiff should use all of Plaintiff's available resources, including Plaintiff's 227-page-long 2019-2020 MSM Student Handbook, in looking for a solution to Plaintiff's problem. See Orig. Complaint's Exhibit AY, Doc. 1-25, Page 1.

193.

Comparing Orig. Complaint's Exhibit AY, Doc. 1-25 and Orig. Complaint's Exhibit AZ, Doc. 1-26, there exists untruthfulness and collusion between the two accounts, with Marla Thompson stating to Plaintiff via email that non-ODS decisions such as concerns involving tuition were shared with Dr. Ngozi Anachebe and that Dr. Ngozi Anachebe correctly understood Plaintiff's concerns, while Dr. Ngozi Anachebe stated to both Marla Thompson and Plaintiff via email that she was under the impression that she was only discussing MSM's academic policy to Plaintiff.

194.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AW, Doc. 1-23 and Orig. Complaint's Exhibit AX, Doc. 1-24) sent to Marla Thompson, MSM's Title IX Coordinator, was not promptly investigated.

195.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AW, Doc. 1-23 and Orig. Complaint's Exhibit AX, Doc. 1-24) sent to Marla Thompson, MSM's Title IX Coordinator, MSM never provided Plaintiff with any written notification regarding the results of any investigation.

196.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AW, Doc. 1-23 and Orig. Complaint's Exhibit AX, Doc. 1-24) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not take any appropriate corrective actions.

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In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73), Plaintiff's written discrimination complaint (See Orig. Complaint's Exhibit AW, Doc. 1-23 and Orig. Complaint's Exhibit AX, Doc. 1-24) sent to Marla Thompson, MSM's Title IX Coordinator, MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

198.

The actions of Marla Thompson and Dr. Ngozi Anachebe, regarding how MSM chose to handle Plaintiff's concerns regarding the failure of MSM in accommodating Plaintiff's disability (discrimination), were made for the sole purposes of discriminating against Plaintiff and intimidating, threatening, retaliating against, coercing, and interfering with Plaintiff's exercise or enjoyment of, or on account of Plaintiff having exercised or asserted, Plaintiff's rights under the disability rights statutes.

199.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 73) has stated, under the "Prohibition Against Retaliation" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that,

> "Anyone who, in good faith, reports what s/he believes to be discrimination or harassment, who participates or cooperates in any investigation, or who otherwise opposes unlawful conduct believed to be in violation of this policy will not be subjected to retaliation. Anyone who believes he or she has been the victim of retaliation for reporting discrimination or harassment, participating or cooperating in an investigation or otherwise opposing

> unlawful conduct believed to be in violation of this policy should immediately contact the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator, who have authority to investigate all such claims. Any individual found to have retaliated against another individual who engaged in conduct consistent with the protections afforded under this Policy will be in violation of this policy and will be subject to disciplinary action."

G. COMPLIANCE COMPLAINT AND DISMISSAL HEARING

200.

On or around March 16, 2020, Plaintiff emailed Keith Henderson, MSM's Chief Compliance Officer, Keith Henderson chose not to respond to Plaintiff. See Orig. Complaint's Exhibit BA, Doc. 1-27 and Orig. Complaint's Exhibit BB, Doc. 1-28, Page 2.

201.

On or around March 28, 2020, Plaintiff filed an internal compliance complaint to MSM's Office of Compliance regarding the failure of MSM in timely providing for Plaintiff's note-taking accommodation and for the attempts to conceal and retaliatory acts described in subdivision heading F, "RESOLUTION ATTEMPT BY PLAINTIFF." See Orig. Complaint's Exhibit BB, Doc. 1-28, Pages 1-7.

202.

The investigation regarding Plaintiff's compliance complaint filed on or around March 28, 2020, has at all times been conducted by Alecia Bell, who became MSM's Interim Chief Compliance Officer on or around April of 2020.

203.

Plaintiff would end up failing Plaintiff's classes during the 2019-2020 academic school year (See Orig. Complaint's Exhibit AN, Doc. 1-14, Page 3) due to the failings of MSM in providing for Plaintiff's note-taking accommodation in the 2017-2018 and 2018-2019 academic school years, for reasons as explained in subdivision heading E, "2019-2020 ACADEMIC SCHOOL YEAR," and due to Plaintiff's time being spent on seeking resolutions for such failings as described in all paragraphs herein and the toll it was taking on Plaintiff (See Orig. Complaint's Exhibit BC, Doc. 1-29, Pages 2-3).[7]

204.

On or around May 27, 2020, Plaintiff advised Alecia Bell via phone conversation that MSM may attempt to dismiss Plaintiff for failing Plaintiff's

[7] Residency programs take grades into consideration when deciding to accept medical school graduates or not, as Plaintiff was told by Dr. Ngozi Anachebe, Associate Dean of Admissions and Student Affairs at MSM, and any failing grades are looked upon very unfavorably.

classes for the 2019-2020 academic school year, and that she should contact Dr. Brenda Klement, Student Academic Progress and Promotion (hereafter referred to as "SAPP") Committee Chair, to inform her that Plaintiff has an open and ongoing investigation regarding a compliance complaint Plaintiff filed on or around March 28, 2020, about the failure of MSM in timely providing for Plaintiff's note-taking accommodation.

205.

On or around May 27, 2020, Alecia Bell communicated to Plaintiff that she would contact Dr. Brenda Klement.

206.

On or around May 29, 2020, while Plaintiff's compliance complaint about MSM's failure to accommodate Plaintiff was still being investigated by Alecia Bell, MSM notified Plaintiff via email that there was a dismissal hearing scheduled against Plaintiff for June 16, 2020. See Orig. Complaint's Exhibit BD, Doc. 1-30, Page 1.

207.

This notification of a dismissal hearing scheduled against Plaintiff was cc-ed to Dr. Ngozi Anachebe, Dr. Brenda Klement, and Plaintiff's two advisors: Dr.

Robert Sloviter and Dr. Chevon Brooks. See Orig. Complaint's Exhibit BD, Doc. 1-30, Page 3.

208.

On or around May 30, 2020, Plaintiff notified the person in charge of the dismissal hearing, Dr. Brenda Klement, via email that Plaintiff has an open and ongoing investigation regarding a compliance complaint Plaintiff filed on or around March 28, 2020, about the failure of MSM in providing for Plaintiff's note-taking accommodation. See Orig. Complaint's Exhibit BE, Doc. 1-31, Pages 2-3.

209.

Plaintiff's notice to Dr. Brenda Klement was cc-ed to Dr. Ngozi Anachebe, Alecia Bell, and Plaintiff's two advisors: Dr. Robert Sloviter and Dr. Chevon Brooks. See Orig. Complaint's Exhibit BE, Doc. 1-31, Pages 2-3.

210.

Plaintiff complained to both Dr. Brenda Klement, via email (See Orig. Complaint's Exhibit BE, Doc. 1-31, Pages 2-3), and Alecia Bell, via email (See Orig. Complaint's Exhibit BF, Doc. 1-32, Pages 1-2) and via phone conversations, about the prejudicial nature of having a dismissal hearing before the investigative conclusion of an already filed compliance complaint regarding the failure of MSM

in accommodating Plaintiff's disability, and the purpose altogether of a dismissal hearing when MSM failed to provide for Plaintiff's note-taking accommodation.

211.

On or around May 31, 2020, Alecia Bell claimed to Plaintiff via email that she had not yet reached out to Dr. Brenda Klement (See Orig. Complaint's Exhibit BF, Doc. 1-32, Page 1), and on or around June 1, 2020, Alecia Bell reported to Plaintiff via email that she would reach out to Dr. Brenda Klement later that day (See Orig. Complaint's Exhibit BF, Doc. 1-32, Page 1).

212.

Later on or around June 1, 2020, Dr. Brenda Klement reached out to Plaintiff informing Plaintiff via email that after speaking with Alecia Bell, MSM needed to continue with the dismissal hearing until someone told her that it should be postponed or cancelled. See Orig. Complaint's Exhibit BE, Doc. 1-31, Page 2.

213.

On or around June 1, 2020, when Plaintiff subsequently asked Dr. Brenda Klement via email who at MSM had the authority to postpone or cancel the dismissal hearing, Dr. Brenda Klement chose not to respond to Plaintiff. See Orig. Complaint's Exhibit BE, Doc. 1-31, Pages 1-2.

214.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 70), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 74), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 75), has stated, under the "Compliance Hotline" heading, that,

> "[MSM] is an organization with strong values of responsibility and integrity. Our written standards and policies contain general guidelines for conducting business with the highest standards of ethics. The institution is committed to an environment where open, honest communications are the expectation, not the exception."

215.

On or around June 5, 2020, Alecia Bell notified Plaintiff via phone that Dr. Brenda Klement and herself both decided that since there was supposedly not a process in place at MSM concerning dismissal hearings where the student also has an ongoing compliance investigation, and because Alecia Bell supposedly still did not have enough information collected from other parties at MSM about Plaintiff's then two-plus-month-old compliance complaint, the dismissal hearing against Plaintiff would continue as scheduled. See Orig. Complaint's Exhibit BG, Doc. 1-33.

216.

On or around June 5, 2020, Alecia Bell also notified Plaintiff via phone that despite ODS having more or less agreed to the facts in Plaintiff's compliance complaint about MSM's failure to accommodate Plaintiff, the dismissal hearing against Plaintiff would continue as scheduled.

217.

On or around June 5, 2020, Alecia Bell advised Plaintiff via phone that during the dismissal hearing, Plaintiff should disclose all of the details about Plaintiff's compliance complaint, regarding the failures of MSM in accommodating Plaintiff, to all members of the dismissal hearing.

218.

This is despite MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 70), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 74), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 75), under the "Compliance Hotline" heading, stating that in a compliance complaint, "[a]ll information provided will remain confidential."

219.

After Plaintiff was on notice for fourteen (14) days that MSM intended to have a dismissal hearing against Plaintiff, which caused Plaintiff significant emotional distress, Dr. Brenda Klement notified Plaintiff on or around June 12, 2020, via email that the dismissal hearing scheduled for June 16, 2020, had been postponed until a later time. Orig. Complaint's Exhibit BE, Doc. 1-31, Page 1.

220.

Plaintiff was not offered any explanation as to why the dismissal hearing was now postponed - nor has a reason ever been offered by anyone at MSM. See Orig. Complaint's Exhibit BE, Doc. 1-31, Page 1.

221.

The actions of MSM, in its desire to have a dismissal hearing before the investigative conclusion of a previously filed compliance complaint, regarding the failure of MSM in accommodating Plaintiff's disability, were made for the sole purposes of discriminating against Plaintiff and intimidating, threatening, retaliating against, coercing, and interfering with Plaintiff's exercise or enjoyment of, or on account of Plaintiff having exercised or asserted Plaintiff's rights under the disability rights statutes.

222.

On or around June 19, 2020, Alecia Bell notified Plaintiff via phone that the investigation regarding Plaintiff's compliance complaint, filed on or around March 28, 2020, had been concluded and that a written report would be prepared by the middle of the week of June 22, 2020, and that she would present her report to MSM's legal department during the week of June 29, 2020.

223.

On or around June 19, 2020, Alecia Bell also notified Plaintiff via phone that for the events that Plaintiff was subjected to by Marla Thompson and Dr. Ngozi Anachebe in subdivision heading F, "RESOLUTION ATTEMPT BY PLAINTIFF," from on or around February 17, 2020, to on or around March 16, 2020, Alecia Bell stated that she could not respond as to why this happened from the responses Marla Thompson and Dr. Ngozi Anachebe provided to her. See Orig. Complaint's Exhibit BH, Doc. 1-34, Pages 1-4.

224.

On or around June 19, 2020, Alecia Bell additionally stated that she believes "greater understanding around the requirements of the ADA is necessary for all involved in academia and have encouraged more training from our ODS office in

general," as she confirmed in her email to Plaintiff on or around June 24, 2020. See Orig. Complaint's Exhibit BH, Doc. 1-34, Pages 1-4.

225.

After their phone meeting on around June 19, 2020, Plaintiff subsequently asked Alecia Bell via email on or around June 19, 2020, if Plaintiff would be provided a copy of this written report, to which Alecia Bell responded on or around June 23, 2020, that Plaintiff would not be provided a copy since the reports were internal confidential documents (See Orig. Complaint's Exhibit BI, Doc. 1-35), despite Alecia Bell telling Plaintiff on or around May 27, 2020, that Plaintiff would receive documentation about Alecia Bell's investigation (See Orig. Complaint's Exhibit BC, Doc. 1-29, Page 1).

226.

On or around July 1, 2020, Alecia Bell notified Plaintiff via email that her meeting with the legal department had been delayed until the early part of the week of July 6, 2020, but that the legal department had her report and would be ready to review and discuss during their meeting. See Orig. Complaint's Exhibit BJ, Doc. 1-36.

227.

On or around July 6, 2020, Alecia Bell emailed Plaintiff stating that Plaintiff would now be receiving, by the end of the week of July 13, 2020, a summary of her findings, as a written letter of determination (See Orig. Complaint's Exhibit BK, Doc. 1-37), despite telling Plaintiff the contrary on or around June 19, 2020 (See Orig. Complaint's Exhibit BI, Doc. 1-35).

228.

On or around July 9, 2020, Plaintiff asked Alecia Bell what the difference was between the report she provided to MSM's legal department and the written letter of determination she would be providing to Plaintiff, Alecia Bell chose not to respond to Plaintiff. See Orig. Complaint's Exhibit BL, Doc. 1-38.

229.

Despite Plaintiff being asked by Alecia Bell, MSM's Interim Chief Compliance Officer, via phone meeting on or around June 19, 2020, to give MSM an opportunity to provide some solutions with regards to Plaintiff's compliance complaint (See Orig. Complaint's Exhibit BN, Doc. 1-40, Page 2), MSM notified Plaintiff on or around July 13, 2020, that upon advisement by the Office of Compliance (Alecia Bell, MSM's Interim Chief Compliance Officer), Plaintiff's

previously postponed dismissal hearing was now rescheduled for July 28, 2020. See Orig. Complaint's Exhibit BM, Doc. 1-39, Pages 1-5.

230.

Plaintiff was not offered any explanation as to why the dismissal hearing was now rescheduled - nor has a reason ever been offered by anyone at MSM. See Orig. Complaint's Exhibit BM, Doc. 1-39, Pages 1-5.

231.

This notification of a rescheduled dismissal hearing scheduled against Plaintiff was cc-ed to Dr. Ngozi Anachebe, Dr. Brenda Klement, and Plaintiff's two advisors: Dr. Robert Sloviter and Dr. Chevon Brooks. See Orig. Complaint's Exhibit BM, Doc. 1-39, Pages 1-5.

232.

MSM has failed to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints under the Rehabilitation Act and the ADA.

233.

On or around June 26, 2020, and June 29, 2020, Plaintiff emailed Alecia Bell and asked for more clarity about the processes and procedures regarding MSM's Office of Compliance and Office of General Counsel in investigating and

dealing with Plaintiff's compliance complaint. See Orig. Complaint's Exhibit BN, Doc. 1-40, Pages 1-2.

234.

On or around June 29, 2020, Alecia Bell stated she did not have answers to any of Plaintiff's questions, when in fact Alecia Bell knew the answers to at the very least Plaintiff's first and second question, because it was the process and procedure Alecia Bell was carrying out. See Orig. Complaint's Exhibit BN, Doc. 1-40, Pages 1-2.

235.

On or around July 14, 2020, Alecia Bell submitted her conclusory findings, regarding Plaintiff's three-plus-month-old compliance complaint, in her written letter of determination emailed to Plaintiff. See Orig. Complaint's Exhibit BO, Doc. 1-41.

236.

In Alecia Bell's written letter of determination sent to Plaintiff, Alecia Bell made numerous erroneous, misleading, unclear, arbitrary, self-serving, and false findings including, but not limited to, the issues described in the following eleven (10) paragraphs. See Orig. Complaint's Exhibit BO, Doc. 1-41.

237.

In Alecia Bell's written letter of determination to Plaintiff, Alecia Bell failed to address the portion of Plaintiff's compliance complaint outlining MSM's attempts to conceal and retaliatory acts made against Plaintiff (See Orig. Complaint's Exhibit BB, Doc. 1-28, Pages 1-2), events which are described in subdivision heading F, "RESOLUTION ATTEMPT BY PLAINTIFF." See Orig. Complaint's Exhibit BO, Doc. 1-41, Pages 2-3.

238.

In Alecia Bell's written letter of determination to Plaintiff, Alecia Bell states in her third bullet of key findings that, "By August of 2017 [Plaintiff] was receiving notes, however, those notes were not provided to [Plaintiff] within 24-48 hours of each class." See Orig. Complaint's Exhibit BO, Doc. 1-41, Page 2.

239.

This key finding of Alecia Bell completely ignores the key fact that Plaintiff did not always receive notes per Plaintiff's note-taking accommodation, and Plaintiff communicated this fact extensively to Alecia Bell, including but not limited to, in Plaintiff's communications with Alecia Bell and in Plaintiff's compliance complaint (See Orig. Complaint's Exhibit BB, Doc. 1-28, Pages 1, 3, and 4).

240.

In Alecia Bell's written letter of determination to Plaintiff, Alecia Bell states in her fourth bullet of key findings that, "OSLER continued to provide notes to accommodated students."[8] See Orig. Complaint's Exhibit BO, Doc. 1-41, Page 2.

241.

This key finding of Alecia Bell completely ignores the key facts that Plaintiff did not always receive notes per Plaintiff's note-taking accommodation and that these notes were not timely, and Plaintiff communicated this fact extensively to Alecia Bell, including but not limited to, in Plaintiff's communications with Alecia Bell and in Plaintiff's compliance complaint (See Orig. Complaint's Exhibit BB, Doc. 1-28, Pages 1, 3, and 4).

242.

In Alecia Bell's written letter of determination to Plaintiff, Alecia Bell states in her fourth bullet of key findings that, "Under the supervision of a new director, OSLER provides notes to accommodated students within a 24-48 hour period of each class and includes an email notification." See Orig. Complaint's Exhibit BO, Doc. 1-41, Page 2.

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[8] OSLER is Defined in Paragraph 24 as Office of Student Learning and Educational Resources

243.

This key finding of Alecia Bell is misleading in that MSM has not conducted any of its own analysis and this supposed key finding is mere speculation rather than a finding of fact.

244.

This key finding of Alecia Bell is misleading in that during the initial stages of the investigation regarding Plaintiff's compliance complaint, OSLER communicated to Alecia Bell that notes were provided weekly to students (See Orig. Complaint's Exhibit BB, Doc. 1-28, Pages 5-6), not within a 24-48 hour period of each class, which is contrary to Alecia Bell's key finding here.

245.

In Alecia Bell's written letter of determination to Plaintiff, Alecia Bell states that, "Compliance has determined that OSLER resolved the complaint, March 22, 2019. OSLER continues to provide class notes within 24-48 hours, meeting MSM's requirement to provide auxiliary aids and services to ensure effective participation in the medical school program." See Orig. Complaint's Exhibit BO, Doc. 1-41, Page 3.

246.

This statement made by Alecia Bell is at best self-serving in that nowhere in Alecia Bell's written letter of determination is it ever stated with such emphasis and clarity that MSM did not meet its requirements to provide auxiliary aids and service to ensure effective participation of Plaintiff in MSM's medical school program during Plaintiff's 2017-2018 and 2018-2019 academic school years, despite 'OSLER resolving a complaint,' nor does Alecia Bell's written letter of determination mention anything about the issues Plaintiff brought up in the compliance complaint as a result of MSM's failings, including but not limited to, Plaintiff's poor grades, Plaintiff's poor knowledgebase, and Plaintiff receiving financial injury (See Orig. Complaint's Exhibit BB, Doc. 1-28).

247.

On information and belief, Plaintiff's compliance complaint is being swept under the rug due to MSM's current reaffirmation of its accreditation with the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) (See Orig. Complaint's Exhibit BP, Doc. 1-42, Pages 1-2), and due to MSM's current reaffirmation of its accreditation with the Liaison Committee on Medical Education (LCME) (See Orig. Complaint's Exhibit BP, Doc. 1-42, Pages 3-7).

248.

On information and belief, Alecia Bell intentionally made numerous erroneous, misleading, unclear, arbitrary, self-serving, and false findings in her written letter of determination so as to preclude Plaintiff from being able to rely on it during Plaintiff's dismissal hearing.

249.

Despite Plaintiff being asked by Alecia Bell via phone meeting on or around June 19, 2020, to give MSM an opportunity to provide some solutions with regards to Plaintiff's compliance complaint (See Orig. Complaint's Exhibit BN, Doc. 1-40, Page 2), MSM has not made any attempted resolutions regarding Plaintiff's compliance complaint and accordingly, Plaintiff has been precluded from being a student for the 2020-2021 academic school year.

250.

On or around July 16, 2020, per the instructions on Page 5 of Orig. Complaint's Exhibit BM, Doc. 1-39, in preparation for Plaintiff's dismissal hearing, Plaintiff emailed Dr. Ngozi Anachebe, Associate Dean for Admission and Student Affairs, and asked if the dismissal hearing committee members will have access to Plaintiff's compliance complaint, and the findings made by the Office of

Compliance, to which Dr. Ngozi Anachebe responded on or around July 16, 2020, that Plaintiff's dismissal hearing is an academic hearing and the "Compliance Office, Office of Disability Services, Student Health Services, Morehouse Health Care, and Office of Counseling Services are not involved and their records are not part of [Plaintiff's] academic records." See Orig. Complaint's Exhibit BQ, Doc. 1-43, Pages 1-3.

251.

On or around July 28, 2020, MSM held a dismissal hearing against Plaintiff. See Orig. Complaint's Exhibit BM, Doc. 1-39.

252.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), has stated, under the "Dismissal and Suspension" subheading, under "The Student Academic Progress & Promotion Committee (SAPP)" heading, that,

> "The student is invited to appear in person to present their case, evidence, and context for the academic deficiencies. All documentary evidence pertinent to their case against dismissal must be provided to the Chair of the SAPP committee by the start of the dismissal hearing."

253.

In accordance with the preceding paragraph, on or around July 28, 2020, Plaintiff emailed six (6) exhibits, which are attached hereto as one collective exhibit (See Orig. Complaint's Exhibit BR, Doc. 1-44, Pages 1-29), to Dr. Brenda Klement, SAPP Committee Chair. See Orig. Complaint's Exhibit BS, Doc. 1-45.

254.

On or around July 28, 2020, Dr. Brenda Klement subsequently emailed Plaintiff asking, "Are you going to present this information during the hearing? Do you want me to show them to the committee on the screen as you go through each one? Or should the committee review the documents before you join the meeting?" See Orig. Complaint's Exhibit BS, Doc. 1-45.

255.

On or around July 28, 2020, Plaintiff responded to Dr. Brenda Klement's email stating that, "Ideally I would like the committee to look them over before the hearing. It could make things a lot easier for everyone," to which Dr. Brenda Klement responded via email with "ok, got it!" See Orig. Complaint's Exhibit BS, Doc. 1-45.

256.

At the start of Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff was informed, without warning, by Dr. Brenda Klement that the committee members had not, and were not, going to look over Plaintiff's dismissal hearing exhibits before the hearing, despite Dr. Brenda Klement affirming that they would (See Orig. Complaint's Exhibit BS, Doc. 1-45), and with no explanation as to why this decision was being made when Plaintiff was previously asked what method of disseminating Plaintiff's dismissal hearing exhibits Plaintiff wanted.

257.

At the start of Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff was informed, without warning, by Dr. Brenda Klement that the exhibits were to remain in Dr. Ngozi Anachebe's and Dr. Martha Elks's, Senior Associate Dean of Educational Affairs, possession.

258.

At the start of Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff was informed, without warning, by Dr. Brenda Klement that the exhibits would only be available for viewing by the dismissal hearing's committee members if Dr. Brenda Klement shared her screen to these committee members during Plaintiff's dismissal hearing.

259.

Plaintiff was without recourse for this surprise decision by MSM and its indifference of disseminating Plaintiff's dismissal hearing exhibits to the dismissal hearing's committee members prior to Plaintiff's dismissal hearing.

260.

Plaintiff gave an oral account of everything discussed in Plaintiff's dismissal hearing exhibits, including but not limited to, Plaintiff's reasonable note-taking accommodation that MSM granted to Plaintiff, MSM's failure in providing for Plaintiff's reasonable note-taking accommodation as described herein, Plaintiff's written complaints sent to MSM's Title IX Coordinator (Marla Thompson) as described herein, and MSM's failure in handling said complaints despite MSM's commitments and policies as outlined in MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 35, 65-68), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Pages 37, 70-72), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Pages 40, 71-73) as described herein, and in the event any of the committee members wanted to see any of Plaintiff's dismissal hearing exhibits (See Orig. Complaint's Exhibit BR, Doc. 1-44), Plaintiff would ask Dr. Brenda Klement to share her screen to the committee members.

261.

No committee members ever asked to see any of Plaintiff's dismissal hearing exhibits during Plaintiff's dismissal hearing.

262.

During Plaintiff's dismissal hearing on or around July 28, 2020, at least one committee member determined Plaintiff's reasonable note-taking accommodation, granted by MSM, as non-essential because Plaintiff had textbooks.

263.

During Plaintiff's dismissal hearing on or around July 28, 2020, at least one committee member determined Plaintiff's reasonable note-taking accommodation, granted by MSM, as non-essential because Plaintiff had access to class recordings.

264.

During Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff continually stressed that Plaintiff's note-taking accommodation was necessary to ensure Plaintiff had meaningful access to MSM's medical school program.

265.

During Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff continually stressed that failing to provide for Plaintiff's note-taking

accommodation, that MSM had granted to Plaintiff for the entirety of Plaintiff's medical school education, was very clear disability discrimination.

266.

During Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff continually stressed that the time periods in which MSM failed to provide Plaintiff's note-taking accommodation were necessary for Plaintiff to learn and understand normal human physiology; and that MSM has told its students that one cannot learn abnormal human physiology (the classes Plaintiff failed during the 2019-2020 academic school year) without first learning normal human physiology.

267.

During Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff also spoke about further attempts made by Plaintiff since January of 2020 to find resolutions to the problems Plaintiff was experiencing including, but not limited to, Plaintiff's time spent combing through two plus years of emails, compiling and conducting analytics with regards to Plaintiff's note-taking accommodation for the 2017-2018 and 2018-2019 academic school years, Plaintiff's meetings with Marla Thompson and Dr. Ngozi Anachebe, Plaintiff filing a compliance complaint, and Plaintiff sharing to Marla Thompson and Dr. Ngozi Anachebe Plaintiff's feelings of depression, anxiety, and panic attacks with regards to this entire situation.

268.

Prior to Plaintiff's dismissal hearing, at least three dismissal hearing committee members had knowledge of Plaintiff's compliance complaint, and on information and belief, all had knowledge of Plaintiff's compliance complaint at the time of Plaintiff's dismissal hearing.

269.

On or around July 28, 2020, Plaintiff was later notified via phone by Dr. Kennie Shepherd that Plaintiff was being dismissed from MSM.

270.

On or around July 30, 2020, Plaintiff received written notification of Plaintiff's dismissal from MSM's medical school program. See Orig. Complaint's Exhibit BT, Doc. 1-46.

271.

In its dismissal letter to Plaintiff, MSM alleges,

> "After careful consideration of the information you presented during the hearing, the written information you submitted to the committee (Exhibits A-F) [Plaintiff's Orig. Complaint's Exhibit BR, Doc. 1-44], and your academic transcript, the committee voted to dismiss you from Morehouse School of Medicine. The decision was based on the school's policy of receiving a final grade of D or F while in the decelerated track, and for receiving two or more final grades of D or F (Page 107, iii and viii, respectively, 2019-2020 Student Handbook) [Plaintiff's Exhibit AF]." See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2.

272.

In its dismissal letter to Plaintiff, MSM also alleges,

> "In addition, MSM has a policy that the 1st and 2nd Year Curriculum will consist of no more than 36 months excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook) [Plaintiff's Exhibit AF], and you have reached this time limit." See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2.

273.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101, MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108) has stated, under the "Dismissal and Suspension" subheading, under "The Student Academic Progress & Promotion Committee (SAPP)" heading, that, "The Chair of the SAPP committee will provide written information on the reasons for the dismissal hearing."

274.

Plaintiff was never notified or provided written information (See Orig. Complaint's Exhibit BD, Doc. 1-30, Page 4, and Orig. Complaint's Exhibit BM, Doc. 1-39, Page 4) that one of the reasons for MSM's dismissal hearing against Plaintiff, and one of the reasons MSM's dismissal of Plaintiff would ultimately be

for, was that "MSM has a policy that the 1st and 2nd Year Curriculum will consist of no more than 36 months excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook) [Plaintiff's See Orig. Complaint's Exhibit AF, Doc. 1-6], and [Plaintiff had] reached this time limit," (See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2).

275.

In violation of MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), MSM did not give Plaintiff notice and an opportunity to present Plaintiff's case, evidence, and context, regarding this particular reason Plaintiff was dismissed from MSM, nor was it ever brought up by anyone during Plaintiff's dismissal hearing.

276.

On information and belief, MSM has allowed other students to spend more than 36 months during their 1st and 2nd Year Curriculum.

277.

On information and belief, other students have been told by MSM all the reasons for their dismissal hearings and have thus been able to properly present their case, evidence, and context in their dismissal hearings.

278.

The acts and omissions of MSM, described herein, were either done with intentional animus or with deliberate indifference to the protected rights of Plaintiff as a person with disabilities.

279.

MSM knew that harm to Plaintiff's federally protected rights was substantially likely as a result of MSM's actions and inactions, and MSM failed to act on that likelihood.

280.

The actions of MSM, in its desire and commitment to dismiss Plaintiff, after knowing of MSM's discrimination of Plaintiff, were made for the sole purposes of discriminating against Plaintiff and intimidating, threatening, retaliating against, coercing, and interfering with Plaintiff's exercise or enjoyment of, or on account of Plaintiff having exercised or asserted Plaintiff's rights under the disability rights statutes.

281.

The actions of MSM, in its desire and commitment to dismiss Plaintiff, despite Alecia Bell asking Plaintiff on June 19, 2020, to give MSM an opportunity to provide some solutions for Plaintiff's compliance complaint (See Orig. Complaint's Exhibit BN, Doc. 1-40, Page 2) regarding the failure of MSM in accommodating Plaintiff's disability, were made for the sole purposes of discriminating against Plaintiff and intimidating, threatening, retaliating against, coercing, and interfering with Plaintiff's exercise or enjoyment of, or on account of Plaintiff having exercised or asserted Plaintiff's rights under the disability rights statutes.

282.

The actions of MSM, in its desire and commitment to dismiss Plaintiff, despite knowing that MSM has treated Plaintiff's written discrimination complaints with indifference, were made for the sole purposes of discriminating against Plaintiff and intimidating, threatening, retaliating against, coercing, and interfering with Plaintiff's exercise or enjoyment of, or on account of Plaintiff having exercised or asserted Plaintiff's rights under the disability rights statutes.

283.

Plaintiff has currently lost four years due to the actions and inactions of MSM (two years due to MSM's failure in accommodating Plaintiff in the 2017-2018 and 2018-2019 academic school years; one year, the 2019-2020 academic school year, due to the effects of MSM's failure in accommodating Plaintiff in the prior two years; and one year due to Plaintiff not being able to register as a student for the 2020-2021 academic school year).

284.

In its discrimination and dismissal of Plaintiff, MSM has taken away any reasonable opportunity for Plaintiff to ever study medicine or practice medicine, without corrective relief from MSM.

285.

Plaintiff would like to complete Plaintiff's education at MSM and obtain a medical degreed degree with the same range of opportunities, to perform Plaintiff's best, and to receive the same access to information in order to be able to make the most of Plaintiff's degree as any other student at MSM, free from discriminatory and retaliatory actions.

286.

As a result of the uncertainty of Plaintiff's future as a medical student due to the discrimination by MSM, as of the end of May of 2020, Plaintiff has been forced to move to Plaintiff's parent's residence in a metro county distant from MSM.

287.

As a result of the discrimination and denial of effective and appropriate auxiliary aids and services, the retaliation against Plaintiff, as well as MSM's discriminatory dismissal of Plaintiff, Plaintiff has experienced actual damages, non-economic damages, loss of educational opportunities, loss of employment opportunities, loss of research opportunities, loss of future income, increased financial debt, embarrassment, humiliation, emotional harm, mental and physical pain, and anguish

H. STUDENT LOANS, HEALTH INSURANCE, AND INFORMATION TECHNOLOGY ACCESS

288.

In the Summer of 2021, Plaintiff was supposed to graduate with a medical degree from MSM.

289.

In the event Plaintiff is reinstated as a student in MSM's medical school program, Plaintiff will have prior private student loans that will go into repayment, regardless of if Plaintiff is in school, in or around Summer of 2021.

290.

During the course of Plaintiff's compliance complaint and investigation, Plaintiff has communicated the status of what will happen with Plaintiff's private student loans to MSM.

291.

MSM has placed Plaintiff in a financially impossible position in that when Plaintiff is allowed to restart Plaintiff's medical school education, after MSM's discrimination of Plaintiff, Plaintiff will have to start paying back Plaintiff's prior private student loans while simultaneously attending MSM, which prohibits its students from obtaining employment if enrolled as a medical school student.

292.

MSM has further currently placed Plaintiff in a financially impossible position in that due to MSM's failure to adopt and publish grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of Plaintiff's complaint, all of Plaintiff's loans, private and

federal, obtained prior to Plaintiff's enrollment at MSM and during Plaintiff's enrollment at MSM, will go into repayment since Plaintiff is not currently enrolled as a student at MSM.

293.

MSM has placed Plaintiff in a financially impossible position in that all of Plaintiff's loans, private and federal, obtained prior to Plaintiff's enrollment at MSM and during Plaintiff's enrollment at MSM, will go into repayment since Plaintiff is not currently enrolled as a student at MSM, and due to the actions and inactions of MSM, Plaintiff has not received a medical degree.

294.

On or around May 27, 2020, Plaintiff asked Alecia Bell via phone conversation to look into what will happen to Plaintiff's health insurance, under MSM, during her compliance investigation and any other events that may follow regarding the resolution of Plaintiff's issues regarding Plaintiff's academic accommodations. See Orig. Complaint's Exhibit BU, Doc. 1-47, Pages 1-2.

295.

On or around May 27, 2020, Alecia Bell stated to Plaintiff via phone conversation that she would look into the status of Plaintiff's health insurance. See Orig. Complaint's Exhibit BU, Doc. 1-47, Pages 1-2.

296.

On or around June 30, 2020, Plaintiff asked Alecia Bell via email what she found out regarding the status of Plaintiff's health insurance. See Orig. Complaint's Exhibit BU, Doc. 1-47, Pages 1-2.

297.

On or around June 30, 2020, Alecia Bell subsequently notified Plaintiff via email that she had not looked into, nor had the answer, regarding what will happen to Plaintiff's health insurance, and told Plaintiff that she recommended that Plaintiff look into it. See Orig. Complaint's Exhibit BU, Doc. 1-47, Pages 1-2.

298.

On or around June 30, 2020, Plaintiff, later that day, found out that Plaintiff's last day of health insurance coverage was that very same day, June 30, 2020. See Orig. Complaint's Exhibit BV, Doc. 1-48.

299.

MSM, a medical school, has placed Plaintiff, one of its students, who has a disability, in a financially and medically disadvantageous position in that Plaintiff was given no warning of when Plaintiff's health insurance benefits would end, despite Plaintiff asking for answers about what will happen to Plaintiff's health insurance on or around May 27, 2020 (See Orig. Complaint's Exhibit BU, Doc. 1-

47, pages 1-2), leaving Plaintiff uninsured for the month of July 2020, and unable to secure health insurance until August of 2020, during the global COVID-19 pandemic.

300.

MSM has placed Plaintiff, who has a disability, in a financially and medically disadvantageous position in that Plaintiff lost access to Plaintiff's doctors and Plaintiff has had to use medications with less frequency than prescribed due to their uninsured high costs because MSM cancelled Plaintiff's health insurance without any warning, despite Plaintiff asking for answers about what will happen to Plaintiff's health insurance on or around May 27, 2020 (See Orig. Complaint's Exhibit BU, Doc. 1-47, Pages 1-2), during the global COVID-19 pandemic.

301.

On or around July 2, 2020, in response to Plaintiff losing health insurance coverage without any warning, Plaintiff fearfully emailed Alecia Bell, stating that Plaintiff could not deal with any more surprises, and that Plaintiff needed some assurances that Plaintiff will continue to have access to Plaintiff's school email and laptop computer (which will become Plaintiff's own laptop computer after graduating but currently requires a MSM-issued password to access and use) at

least until the resolution of Plaintiff's issues with MSM. See Orig. Complaint's Exhibit BW, Doc. 1-49, Pages 1-2.

302.

On or around July 2, 2020, in response to Plaintiff's email, Alecia Bell responded via email (with Marla Thompson cc-ed) stating, "I'll work with Marla Thompson to see how this can be addressed. I do not believe that your email or use of your laptop will be restricted unless or until you are dismissed from the institution." See Orig. Complaint's Exhibit BW, Doc. 1-49, Pages 1-2.

303.

On or around July 2, 2020, Marla Thompson subsequently responded to Alecia Bell via email (with Plaintiff cc-ed) stating, "I will engage the Registrar so you have clarity on how they manage this process. We will do what we are able to so [Plaintiff] is aware of this information today." See Orig. Complaint's Exhibit BW, Doc. 1-49, Pages 1-2.

304.

Plaintiff has never heard back from anyone at MSM about whether Plaintiff will continue to have access to Plaintiff's school email and laptop computer.

305.

On or around June 30, 2020, and on or around July 1, 2020, due to the possibility of Plaintiff needing to return to campus to possibly meet with anyone, or sign anything, regarding Plaintiff's issues with MSM, Plaintiff, after receiving emails that all students and staff returning to campus are required to get tested first, emailed Alecia Bell asking if Plaintiff should schedule a COVID-19 test; Alecia Bell chose not to respond to either email. See Orig. Complaint's Exhibit BX, Doc. 1-50, Pages 1-4.

I. PLAINTIFF'S APPEAL OF DISMISSAL AND OTHER FACTS

306.

In accordance with MSM's appeal policy and procedure (MSM's 2017-2018 Student Handbook, See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 101-102, MSM's 2018-2019 Student Handbook, See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107, and MSM's 2019-2020 Student Handbook, See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), on or around August 13, 2020, Plaintiff timely submitted a letter of Plaintiff's intent to appeal MSM's dismissal decision (See Amended Complaint's Exhibit BX-1) to Dr. Valerie Montgomery Rice, President and Dean of MSM, as well as accompanying attached exhibits (Appeal Exhibit A is Plaintiff's Orig. Complaint's Exhibit BT, Doc. 1-46, Pages 2-4, Appeal Exhibit

B is Plaintiff's Orig. Complaint's Exhibit BD, Doc. 1-30, Pages 4-5, Appeal Exhibit C is Plaintiff's Orig. Complaint's Exhibit BM, Doc. 1-39, Pages 4-5, and Appeal Exhibit D is Plaintiff's Orig. Complaint's Exhibit BR, Doc. 1-44, Pages 1-29).

307.

In addition to providing the same evidence to Dr. Valerie Montgomery Rice, President and Dean of MSM, as Plaintiff submitted to the SAPP Committee for Plaintiff's dismissal hearing (See Orig. Complaint's Exhibit BR, Doc. 1-44, Pages 1-29), Plaintiff also included new evidence/grounds (See Amended Complaint's Exhibit BX-1, Pages 2-7), in accordance with MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 101-102), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), under the "Student Appeals Procedure" subheading, due to failure of the SAPP Committee to follow proper procedures and due to prejudice toward the student by faculty and administrative members of the SAPP Committee.

308.

According to MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 101-102), MSM's 2018-2019 Student Handbook (See

Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), under the "Student Appeals Procedure" subheading, under the "The Student Academic Progress & Promotion Committee (SAPP)" heading, states that,

> "Each appeal by the student will be heard by the President/Dean within 10 working days of receipt [emphasis added] of the student's written notification of intent to appeal."

309.

Despite MSM's aforementioned policy about Student Appeals Procedure (See Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 101-102; Exhibit AE, Doc. 1-5, Page 107; and Exhibit AF, Doc. 1-6, Page 108), Plaintiff's appeal went unheard and unanswered.

310.

On or around September 8, 2020, MSM's counsel inquired to Plaintiff's counsel on whether or not Plaintiff ever appealed the dismissal decision by MSM, to which Plaintiff's counsel affirmed that Plaintiff in fact did appeal the dismissal and that no appeal hearing was ever conducted.

311.

Subsequently, during the evening of on or around September 8, 2020, 18 working days after Plaintiff submitted a written notification of intent to appeal, and

only after Plaintiff filed the present lawsuit, Dr. Valerie Montgomery Rice emailed Plaintiff in order to schedule Plaintiff's appeal hearing.

312.

On or around September 10, 2020, 20 working days after Plaintiff submitted a written notification of intent to appeal, Plaintiff's appeal hearing was conducted by Dr. Valerie Montgomery Rice, President and Dean of MSM.

313.

On September 15, 2020, Dr. Valerie Montgomery Rice, President and Dean of MSM, reversed Plaintiff's dismissal (See Amended Complaint's Exhibit BX-2), stating:

> "I find, among other things, that the record shows that the SAPP Committee was aware that when you started the MSM MD Program in July of 2017, you were approved for academic accommodations, which included a note-taker. The SAPP Committee was also aware that during your academic years 2017-2018 and 2018-2019 that you did not receive written notes from the note-taker within 24-48 hours of your courses/classes. The committee was also aware that as of the end of March 2019, you did begin to receive written notes through the note-taker within 24-48 hours.
>
> While I find there is sufficient evidence to support the SAPP Committee's decision to schedule you for a dismissal hearing, I additionally find the delay in the completion of your hearing was not proper. In addition, I find there is not sufficient evidence to support the SAPP Committee's decision to dismiss you from the MD program. For these reasons, I am reversing the SAPP Committee's decision to dismiss you from the MD program, effective immediately." See Amended Complaint's Exhibit BX-2, Pages 2-3.

314.

Thus, Dr. Valerie Montgomery Rice, President and Dean of MSM, found MSM's dismissal of Plaintiff improper and without sufficient evidence.

315.

On or around September 16, 2020, Dr. Martha Elks, Senior Associate Dean of Educational Affairs, emailed Plaintiff a proposed plan for Plaintiff's reentry into MSM's medical school program, without any input from Plaintiff, and without mentioning anything about grades or tuition. See Amended Complaint's Exhibit BX-3, Pages 2-3.

316.

MSM's proposed plan for Plaintiff's reentry only allowed for Plaintiff to retake the courses that Plaintiff failed during the 2019-2020 academic school year (pathology and pathophysiology) despite Dr. Valerie Montgomery Rice, President and Dean of MSM, finding that MSM failed to provide for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years (See Amended Complaint's Exhibit BX-2).

317.

MSM's proposed prejudicial plan for Plaintiff's reentry saw Plaintiff being thrown into classes around five (5) weeks after classes began on August 11, 2020,

and after the first Pathology exam, which MSM tells its student is the cornerstone of understanding the further material in the Pathology course because the material in the first exam is about the pathological processes that take place in all following material.

318.

Despite Dr. Valerie Montgomery Rice, President and Dean of MSM, finding that MSM failed to provide for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years, MSM attempted to charge Plaintiff the tuition for retaking these courses, currently $14,161.11 for the Fall 2020 semester. See Amended Complaint's Exhibit BX-4, Pages 5 and 10.

319.

On or around September 20, 2020, Plaintiff notified MSM that the proposed plan for Plaintiff's reentry was inequitable and prejudicial, and that Plaintiff could not realistically accept it. See Amended Complaint's Exhibit BX-3, Pages 1-2.

320.

As of October 31, 2020, Plaintiff is still being charged the Fall 2020 tuition of $14,161.11. See Amended Complaint's Exhibit BX-4, Page 10.

321.

On or around September 22, 2020, during a zoom conversation to discuss possible plans for Plaintiff's reentry into MSM's medical school program with Dr. Martha Elks, Senior Associate Dean of Educational Affairs, when Plaintiff asked if he would still be provided the note-taking accommodation, Dr. Martha Elks responded by saying,

> "As you're well aware, the challenge is...people aren't good notetakers anymore. The notetaking that was industrial strength thousands of years ago when I was in medical school...people don't take notes anymore. We can certainly provide you with notes. Would they be good notes? Not what I remember the class of '78 would have called good notes. But we're not the class of '78 anymore."

322.

On or around September 22, 2020, during a zoom conversation to discuss possible plans for Plaintiff's reentry into MSM's medical school program with Dr. Martha Elks, Senior Associate Dean of Educational Affairs, Plaintiff subsequently asked Dr. Martha Elks,

> "But they may not be good notes like you said, but ODS advertises a note-taking service for students with accommodations. I'm not saying you're wrong that the notes would not be good...how can you advertise a service while at the same time know it's trash?"

323.

On or around September 22, 2020, during a zoom conversation to discuss possible plans for Plaintiff's reentry into MSM's medical school program with Dr. Martha Elks, Senior Associate Dean of Educational Affairs, Dr. Martha Elks subsequently responded to Plaintiff's question stating,

> "I hear you on that. Let us just say politely that there are disconnects and I will leave it right there and move along…within our institution there are disconnects…there are many disconnects."

324.

Plaintiff has received poor grades, poor education, and a poor, disorganized and fragmented medical knowledgebase at MSM due to MSM failing to provide for Plaintiff's note-taking accommodation.

325.

Plaintiff must be able to restart his medical education to ensure Plaintiff receives a proper and satisfactory medical education, with Plaintiff's academic accommodations provided for, so that Plaintiff has a solid foundational medical knowledgebase, to enable Plaintiff to become the best physician he possibly can because someday Plaintiff will be responsible for patients' lives.

326.

Plaintiff's academic record at MSM must be deleted so Plaintiff is not forever prejudiced by having far less opportunities to practice medicine and in far fewer fields of medicine, due to the actions of MSM failing to provide for Plaintiff's note-taking accommodation.

327.

MSM opposes Plaintiff being able to restart his medical education with all of Plaintiff's accommodation in place, and MSM opposes Plaintiff being able to earn grades that equitably reflect Plaintiff's academic performance when all of Plaintiff's accommodations, including the note-taking accommodation, are being provided for.

328.

Thus, even though Plaintiff's discriminatory and improper dismissal has been overturned, MSM is still willfully taking steps to ensure Plaintiff is forever prejudiced, due to MSM's previous discriminatory and retaliatory actions.

329.

The actions of all agents and employees of MSM alleged herein were in furtherance of and within the scope of MSM's business.

330.

On information and belief, MSM enforces its policies, including but not limited to MSM's Student Handbooks, against students as if MSM agreed to them, for instance tuition and fees (*see* Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 18-24; Exhibit AE, Doc. 1-5, Pages 19-26; and Exhibit AF, Doc. 1-6, Pages 20-28), refunds (*see* Orig. Complaint's Exhibit AD, Doc. 1-4, Page 18; Exhibit AE, Doc. 1-5, Page 19; and Exhibit AF, Doc. 1-6, Page 20), dismissal of students (*see* Orig. Complaint's Exhibit AD, Doc. 1-4, Pages 97-102; Exhibit AE, Doc. 1-5, Pages 103-108; and Exhibit AF, Doc. 1-6, Pages 104-109), but when students attempt to enforce MSM policies, including but not limited to MSM's Student Handbooks, against MSM, MSM claims it has not assented to those policies despite writing them and making its students contractually assent to them.

331.

During the 2017-2018 academic school year, many students came forward to anonymously share their grievances, complaints, and injustices by faculty and staff at MSM.

332.

Plaintiff has suffered economic injury due to MSM's discrimination with Plaintiff having taken out loans to attend MSM for three (3) years in the amount of

$184,279.00, and their presently accrued interest of $18,494.00, totaling $202,773.00, and Plaintiff has had to hire counsel and currently has over $52,000 in attorney's fees on account at $400/hour.

COUNT I - VIOLATION OF THE REHABILITATION ACT - FAILURE TO ACCOMMODATE

333.

Plaintiff realleges, repeats, and incorporates by reference herein paragraphs 1 to 332.

334.

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations, 34 C.F.R. § 104.1, *et seq.*, require that,

> "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794 and 34 C.F.R. § 104.4.

335.

Plaintiff is a person with a disability under the Rehabilitation Act and its implementing regulations. 29 U.S.C. § 705(9), 29 U.S.C. § 705(20), 29 U.S.C. § 705(37)(A)(ii)(II), 42 U.S.C. § 12102, and 34 C.F.R. § 104.3(j).

336.

Under the education regulations of the Rehabilitation Act, a "qualified handicapped person" is:

> "With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity." 34 C.F.R. § 104.3(l)(3).

337.

Plaintiff is a qualified individual with disabilities under the Rehabilitation Act. 29 U.S.C. § 794 and 34 C.F.R. § 104.3(l)(3).

338.

MSM by its own admission found Plaintiff to be a qualified individual in that the note-taking accommodation was granted to Plaintiff, and the note-taking accommodation was only available for "qualified students." See Orig. Complaint's Exhibit AI, Doc. 1-9, Pages 1-3, and Orig. Complaint's Exhibit AJ, Doc. 1-10, Page 2.

339.

MSM is a program or activity under the Rehabilitation Act. 29 U.S.C. § 794(b)(2)(A), 29 U.S.C. § 794(b)(3)(A), 34 C.F.R. § 104.3(k)(2)(i), and 34 C.F.R. § 104.3(k)(3)(i)(B).

340.

MSM is a recipient "to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance." 34 C.F.R. § 104.3(f).

341.

At all times relevant to the allegations of the within complaint, MSM has been a recipient of Federal financial assistance including, but not limited to, those under Title IV of the Higher Education Act, Federal student financial aid in the form of tuition payments, loans, grants, subsidies, and other funds. 34 C.F.R. § 104.3(h).

342.

MSM has signed and filed assurances of compliance with the Department of Education conditioning the receipt of Federal financial assistance on continued compliance with the Rehabilitation Act. 34 C.F.R. § 104.5.

343.

A party establishes a Section 504 Rehabilitation Act violation where (a) he or she is disabled, as defined by the Act; (b) he or she is "otherwise qualified" to participate in school activities; (c) the school receives federal financial assistance;

and (d) he or she was excluded from participation in, denied benefits of, or subject to discrimination at, the school. 34 C.F.R. § 104.2-104.4.

344.

By definition, a postsecondary institution, such as MSM, violates Section 504 of the Rehabilitation Act where it fails to provide accommodations to a disabled student. 34 C.F.R. § 104.4 and 34 C.F.R. § 104.44.

345.

Plaintiff's note-taking accommodation is an accommodation, and auxiliary aid or service under the Rehabilitation Act and its implementing regulations. 34 C.F.R. § 104.44(a,d).

346.

Plaintiff has been subjected to a continuing pattern of discrimination under the Rehabilitation Act, and its implementing regulations, as a result of MSM's failure to provide for Plaintiff's note-taking accommodation, during Plaintiff's 2017-2018 and 2018-2019 academic school years, that MSM granted to Plaintiff. 29 U.S.C. § 794, 34 C.F.R. § 104.4, 34 C.F.R. § 104.43, and 34 C.F.R. § 104.44.

347.

Plaintiff's note-taking accommodation was necessary to ameliorate Plaintiff's disability's effect of preventing meaningful access to the benefits of, or participation in, MSM's medical school program, and allow Plaintiff to meet the essential requirements of MSM's MD Program.

348.

MSM exhibited a continuing pattern of discrimination under the Rehabilitation Act, and its implementing regulations, against Plaintiff by denying Plaintiff the opportunity to participate in, or benefit from, the services or accommodations of the medical school program at MSM by failing to provide the note-taking accommodation it granted to Plaintiff during the 2017-2018 and 2018-2019 academic school years. 34 C.F.R. § 104.44(a,d), 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.43, and 34 C.F.R. § 104.4(b)(1)(i-iii).

349.

Plaintiff has been subjected to a continuing pattern of discrimination under the Rehabilitation Act, and its implementing regulations, as a result of MSM's actions and inactions, regarding MSM's failure in providing for Plaintiff's note-taking accommodation, granted to Plaintiff by MSM, which has resulted in Plaintiff receiving poor grades, a poor academic knowledgebase, and ultimately

resolution of complaints alleging any action prohibited by the Rehabilitation Act and its implementing regulations. 34 C.F.R. § 104.7.

352.

MSM has knowledge of its obligations under the Rehabilitation Act and has acted either with intentional animus or with deliberate indifference of Plaintiff's federally protected rights.

353.

MSM knew that harm to Plaintiff's federally protected rights was substantially likely as a result of MSM's actions and inactions, and MSM failed to act on that likelihood.

354.

All of the actions and inactions described herein were adverse to Plaintiff.

355.

Plaintiff has been subjected to a continuing pattern of discrimination under the Rehabilitation Act, and its implementing regulations, as a result of MSM's failure to provide for Plaintiff's note-taking accommodation, that MSM granted to Plaintiff, creating a hostile learning/education/educational environment, and the continuing violations doctrine/theory is applicable regardless.

356.

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 7:

391a – 455a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

As a result of MSM's actions, Plaintiff has suffered actual damages, non-economic damages, embarrassment, humiliation, emotional harm, mental and physical pain, and anguish.

357.

As a result of MSM's actions, Plaintiff has experienced economic and general loss of educational opportunities, loss of employment opportunities, loss of research opportunities, increased financial debt, and loss of future income.

358.

Plaintiff has suffered economic injury due to MSM's discrimination with Plaintiff having taken out loans to attend MSM for three (3) years in the amount of $184,279.00, and their presently accrued interest of $18,494.00, totaling $202,773.00.

359.

Plaintiff has had to hire counsel and currently has over $52,000 in attorney's fees on account at $400/hour. 29 U.S.C. § 794a(b).

COUNT II - VIOLATION OF THE REHABILITATION ACT - DISPARATE TREATMENT

360.

Plaintiff realleges, repeats, and incorporates by reference herein paragraphs 1 to 332.

361.

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations, 34 C.F.R. § 104.1, *et seq.*, require that,

> "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794 and 34 C.F.R. § 104.4.

362.

Plaintiff is a person with a disability under the Rehabilitation Act and its implementing regulations. 29 U.S.C. § 705(9), 29 U.S.C. § 705(20), 29 U.S.C. § 705(37)(A)(ii)(II), 42 U.S.C. § 12102, and 34 C.F.R. § 104.3(j).

363.

Under the education regulations of the Rehabilitation Act, a "qualified handicapped person" is:

> "With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity." 34 C.F.R. § 104.3(l)(3).

364.

Plaintiff is a qualified individual with disabilities under the Rehabilitation Act. 29 U.S.C. § 794 and 34 C.F.R. § 104.3(l)(3).

365.

MSM by its own admission found Plaintiff to be a qualified individual in that the note-taking accommodation was granted to Plaintiff, and the note-taking accommodation was only available for "qualified students." See Orig. Complaint's Exhibit AI, Doc. 1-9, Pages 1-3, and Orig. Complaint's Exhibit AJ, Doc. 1-10, Page 2.

366.

MSM is a program or activity under the Rehabilitation Act. 29 U.S.C. § 794(b)(2)(A), 29 U.S.C. § 794(b)(3)(A), 34 C.F.R. § 104.3(k)(2)(i), and 34 C.F.R. § 104.3(k)(3)(i).

367.

MSM is a recipient "to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or

transferee of a recipient, but excluding the ultimate beneficiary of the assistance." 34 C.F.R. § 104.3(f).

368.

At all times relevant to the allegations of the within complaint, MSM has been a recipient of Federal financial assistance including, but not limited to, those under Title IV of the Higher Education Act, Federal student financial aid in the form of tuition payments, loans, grants, subsidies, and other funds. 34 C.F.R. § 104.3(h).

369.

MSM has signed and filed assurances of compliance with the Department of Education conditioning the receipt of Federal financial assistance on continued compliance with the Rehabilitation Act. 34 C.F.R. § 104.5.

370.

A party establishes a Section 504 Rehabilitation Act violation where (a) he or she is disabled, as defined by the Act; (b) he or she is "otherwise qualified" to participate in school activities; (c) the school receives federal financial assistance; and (d) he or she was excluded from participation in, denied benefits of, or subject to discrimination at, the school. 34 C.F.R. § 104.2-104.4.

371.

MSM excluded Plaintiff from participation in and has denied Plaintiff the benefits of its services, programs, and activities, as described herein.

372.

As described herein, MSM exhibited a continuing pattern of discrimination against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, as a result of MSM's actions and inactions, regarding the note-taking accommodation MSM granted to Plaintiff and failed to provide to Plaintiff, during Plaintiff's 2017-2018 and 2018-2019 academic school years, which resulted in Plaintiff receiving poor grades, a poor academic knowledgebase, and ultimately being dismissed from MSM's medical school program. 29 U.S.C. § 794(a), 34 C.F.R. § 104.4(a), 34 C.F.R. § 104.4(b)(1)(i-iii), 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.43(c-d), and 34 C.F.R. § 104.44(a,d).

373.

MSM exhibited a continuing pattern of discrimination against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, by failing to provide for Plaintiff's note-taking accommodation and failing to provide Plaintiff with educational and other services that are as effective in affording equal opportunity as the services provided to students without

disabilities. 29 U.S.C. § 794(a), 34 C.F.R. § 104.4(a), 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.44(a,d).

374.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because MSM's Office of Compliance needed to spend over three and a half months [Plaintiff's compliance complaint was filed on or around March 28, 2020 (See Orig. Complaint's Exhibit BB, Doc. 1-28), and MSM's written letter of determination was sent to Plaintiff on or around July 14, 2020 (See Orig. Complaint's Exhibit BO, Doc. 1-41)] investigating Plaintiff's compliance complaint, which, by MSM's Office of Compliance's own admission, consisted overall of only four to five total meetings.

375.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, the compliance complaints of students without disabilities receive prompt and equitable resolutions. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.44(d).

376.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, by Alecia Bell's written letter of determination to Plaintiff (See Orig. Complaint's Exhibit BO, Doc. 1-41), regarding Plaintiff's compliance complaint, which contained numerous erroneous, misleading, unclear, arbitrary, self-serving and false findings in her written letter of determination sent to Plaintiff. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.7.

377.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff's compliance complaint is being swept under the rug due to MSM's current reaffirmation of its accreditation with the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) (See Orig. Complaint's Exhibit BP, Doc. 1-42, Pages 1-2), and due to MSM's current reaffirmation of its accreditation with the Liaison Committee on Medical Education (LCME) (See Orig. Complaint's Exhibit BP, Doc. 1-42, Pages 3-7). 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.44(a,d).

378.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because Alecia Bell intentionally made numerous erroneous, misleading, unclear, arbitrary, self-serving, and false findings in her written letter of determination so as to preclude Plaintiff from being able to rely on it during Plaintiff's dismissal hearing. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, and 34 C.F.R. § 104.44(a,d).

379.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff was not offered any explanation as to why MSM's dismissal hearing against Plaintiff was postponed and later rescheduled. See Orig. Complaint's Exhibit BE, Doc. 1-31, Page 1, and Orig. Complaint's Exhibit BM, Doc. 1-39, Pages 1-5.

380.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because students without disabilities are provided with open and honest communication regarding adverse proceedings against them. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.7.

381.

According to MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 70), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AG, Doc. 1-7, Page 74), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 75), under the "Compliance Hotline" heading, that,

> "[MSM] is an organization with strong values of responsibility and integrity. Our written standards and policies contain general guidelines for conducting business with the highest standards of ethics. The institution is committed to an environment where open, honest communications are the expectation, not the exception."

382.

MSM's Office of Compliance made a determination, albeit one that was purposely unclear and limited on details and admissions, that MSM failed to provide for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years.

383.

During Plaintiff's dismissal hearing, the dismissal hearing committee members were made aware that Plaintiff has a disability, that MSM failed to provide for Plaintiff's note-taking accommodation, and MSM failed to investigate Plaintiff's written discrimination complaints and take appropriate corrective action.

384.

During Plaintiff's dismissal hearing, Plaintiff communicated to the committee members that Plaintiff's note-taking accommodation was necessary for Plaintiff to have meaningful access and failing to provide the accommodation was very clear disability discrimination.

385.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because at the start of Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff was informed, without warning, by Dr. Brenda Klement that the committee members had not, and were not, going to look over Plaintiff's dismissal hearing exhibits before the hearing, despite Dr. Brenda Klement affirming that they would (See Orig. Complaint's Exhibit BS, Doc. 1-45), and with no explanation as to why this decision was being made when Plaintiff was previously asked what method of disseminating Plaintiff's dismissal hearing exhibits Plaintiff wanted. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.7.

386.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, students without disabilities have their dismissal hearing exhibits read by the committee members before their dismissal hearings. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.7.

387.

In MSM's dismissal letter to Plaintiff, MSM alleges, "After careful consideration of the information you presented during the hearing, the written information you submitted to the committee (Exhibits A-F) [Plaintiff's Orig. Complaint's Exhibit BR, Doc. 1-44], and your academic transcript, the committee voted to dismiss you from Morehouse School of Medicine." See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2.

388.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because all of the committee members of Plaintiff's dismissal hearing did not carefully consider Plaintiff's exhibits because the exhibits remained in the possession of Dr. Ngozi

Anachebe and Dr. Martha Elks, and not in the possession of all committee members for them to carefully consider. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.44(a,d).

389.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, students without disabilities have their dismissal hearing exhibits truly carefully considered by the committee members in their determination of being dismissed from MSM or not. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.44(a,d).

390.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, in that during Plaintiff's dismissal hearing on or around July 28, 2020, at least one committee member determined Plaintiff's reasonable note-taking accommodation, granted by MSM, as non-essential because Plaintiff had textbooks. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.43(d), and 34 C.F.R. § 104.44(a,d).

391.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, in that during Plaintiff's dismissal hearing on or around July 28, 2020, at least one committee member determined Plaintiff's reasonable note-taking accommodation, granted by MSM, as non-essential because Plaintiff had access to class recordings. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.43(d), and 34 C.F.R. § 104.44(a,d).

392.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, MSM does not treat the services and accommodations that students without disabilities require to be successful, that MSM has agreed to provide, with the same indifference that MSM showed Plaintiff's note-taking accommodation, that MSM granted to Plaintiff. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.44(a,d), 34 C.F.R. § 104.4(b)(1)(ii-iii), 34 C.F.R. § 104.43(d), 29 U.S.C. § 794(a), and 34 C.F.R. § 104.4(a).

393.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, by excluding Plaintiff from equal participation in MSM's medical school program via MSM's failure to provide for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years, and MSM's ultimate dismissal of Plaintiff from its medical school program. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(i-iii), 34 C.F.R. § 104.43(c), and 34 C.F.R. § 104.44(a,d).

394.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, MSM makes sure that its students without disabilities get the services and accommodations that MSM has agreed to provide them prior to a dismissal hearing. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.44(a,d).

395.

In MSM's dismissal letter to Plaintiff, MSM alleges, "MSM has a policy that the 1st and 2nd Year Curriculum will consist of no more than 36 months

excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook) [Plaintiff's Orig. Complaint's Exhibit AF, Doc. 1-6], and you have reached this time limit." See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2.

396.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, MSM has allowed other students to spend more than 36 months during their 1st and 2nd Year Curriculum. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.7, 34 C.F.R. § 104.4(b)(1)(i-iii), 34 C.F.R. § 104.43(c), and 34 C.F.R. § 104.44(a,d).

397.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101, MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108) has stated, under the "Dismissal and Suspension" subheading, under "The Student Academic Progress & Promotion Committee (SAPP)" heading, that, "The Chair of the SAPP committee will provide written information on the reasons for the dismissal hearing."

398.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff was never notified or provided written information (See Orig. Complaint's Exhibit BD, Doc. 1-30, Page 4, and Orig. Complaint's Exhibit BM, Doc. 1-39, Page 4) that one of the reasons for MSM's dismissal hearing against Plaintiff, and one of the reasons MSM's dismissal of Plaintiff would ultimately be for, was that "MSM has a policy that the 1st and 2nd Year Curriculum will consist of no more than 36 months excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook) [Plaintiff's Orig. Complaint's Exhibit AF, Doc. 1-6], and [Plaintiff had] reached this time limit," (See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2). 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(i-iii), 34 C.F.R. § 104.43(c), 34 C.F.R. § 104.44(a,d), and 34 C.F.R. § 104.7.

399.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff was not able to present Plaintiff's case, evidence, and context, regarding this reason Plaintiff was dismissed from MSM in accordance with MSM's Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101; Exhibit AE,

Doc. 1-5, Page 107; and Exhibit AF, Doc. 1-6, Page 108). 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(i-iii), 34 C.F.R. § 104.43(c), and 34 C.F.R. § 104.7.

400.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, as on information and belief, students without disabilities are provided all the reasons for their dismissal hearings, and have thus been able to properly present their case, evidence, and context during their dismissal hearings in accordance with MSM's Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101; Exhibit AE, Doc. 1-5, Page 107; and Exhibit AF, Doc. 1-6, Page 108). 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(ii-iii), and 34 C.F.R. § 104.7.

401.

In MSM's dismissal letter to Plaintiff, MSM alleges, "After careful consideration of the information you presented during the hearing, the written information you submitted to the committee (Exhibits A-F) [Plaintiff's Orig. Complaint's Exhibit BR, Doc. 1-44], and your academic transcript, the committee voted to dismiss you from Morehouse School of Medicine. The decision was based on the school's policy of receiving a final grade of D or F while in the decelerated track, and for receiving two or more final grades of D or F (Page 107, iii and viii,

respectively, 2019-2020 Student Handbook) [Plaintiff's Orig. Complaint's Exhibit AF, Doc. 1-6]," (See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2).

402.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, students without disabilities who have received two or more final grades of D or F while in the decelerated track have not been dismissed by MSM. 34 C.F.R. § 104.4(b)(4), 34 C.F.R. § 104.4(b)(1)(i-iii), 34 C.F.R. § 104.43(c), and 34 C.F.R. § 104.44(a,d).

403.

MSM discriminated against Plaintiff under the Rehabilitation Act and its implementing regulations, on the basis of Plaintiff's disability, because MSM failed to provide Plaintiff an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to Plaintiff's needs. 34 C.F.R. § 104.43(d) and 34 C.F.R. § 104.4(b)(1)(ii-iii).

404.

MSM chose to dismiss Plaintiff because of the effects that MSM caused by not providing for Plaintiff's note-taking accommodation that was granted by MSM solely because of Plaintiff's disability.

405.

Thus, MSM dismissed Plaintiff, an adverse action, solely because of his disability.

406.

According to MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 102), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), under the "Student Appeals Procedure" subheading, under the "The Student Academic Progress & Promotion Committee (SAPP)" heading,

> "Each appeal by the student will be heard by the President/Dean within 10 working days of receipt [emphasis added] of the student's written notification of intent to appeal."

407.

Despite MSM's commitments and policies as outlined above in its contract with Plaintiff, Plaintiff's August 13, 2020 appeal to Dr. Valerie Montgomery Rice,

President and Dean of MSM, (Amended Complaint's Exhibit BX-1) went unheard and unanswered.

408.

MSM discriminated against Plaintiff by denying Plaintiff the benefits of, and excluding Plaintiff from participation in, a timely appeal hearing as outlined in MSM's student handbook.

409.

On or around September 8, 2020, MSM's counsel inquired to Plaintiff's counsel on whether or not Plaintiff ever appealed the dismissal decision by MSM, to which Plaintiff's counsel affirmed that Plaintiff in fact did appeal the dismissal and that no appeal hearing was ever conducted.

410.

Subsequently, during the evening of on or around September 8, 2020, 18 working days after Plaintiff submitted a written notification of intent to appeal, and only after Plaintiff filed the present lawsuit, Dr. Valerie Montgomery Rice emailed Plaintiff in order to schedule Plaintiff's appeal hearing.

411.

On or around September 10, 2020, 20 working days after Plaintiff submitted a written notification of intent to appeal, Plaintiff's appeal hearing was conducted by Dr. Valerie Montgomery Rice.

412.

On September 15, 2020, Dr. Valerie Montgomery Rice reversed Plaintiff's dismissal (See Amended Complaint's Exhibit BX-2), stating:

> "I find, among other things, that the record shows that the SAPP Committee was aware that when you started the MSM MD Program in July of 2017, you were approved for academic accommodations, which included a note-taker. The SAPP Committee was also aware that during your academic years 2017-2018 and 2018-2019 that you did not receive written notes from the note-taker within 24-48 hours of your courses/classes. The committee was also aware that as of the end of March 2019, you did begin to receive written notes through the note-taker within 24-48 hours.
>
> While I find there is sufficient evidence to support the SAPP Committee's decision to schedule you for a dismissal hearing, I additionally find the delay in the completion of your hearing was not proper. In addition, I find there is not sufficient evidence to support the SAPP Committee's decision to dismiss you from the MD program. For these reasons, I am reversing the SAPP Committee's decision to dismiss you from the MD program, effective immediately." See Amended Complaint's Exhibit BX-2.

413.

Thus, Dr. Valerie Montgomery Rice, President and Dean of MSM, found MSM's dismissal of Plaintiff improper and without sufficient evidence.

414.

MSM has failed to adopt and publish grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Rehabilitation Act and its implementing regulations. 34 C.F.R. § 104.7.

415.

MSM has knowledge of its obligations under the Rehabilitation Act and its implementing regulations, and MSM has acted with intentional animus and deliberate indifference of Plaintiff's federally protected rights.

416.

MSM knew that harm to Plaintiff's federally protected rights was substantially likely as a result of MSM's actions and inactions, and MSM failed to act on that likelihood.

417.

All of the actions and inactions described herein were adverse to Plaintiff and did not happen to students without disabilities.

418.

Plaintiff has been subjected to a continuing pattern of discrimination under the Rehabilitation Act, and its implementing regulations, as a result of MSM's

discrimination against Plaintiff creating a hostile learning/education/educational environment, and the continuing violations doctrine/theory is applicable regardless.

419.

As a result of MSM's actions, Plaintiff has suffered actual damages, non-economic damages, embarrassment, humiliation, emotional harm, mental and physical pain, and anguish.

420.

As a result of MSM's actions, Plaintiff has experienced economic and general loss of educational opportunities, loss of employment opportunities, loss of research opportunities, increased financial debt, and loss of future income.

421.

Plaintiff has suffered economic injury due to MSM's discrimination with Plaintiff having taken out loans to attend MSM for three (3) years in the amount of $184,279.00, and their presently accrued interest of $18,494.00, totaling $202,773.00.

422.

Plaintiff has had to hire counsel and currently has over $52,000 in attorney's fees on account at $400/hour. 29 U.S.C. § 794a(b).

COUNT III - VIOLATION OF THE ADA - FAILURE TO ACCOMMODATE

423.

Plaintiff realleges, repeats, and incorporates by reference herein paragraphs 1 to 332.

424.

Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182, and its implementing regulations, 28 C.F.R. § 36.101, *et seq.*, require that,

> "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a).

425.

Plaintiff is a person with a disability under the ADA and its implementing regulations. 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.

426.

Plaintiff is a qualified individual with disabilities under the ADA.

427.

MSM by its own admission found Plaintiff to be a qualified individual in that the note-taking accommodation was granted to Plaintiff, and the note-taking accommodation was only available for "qualified students." See Orig. Complaint's

12103(1)(D), 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

433.

Plaintiff's note-taking accommodation was necessary to ameliorate Plaintiff's disability's effect of preventing meaningful access to the benefits of, or participation in, MSM's medical school program, and allow Plaintiff to meet the essential requirements of MSM's MD Program.

434.

As described herein, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, during the 2017-2018 and 2018-2019 academic school years, in that Plaintiff could not experience full and equal enjoyment of MSM's services because of MSM's failure in providing the note-taking accommodation it granted to Plaintiff. 42 U.S.C. § 12182(a), 28 C.F.R. § 36.201(a), 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a), 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), and 28 C.F.R. § 36.303(a-c).

435.

During Plaintiff's 2017-2018 and 2018-2019 academic school years, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA

and its implementing regulations, on the basis of Plaintiff's disability, by denying Plaintiff the opportunity to participate in or benefit from the services or accommodations of the medical school program at MSM by failing to provide the note-taking accommodation it granted to Plaintiff. 42 U.S.C. § 12182(a), 28 C.F.R. § 36.201(a), 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a), 42 U.S.C. § 12182(b)(1)(A)(i), 28 C.F.R. § 36.202(a), and 28 C.F.R. § 36.303(a-c).

436.

During Plaintiff's 2017-2018 and 2018-2019 academic school years, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, as a result of MSM's failure to obtain and timely provide effective educational auxiliary aids and services, the note-taking accommodation that MSM already granted to Plaintiff, during Plaintiff's 2017-2018 and 2018-2019 academic school years. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a) and 28 C.F.R. § 36.303(a-c).

437.

As described herein, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by failing to make reasonable modifications in policies, practices, or procedures, during the entirety of Plaintiff's medical school education

at MSM, when such modifications were necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to Plaintiff, regarding the note-taking accommodation granted to Plaintiff by MSM during the 2017-2018 and 2018-2019 academic school years. 42 U.S.C. § 12182(b)(2)(A)(ii) and 28 C.F.R. § 36.302(a).

438.

MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by failing to timely provide for Plaintiff's note-taking accommodation, granted to Plaintiff by MSM, during the 2017-2018 and 2018-2019 academic school years. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

439.

MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, as a result of MSM's actions and inactions, regarding the note-taking accommodation MSM granted to Plaintiff and failed to provide to Plaintiff, during Plaintiff's 2017-2018 and 2018-2019 academic school years, which resulted in Plaintiff receiving poor grades, a poor academic knowledgebase, and ultimately being dismissed from

MSM's medical school program. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), 28 C.F.R. § 36.303(a-c), 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(i-iii), and 28 C.F.R. § 36.202(a-b).

440.

During the entirety of Plaintiff's medical school education at MSM, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by affording Plaintiff only an opportunity to participate in, or benefit from, the aid, benefit, privilege, service, or accommodation, offered by MSM, that was not equal to that afforded to others. 42 U.S.C. § 12182(b)(1)(A)(ii) and 28 C.F.R. § 36.202(b).

441.

The failure of MSM to timely provide appropriate educational services, accommodations, and adaptations to Plaintiff, has, among other things, exacerbated the impact of the Plaintiff's disabilities; interfered with Plaintiff's ability to meaningfully participate with Plaintiff's peers; and deferred Plaintiff's ability to engage and be included in educational opportunities, programs, and services to which Plaintiff would have had access if Plaintiff had received appropriate accommodations, adaptations, and related services in a timely manner. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), 28 C.F.R. § 36.303(a-c), 42 U.S.C. §

12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(i-iii), and 28 C.F.R. § 36.202(a-b).

442.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by failing to provide Plaintiff an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to Plaintiff's needs by MSM's failure to provide for Plaintiff's note-taking accommodation, which MSM granted to Plaintiff for the entirety of Plaintiff's medical school education at MSM. 42 U.S.C. § 12182(b)(1)(B) and 28 C.F.R. § 36.203(a).

443.

MSM has knowledge of its obligations under the ADA and its implementing regulations, and MSM has acted either with intentional animus or in deliberate indifference of Plaintiff's federally protected rights.

444.

MSM knew that harm to Plaintiff's federally protected rights was substantially likely as a result of MSM's actions and inactions, and MSM failed to act on that likelihood.

445.

All of the actions and inactions described herein were adverse to Plaintiff.

446.

Plaintiff has been subjected to a continuing pattern of discrimination under the ADA, and its implementing regulations, as a result of MSM's failure to provide for Plaintiff's note-taking accommodation, that MSM granted to Plaintiff, creating a hostile learning/education/educational environment, and the continuing violations doctrine/theory is applicable regardless.

447.

As a result of MSM's actions, Plaintiff has suffered actual damages, non-economic damages, embarrassment, humiliation, emotional harm, mental and physical pain, and anguish.

448.

As a result of MSM's actions, Plaintiff has experienced economic and general loss of educational opportunities, loss of employment opportunities, loss of research opportunities, increased financial debt, and loss of future income.

449.

Plaintiff has had to hire counsel and currently has over $52,000 in attorney's fees on account at $400/hour. 28 C.F.R. § 36.505 and 42 U.S.C. § 2000a-3(b).

COUNT IV - VIOLATION OF THE ADA - DISPARATE TREATMENT

450.

Plaintiff realleges, repeats, and incorporates by reference herein paragraphs 1 to 332.

451.

Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182, and its implementing regulations, 28 C.F.R. § 36.101, *et seq.*, require that,

> "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a).

452.

Plaintiff is a person with a disability under the ADA and its implementing regulations. 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.

453.

Plaintiff is a qualified individual with disabilities under the ADA.

454.

MSM by its own admission found Plaintiff to be a qualified individual in that the note-taking accommodation was granted to Plaintiff, and the note-taking accommodation was only available for "qualified students." See Orig. Complaint's

Exhibit AI, Doc. 1-9, Pages 1-3, and Orig. Complaint's Exhibit AJ, Doc. 1-10, Page 2.

455.

MSM is a private entity under Title III of the ADA and its implementing regulations. 42 U.S.C. § 12181(6), 42 U.S.C. § 12181(7)(J), and 28 C.F.R. § 36.104.

456.

Title III of the ADA requires that a postgraduate private school, such as MSM, not discriminate against students on the basis of disability. 42 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(a).

457.

MSM excluded Plaintiff from participation in and has denied Plaintiff the benefits of its services, programs, and activities, as described herein.

458.

As described herein, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, as a result of MSM's actions and inactions, regarding the note-taking accommodation MSM granted to Plaintiff and failed to provide to Plaintiff, during Plaintiff's 2017-2018 and 2018-2019 academic school years,

which resulted in Plaintiff receiving poor grades, a poor academic knowledgebase, and ultimately being dismissed from MSM's medical school program. 42 U.S.C. § 12182(a), 28 C.F.R. § 36.201(a), 42 U.S.C. § 12182(b)(1)(A)(i-ii), 28 C.F.R. § 36.202(a-b), 42 U.S.C. § 12182(b)(1)(B), 28 C.F.R. § 36.203(a), 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

459.

As described herein, MSM exhibited a continuing pattern of discrimination against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by failing to provide for Plaintiff's note-taking accommodation and failing to provide Plaintiff with educational and other services that are as effective in affording equal opportunity as the services provided to students without disabilities. 42 U.S.C. § 12182(a), 28 C.F.R. § 36.201(a), 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

460.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because MSM's Office of Compliance needed to spend over three and a half months [Plaintiff's compliance complaint was filed on or around March 28, 2020 (See Orig. Complaint's Exhibit

BB, Doc. 1-28), and MSM's written letter of determination was sent to Plaintiff on or around July 14, 2020 (See Orig. Complaint's Exhibit BO, Doc. 1-41)] investigating Plaintiff's compliance complaint, which, by MSM's Office of Compliance's own admission, consisted overall of only four to five total meetings.

461.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, the compliance complaints of students without disabilities receive prompt and equitable resolutions. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42 U.S.C. § 12182(b)(2)(A)(iii), and 28 C.F.R. § 36.303(a-c).

462.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by Alecia Bell's written letter of determination to Plaintiff (See Orig. Complaint's Exhibit BO, Doc. 1-41), regarding Plaintiff's compliance complaint, which contained numerous erroneous, misleading, unclear, arbitrary, self-serving and false findings in her written letter of determination sent to Plaintiff. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), and 28 C.F.R. § 36.202(b).

463.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff's compliance complaint is being swept under the rug due to MSM's current reaffirmation of its accreditation with the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) (See Orig. Complaint's Exhibit BP, Doc. 1-42, Pages 1-2), and due to MSM's current reaffirmation of its accreditation with the Liaison Committee on Medical Education (LCME) (See Orig. Complaint's Exhibit BP, Doc. 1-42, Pages 3-7). 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

464.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because Alecia Bell intentionally made numerous erroneous, misleading, unclear, arbitrary, self-serving, and false findings in her written letter of determination so as to preclude Plaintiff from being able to rely on it during Plaintiff's dismissal hearing. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

465.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff was not offered any explanation as to why MSM's dismissal hearing against Plaintiff was postponed and later rescheduled. See Orig. Complaint's Exhibit BE, Doc. 1-31, Page 1, and Orig. Complaint's Exhibit BM, Doc. 1-39, Pages 1-5.

466.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because students without disabilities are provided with open and honest communication regarding adverse proceedings against them. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), and 28 C.F.R. § 36.202(b).

467.

According to MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 70), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 74), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 75), under the "Compliance Hotline" heading, that,

> "[MSM] is an organization with strong values of responsibility and integrity. Our written standards and policies contain general guidelines for conducting

> business with the highest standards of ethics. The institution is committed to an environment where open, honest communications are the expectation, not the exception."

468.

MSM's Office of Compliance made a determination, albeit that was purposely unclear and limiting on details and admissions, that MSM failed to provide for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years.

469.

During Plaintiff's dismissal hearing, the dismissal hearing committee members were made aware that Plaintiff has a disability, that MSM failed to provide for Plaintiff's note-taking accommodation, and MSM failed to investigate Plaintiff's written discrimination complaints and take appropriate corrective action.

470.

During Plaintiff's dismissal hearing, Plaintiff communicated to the committee members that Plaintiff's note-taking accommodation was necessary for Plaintiff to have meaningful access and failing to provide the accommodation was very clear disability discrimination.

471.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because at the start of Plaintiff's dismissal hearing on or around July 28, 2020, Plaintiff was informed, without warning, by Dr. Brenda Klement that the committee members had not, and were not going to, look over Plaintiff's dismissal hearing exhibits before the hearing, despite Dr. Brenda Klement affirming that they would (See Orig. Complaint's Exhibit BS, Doc. 1-45), and with no explanation as to why this decision was being made when Plaintiff was previously asked what method of disseminating Plaintiff's dismissal hearing exhibits Plaintiff wanted. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), and 28 C.F.R. § 36.202(b).

472.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, students without disabilities have their dismissal hearing exhibits read by the committee members before their dismissal hearings. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), and 28 C.F.R. § 36.202(b).

473.

In MSM's dismissal letter to Plaintiff, MSM alleges, "After careful consideration of the information you presented during the hearing, the written

information you submitted to the committee (Exhibits A-F) [Plaintiff's Orig. Complaint's Exhibit BR, Doc. 1-44], and your academic transcript, the committee voted to dismiss you from Morehouse School of Medicine." See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2.

474.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because all of the committee members of Plaintiff's dismissal hearing did not carefully consider Plaintiff's exhibits because the exhibits remained in the possession of Dr. Ngozi Anachebe and Dr. Martha Elks, and not in the possession of all committee members for them to carefully consider. 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42 U.S.C. § 12182(b)(2)(A)(iii), and 28 C.F.R. § 36.303(a-c).

475.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, students without disabilities have their dismissal hearing exhibits truly carefully considered by the committee members in their determination of being dismissed from MSM or not. 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42

U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(2)(A)(iii), and 28 C.F.R. § 36.303(a-c).

476.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, in that during Plaintiff's dismissal hearing on or around July 28, 2020, at least one committee member determined Plaintiff's reasonable note-taking accommodation, granted by MSM, as non-essential because Plaintiff had textbooks. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), 28 C.F.R. § 36.303(a-c), 42 U.S.C. § 12182(b)(1)(D) and 28 C.F.R. § 36.204.

477.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, in that during Plaintiff's dismissal hearing on or around July 28, 2020, at least one committee member determined Plaintiff's reasonable note-taking accommodation, granted by MSM, as non-essential because Plaintiff had access to class recordings. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), 28 C.F.R. § 36.303(a-c), 42 U.S.C. § 12182(b)(1)(D) and 28 C.F.R. § 36.204.

478.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, MSM does not treat the services and accommodations that students without disabilities require to be successful, that MSM has agreed to provide, with the same indifference that MSM showed Plaintiff's note-taking accommodation, that MSM granted to Plaintiff. 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.303(a-c), 28 C.F.R. § 36.302(a), 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42 U.S.C. § 12182(b)(1)(B), 28 C.F.R. § 36.203(a), 42 U.S.C. § 12182(a), and 28 C.F.R. § 36.201(a).

479.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, by excluding Plaintiff from equal participation in MSM's medical school program via MSM's failure to provide for Plaintiff's note-taking accommodation during the 2017-2018 and 2018-2019 academic school years, and MSM's ultimate dismissal of Plaintiff from its medical school program. 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

480.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, MSM makes sure that its students without disabilities get the services and accommodations that MSM has agreed to provide them prior to a dismissal hearing. 42 U.S.C. § 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b), 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 28 C.F.R. § 36.302(a), 42 U.S.C. § 12182(b)(2)(A)(ii-iii), and 28 C.F.R. § 36.303(a-c).

481.

In MSM's dismissal letter to Plaintiff, MSM alleges, "MSM has a policy that the 1st and 2nd Year Curriculum will consist of no more than 36 months excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook) [Plaintiff's Orig. Complaint's Exhibit AF, Doc. 1-6], and you have reached this time limit." See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2.

482.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, MSM has allowed other students to spend more than 36 months during their 1st and 2nd Year Curriculum. 42 U.S.C. § 12182(b)(1)(A)(i-ii), 28 C.F.R. § 36.202(a-b), 42

U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

483.

At all relevant times while Plaintiff has been a student at MSM, MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101, MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108) has stated, under the "Dismissal and Suspension" subheading, under "The Student Academic Progress & Promotion Committee (SAPP)" heading, that, "The Chair of the SAPP committee will provide written information on the reasons for the dismissal hearing."

484.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff was never notified or provided written information (See Orig. Complaint's Exhibit BD, Doc. 1-30, Page 4, and Orig. Complaint's Exhibit BM, Doc. 1-39, Page 4) that one of the reasons for MSM's dismissal hearing against Plaintiff, and one of the reasons MSM's dismissal of Plaintiff would ultimately be for, was that "MSM has a policy that the 1st and 2nd Year Curriculum will consist of no more than 36 months

excluding any leave of absence (Page 104, b. 2019-2020 Student Handbook) [Plaintiff's Orig. Complaint's Exhibit AF, Doc. 1-6], and [Plaintiff had] reached this time limit." (See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2). 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, and 42 U.S.C. § 12182(b)(1)(A)(i-ii), 28 C.F.R. § 36.202(a-b), 42 U.S.C. § 12182(b)(2)(A)(ii-iii), 28 C.F.R. § 36.302(a), and 28 C.F.R. § 36.303(a-c).

485.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because Plaintiff was not able to present Plaintiff's case, evidence, and context, regarding this reason Plaintiff was dismissed from MSM in accordance with MSM's Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101; Exhibit AE, Doc. 1-5, Page 107; and Exhibit AF, Doc. 1-6, Page 108). 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, and 42 U.S.C. § 12182(b)(1)(A)(i-ii), and 28 C.F.R. § 36.202(a-b).

486.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, as on information and belief, students without disabilities are provided all the reasons for their dismissal hearings, and have thus been able to properly present their case, evidence, and

context during their dismissal hearings in accordance with MSM's Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 101; Exhibit AE, Doc. 1-5, Page 107; and Exhibit AF, Doc. 1-6, Page 108). 42 U.S.C. § 12182(b)(1)(D), 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(ii), and 28 C.F.R. § 36.202(b).

487.

In MSM's dismissal letter to Plaintiff, MSM alleges, "After careful consideration of the information you presented during the hearing, the written information you submitted to the committee (Exhibits A-F) [Plaintiff's Orig. Complaint's Exhibit BR, Doc. 1-44], and your academic transcript, the committee voted to dismiss you from Morehouse School of Medicine. The decision was based on the school's policy of receiving a final grade of D or F while in the decelerated track, and for receiving two or more final grades of D or F (Page 107, iii and viii, respectively, 2019-2020 Student Handbook) [Plaintiff's Orig. Complaint's Exhibit AF, Doc. 1-6]," (See Orig. Complaint's Exhibit BT, Doc. 1-46, Page 2).

488.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because on information and belief, students without disabilities who have received two or more final grades of D or F

while in the decelerated track have not been dismissed by MSM. 42 U.S.C. § 12182(b)(1)(D) and 28 C.F.R. § 36.204, 42 U.S.C. § 12182(b)(1)(A)(i-ii), 28 C.F.R. § 36.202(a-b), 42 U.S.C. § 12182(b)(2)(A)(iii), and 28 C.F.R. § 36.303(a).

489.

MSM discriminated against Plaintiff under the ADA and its implementing regulations, on the basis of Plaintiff's disability, because MSM failed to provide Plaintiff an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to Plaintiff's needs. 42 U.S.C. § 12182(b)(1)(B), 28 C.F.R. § 36.203, 42 U.S.C. § 12182(b)(1)(A)(ii), and 28 C.F.R. § 36.202(b).

490.

MSM chose to dismiss Plaintiff because of the effects that MSM caused by not providing for Plaintiff's note-taking accommodation that was granted by MSM solely because of Plaintiff's disability.

491.

Thus, Plaintiff's disability was at the very least a motivating cause of MSM dismissal of Plaintiff.

492.

According to MSM's 2017-2018 Student Handbook (See Orig. Complaint's Exhibit AD, Doc. 1-4, Page 102), MSM's 2018-2019 Student Handbook (See Orig. Complaint's Exhibit AE, Doc. 1-5, Page 107), and MSM's 2019-2020 Student Handbook (See Orig. Complaint's Exhibit AF, Doc. 1-6, Page 108), under the "Student Appeals Procedure" subheading, under the "The Student Academic Progress & Promotion Committee (SAPP)" heading, states that,

> "Each appeal by the student will be heard by the President/Dean within 10 working days of receipt [emphasis added] of the student's written notification of intent to appeal."

493.

Despite MSM's commitments and policies as outlined above in its contract with Plaintiff, Plaintiff's August 13, 2020 appeal to Dr. Valerie Montgomery Rice, President and Dean of MSM, (Amended Complaint's Exhibit BX-1) went unheard and unanswered.

494.

MSM discriminated against Plaintiff by denying Plaintiff the benefits of, and excluding Plaintiff from participation in, an appeal hearing outlined in MSM's student handbook.

495.

On or around September 8, 2020, MSM's counsel inquired to Plaintiff's counsel on whether or not Plaintiff ever appealed the dismissal decision by MSM, to which Plaintiff's counsel affirmed that Plaintiff in fact did appeal the dismissal and that no appeal hearing was ever conducted.

496.

Subsequently, during the evening of on or around September 8, 2020, 18 working days after Plaintiff submitted a written notification of intent to appeal, and only after Plaintiff filed the present lawsuit, Dr. Valerie Montgomery Rice emailed Plaintiff in order to schedule Plaintiff's appeal hearing.

497.

On or around September 10, 2020, 20 working days after Plaintiff submitted a written notification of intent to appeal, Plaintiff's appeal hearing was conducted by Dr. Valerie Montgomery Rice.

498.

On September 15, 2020, Dr. Valerie Montgomery Rice reversed Plaintiff's dismissal (See Amended Complaint's Exhibit BX-2), stating:

> "I find, among other things, that the record shows that the SAPP Committee was aware that when you started the MSM MD Program in July of 2017, you were approved for academic accommodations, which included a note-taker. The SAPP Committee was also aware that during your academic years

> 2017-2018 and 2018-2019 that you did not receive written notes from the note-taker within 24-48 hours of your courses/classes. The committee was also aware that as of the end of March 2019, you did begin to receive written notes through the note-taker within 24-48 hours.
>
> While I find there is sufficient evidence to support the SAPP Committee's decision to schedule you for a dismissal hearing, I additionally find the delay in the completion of your hearing was not proper. In addition, I find there is not sufficient evidence to support the SAPP Committee's decision to dismiss you from the MD program. For these reasons, I am reversing the SAPP Committee's decision to dismiss you from the MD program, effective immediately." See Amended Complaint's Exhibit BX-2.

499.

Thus, Dr. Valerie Montgomery Rice, President and Dean of MSM, found MSM's dismissal of Plaintiff improper and without sufficient evidence.

500.

MSM has knowledge of its obligations under the ADA and its implementing regulations, and MSM has acted with intentional animus and deliberate indifference of Plaintiff's federally protected rights.

501.

MSM knew that harm to Plaintiff's federally protected rights was substantially likely as a result of MSM's actions and inactions, and MSM failed to act on that likelihood.

502.

All of the actions and inactions described herein were adverse to Plaintiff and did not happen to students without disabilities.

503.

Plaintiff has been subjected to a continuing pattern of discrimination under the ADA, and its implementing regulations, as a result of MSM's discrimination against Plaintiff creating a hostile learning/education/educational environment, and the continuing violations doctrine/theory is applicable regardless.

504.

As a result of MSM's actions, Plaintiff has suffered actual damages, non-economic damages, embarrassment, humiliation, emotional harm, mental and physical pain, and anguish.

505.

As a result of MSM's actions, Plaintiff has experienced economic and general loss of educational opportunities, loss of employment opportunities, loss of research opportunities, increased financial debt, and loss of future income.

506.

Plaintiff has had to hire counsel and currently has over $52,000 in attorney's fees on account at $400/hour. 28 C.F.R. § 36.505 and 42 U.S.C. § 2000a-3(b).

WHEREFORE, Plaintiff, JAMES GREGORY HOWELL, JR., requests judgment against Defendant, THE MOREHOUSE SCHOOL OF MEDICINE, INC. and that the Court:

PRAYER - COUNT I - VIOLATION OF THE REHABILITATION ACT - FAILURE TO ACCOMMODATE

A) Permit Plaintiff's claim be tried before a jury;
B) Enter Judgment against Defendant, THE MOREHOUSE SCHOOL OF MEDICINE, INC. for its violation of the Rehabilitation Act;
C) Grant a permanent injunction against MSM prohibiting it from engaging in any practice or policy which interferes with, or fails to fulfill, the Rehabilitation Act rights of its students;
D) Order that MSM allow Plaintiff to restart Plaintiff's entire medical education so as to ensure Plaintiff receives a proper and satisfactory medical education, with Plaintiff's academic accommodations provided for, and removes/deletes Plaintiff's entire previous academic record at MSM;
E) Order that MSM designate an experienced individual who is responsible for compliance under the Rehabilitation Act;
F) Order that MSM designate an experienced individual who is responsible for ensuring student accommodations are actually being provided to students;
G) Order that MSM adopt and publish grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints under the Rehabilitation Act;
H) Order MSM provide, or continue to provide, qualified notetakers for persons who require such accommodations;
I) Order MSM provide, or continue to provide, timely notes to persons with note-taking accommodations;

J) Order that all agents and employees of MSM attend training specifically for the rights and obligations of a post-secondary institution to accommodate its students with disabilities, under the Rehabilitation Act, provided by experts outside of MSM;
K) Award the Plaintiff special damages in the amount of $202,773.00;
L) Award the Plaintiff damages, including but not limited to actual damages, consequential damages, general, and non-economic damages in an amount to be determined at time of trial;
M) Award the Plaintiff pre- and post-judgment interest in the maximum rate allowed by law;
N) Award the Plaintiff reasonable attorney's fees pursuant to 29 U.S.C. § 794a, including litigation expenses, reasonable expert witness fees, and the cost of this action; and
O) Grant such further relief as necessary to fulfill the purpose of the Rehabilitation Act, or as this Court otherwise deems just and proper.

PRAYER - COUNT II - VIOLATION OF THE REHABILITATION ACT - DISPARATE TREATMENT

A) Permit Plaintiff's claim be tried before a jury;
B) Enter Judgment against Defendant, THE MOREHOUSE SCHOOL OF MEDICINE, INC. for its violation of the Rehabilitation Act;
C) That the Court grant a permanent injunction against MSM prohibiting it from engaging in any practice or policy which interferes with, or fails to fulfill, the Rehabilitation Act rights of its students;
D) Order that MSM allow Plaintiff to restart Plaintiff's entire medical education so as to ensure Plaintiff receives a proper and satisfactory medical education, with Plaintiff's academic accommodations provided for, and removes/deletes Plaintiff's entire previous academic record at MSM;
E) Order that MSM designate an experienced individual who is responsible for compliance under the Rehabilitation Act;
F) Order that MSM designate an experienced individual who is responsible for ensuring student accommodations are actually being provided to students;
G) Order that MSM adopt and publish grievance procedures that incorporate appropriate due process standards and that provide for the

prompt and equitable resolution of complaints under the Rehabilitation Act;

H) Order MSM provide, or continue to provide, qualified notetakers for persons who require such accommodations;

I) Order MSM provide, or continue to provide, timely notes to persons with note-taking accommodations;

J) Order that all agents and employees of MSM attend training specifically for the rights and obligations of a post-secondary institution to accommodate its students with disabilities, under the Rehabilitation Act, provided by experts outside of MSM;

K) Award the Plaintiff special damages in the amount of $202,773.00;

L) Award the Plaintiff damages, including but not limited to actual damages, consequential damages, general, and non-economic damages in an amount to be determined at time of trial;

M) Award the Plaintiff pre- and post-judgment interest in the maximum rate allowed by law;

N) Award the Plaintiff reasonable attorney's fees pursuant to 29 U.S.C. § 794a, including litigation expenses, reasonable expert witness fees, and the cost of this action; and

O) Grant such further relief as necessary to fulfill the purpose of the Rehabilitation Act, or as this Court otherwise deems just and proper.

PRAYER - COUNT III - VIOLATION OF THE ADA - FAILURE TO ACCOMMODATE

A) Enter Judgment against Defendant, THE MOREHOUSE SCHOOL OF MEDICINE, INC. for its violation of the ADA;

B) Grant a permanent injunction against MSM prohibiting it from engaging in any practice or policy which interferes with, or fails to fulfill, the ADA rights of its students;

C) Order that MSM allow Plaintiff to restart Plaintiff's entire medical education so as to ensure Plaintiff receives a proper and satisfactory medical education, with Plaintiff's academic accommodations provided for, and removes/deletes Plaintiff's entire previous academic record at MSM;

D) Order that MSM designate an experienced individual who is responsible for compliance under the ADA;

E) Order that MSM designate an experienced individual who is responsible for ensuring student accommodations are actually being provided to students;
F) Order that MSM adopt and publish grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints under the ADA;
G) Order MSM provide, or continue to provide, qualified notetakers for persons who require such accommodations;
H) Order MSM provide, or continue to provide, timely notes to persons with note-taking accommodations;
I) Order that all agents and employees of MSM attend training specifically for the rights and obligations of a post-secondary institution to accommodate its students with disabilities under the ADA, provided by experts outside of MSM;
J) Award the Plaintiff pre- and post-judgment interest in the maximum rate allowed by law;
K) Award the Plaintiff reasonable attorney's fees pursuant to 42 U.S.C. § 2000a-3(b) and 28 C.F.R. § 36.505 (2019), including litigation expenses, reasonable expert witness fees, and the cost of this action; and
L) Grant such further relief as necessary to fulfill the purpose of the ADA, or as this Court otherwise deems just and proper.

PRAYER - COUNT IV - VIOLATION OF THE ADA - DISPARATE TREATMENT

A) Enter Judgment against Defendant, THE MOREHOUSE SCHOOL OF MEDICINE, INC. for its violation of the ADA;
B) Grant a permanent injunction against MSM prohibiting it from engaging in any practice or policy which interferes with, or fails to fulfill, the ADA rights of its students;
C) Order that MSM allow Plaintiff to restart Plaintiff's entire medical education so as to ensure Plaintiff receives a proper and satisfactory medical education, with Plaintiff's academic accommodations provided for, and removes/deletes Plaintiff's entire previous academic record at MSM;
D) Order that MSM designate an experienced individual who is responsible for compliance under the ADA;

E) Order that MSM designate an experienced individual who is responsible for ensuring student accommodations are actually being provided to students;
F) Order that MSM adopt and publish grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints under the ADA;
G) Order MSM provide, or continue to provide, qualified notetakers for persons who require such accommodations;
H) Order MSM provide, or continue to provide, timely notes to persons with note-taking accommodations;
I) Order that all agents and employees of MSM attend training specifically for the rights and obligations of a post-secondary institution to accommodate its students with disabilities under the ADA, provided by experts outside of MSM;
J) Award the Plaintiff pre- and post-judgment interest in the maximum rate allowed by law;
K) Award the Plaintiff reasonable attorney's fees pursuant to 42 U.S.C. § 2000a-3(b) and 28 C.F.R. § 36.505 (2019), including litigation expenses, reasonable expert witness fees, and the cost of this action; and
L) Grant such further relief as necessary to fulfill the purpose of the ADA, or as this Court otherwise deems just and proper.

PRAYER - COUNT V - VIOLATION OF THE ADA - DISPARATE IMPACT

A) Enter Judgment against Defendant, THE MOREHOUSE SCHOOL OF MEDICINE, INC. for its violation of the ADA;
B) Grant a permanent injunction against MSM prohibiting it from engaging in any practice or policy which interferes with, or fails to fulfill, the ADA rights of its students;
C) Order that MSM allow Plaintiff to restart Plaintiff's entire medical education so as to ensure Plaintiff receives a proper and satisfactory medical education, with Plaintiff's academic accommodations provided for, and removes/deletes Plaintiff's entire previous academic record at MSM;
D) Order that MSM designate an experienced individual who is responsible for compliance under the ADA;

This 17th day of November, 2020.

/s/ Drew Mosley
Drew Mosley
Counsel for Plaintiff
GA Bar #: 526406

DREW MOSLEY, LLC
279 W. Crogan St.
Lawrenceville, GA 30046
O: (678) 225-0098
F: (678) 221-0230
drew@mlawmail.com

LOCAL RULE CERTIFICATION

Undersigned counsel attests that this document was prepared in Times New Roman, 14-point font that complies with this Court's Rules.

Respectfully submitted this 17th day of November, 2020.

Counsel for Plaintiff

/S/ Drew Mosley
Drew Mosley, Esq.
GA Bar No. 526406
Drew Mosley, LLC
279 W. Crogan St.
Lawrenceville, Georgia 30046
678-225-0098
678-221-0230 fax
drew@mlawmail.com

CERIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing *Amended Complaint* via the Court's CMECF system which will automatically send an electronic copy of the foregoing to the following attorneys of record for Defendant:

Tanisha Pinkins
Baker, Donelson, Bearman,
Caldwell & Berkowitz, P.C.
Monarch Plaza, Suite 1500
3414 Peachtree Road NE
Atlanta, GA 30326

Nakimuli Davis-Primer (*admitted pro hac vice*)
Baker, Donelson, Bearman,
Caldwell & Berkowitz, P.C.
One Eastover Center
100 Vision Drive, Suite 400
Jackson, MS 39211

Respectfully submitted this 17th day of November, 2020.

Counsel for Plaintiff

/S/ Drew Mosley
Drew Mosley, Esq.
GA Bar No. 526406
Drew Mosley, LLC
279 W. Crogan St.
Lawrenceville, Georgia 30046
678-225-0098
678-221-0230 fax
drew@mlawmail.com

Office of Disability Services

Accommodations Services for Students with Disabilities

MOREHOUSE SCHOOL OF MEDICINE

Registration and Information Packet

Morehouse School of Medicine

Office of Disability Services
720 Westview Drive, S.W.
Harris Building, Room 132
Atlanta, GA 30310
(404) 756-5200
ODS@msm.edu

Morehouse School of Medicine
Office of Disability Services
720 Westview Drive, S.W.
Harris Building, Room 132
Atlanta, GA 30310
(404) 756-5200
ODS@msm.edu

Guidelines for Requesting Accommodations

Morehouse School of Medicine's Office of Disability Services is committed to providing an equitable and inclusive environment for all members of the community. It is the policy and practice of the Office of Disability Services to comply with the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendments Act (ADAAA), 504 of the Rehabilitation Act of 1973, and state and local requirements regarding individuals with disabilities. Under these laws, no qualified individual shall be denied access to or participation in events, programs or services at the School. Through outreach and education, our office will promote access and awareness to all members of our MSM community.

Reasonable academic adjustments s will be made on an individualized basis. It is the responsibility of persons with disabilities, however, to seek available services and make their needs known to the Office of Disability Services and discuss possible academic adjustments.

Students who believe they have a disability that require reasonable academic adjustments should make contact with the Office of Disability Services to discuss his/her needs. The following steps should be followed to ensure a smooth process:

Self-Identification

1. The students identify themselves as having a disability by meeting with the Office of Disability Services. Students can request an appointment by phone (404) 756-5200, or e-mail ODS@msm.edu.

2. During the initial contact with the Office of Disability Services, an Initial Intake Form is completed and the following is evaluated with the student: the nature of the disability, the student's service expectations and the type of disability documentation guidelines that best suit their needs. Students are encouraged to submit complete, current documentation at the earliest possible date to ensure reasonable academic adjustments are granted in a timely manner. Late requests, partial or old documentation may delay the academic adjustment process.

Eligibility for Services

In order to receive services from the Office of Disability Services, you must provide documentation of your disability from a qualified professional that makes evident the current impact of the disability as it relates to the academic adjustment(s) requested. Once documentation is received, eligibility will be evaluated on a case-by-case basis.

Documentation Guidelines

Students requesting services and academic adjustments for a disability will be required to submit documentation to verify eligibility for services under Section 504 and ADAAA. To assist students in assembling appropriate documentation to support their request for academic adjustments, the Office of Disability Services has specific documentation guidelines for their disability. Carefully read the general guidelines on this page and the guidelines applicable to your disability or disabilities, as you are responsible for submitting documentation that complies with these guidelines. We recommend providing a copy of the guidelines to your qualified professional before the preparation of your documentation. If a student and/or qualified professional wishes to discuss the documentation guidelines, s/he can contact the Office of Disability Services by phone (404) 756-5200 or via e-mail at ODS@msm.edu.

All documentation must be completed by a qualified professional. A "qualified professional" is defined as a licensed physical or mental health care provider who has had extensive training in the field related to the student's disability. This would include a licensed physician, psychiatrist, psychologist, clinical or educational psychologist, school psychologist, neuropsychologist, or a learning disability specialist with the license to diagnose according to the *DSM-IV/DSM-IV-TR*. Regardless of professional background, it is not appropriate for the evaluation to be done by a member of the student's immediate or extended family. Also note that it is the student's responsibility to pay all costs involved in obtaining evaluations and documentation of a disability.

Please see the following guidelines and submit documentation of your disability using one of the following verification criteria:

- ADD/ADHD
- Learning Disability
- Medical/Physical Disability
- Psychological Disability

Documentation should be sent directly to Morehouse School of Medicine's Office of Disability Services directly from the Licensed Professional, rather than from the student or the student's family.

In addition to the documentation criteria that are submitted from your Licensed Professional, the Office of Disability Services must also receive these completed documents in order for the file review process to begin:

- Release of Information

- Confidentiality Statement
- Requested Accommodations Form

Personnel from the Office of Disability Services will also gather information from instructors and course directors about the academic requirements for the student's classes and what types of reasonable academic adjustments might assist the student in meeting the academic requirements of the courses, including practicum experiences. The students also will be asked to participate proactively in understanding the academic requirements and providing insights into the reasonable academic adjustments that would allow the student to fulfill the academic requirements. The Office of Disability Services will consider any recommended reasonable modification or adjustment that would enable the student to have an equal opportunity to benefit from the academic program, and will take into consideration the extent of the student's disability (if any), the student's prior use of academic adjustments, the nature and complexity of program content, and the modes through which course content is presented.

Notification of Decision Regarding Request for Reasonable Academic Adjustments

1. Initial determination of eligibility will take up to seven (7) working days. In the case of discrepancies with documentation, other individuals will be consulted on a need to know basis.

2. Students will receive a written response from the Office of Disability Services in a timely manner notifying him/her of the outcome of his/her request for academic adjustments. You will be contacted by the Office of Disability Services staff with the results of your file review. All decisions with regard to reasonable academic adjustments will be delivered to the student in writing during an appointment with the ODS or by mail at the address provided by the student.

3. If any reasonable academic adjustments are granted, you must make an appointment to meet with the Office of Disability Services. At this appointment, you will receive instructions on how to effectively use your approved academic adjustments and next steps to complete the registration process.

4. After reasonable academic adjustments are granted to the student, the Office of Disability Services will provide an individualized Letter of Accommodations addressed to the student's instructors. The student will then deliver the letters with the approved academic adjustments to his/her instructor. Students are encouraged to submit these letters as early as possible to ensure that the instructor is aware of the academic adjustments the student is eligible to receive.

Grievance Procedure

Any MSM student who believes that he or she has been denied academic adjustments required by law shall have the right to invoke the Office of Disability Services Grievance Procedure. This Grievance Procedure is designed to address disagreements or denials regarding requested services, academic adjustments, or modifications to School academic practices or requirements. For more information regarding this process, please see the ODS Grievance Procedure.

MOREHOUSE
SCHOOL OF MEDICINE

Department of Human Resources

Dear Student:

There may be times Human Resources may need to contact you during this process. Please provide the following so we can contact you promptly.

Personal e-mail address: _____

Best phone number(s) to contact you: _____

Current Address: _____

_____

_____ _____

Student Signature **Date**

Thank you very much for providing this information.

Office of Disability Services and Leave Management

720 Westview Drive, SW
Atlanta, GA 30310-1495

Telephone: (404) 752-1600
Fax: (404) 752-1639

MOREHOUSE SCHOOL OF MEDICINE

Disability Accommodation Request Form

Office of Disability Services
720 Westview Drive
Harris Building, Room 132
Atlanta, GA 30310
Phone: (404) 756-5200
E-Mail:ODS@msm.edu

Today's Date: _____

Student Full Name: _____ Date of Birth: _____

Student ID #: _____

Address _____
Street City State Zip

Telephone Number: _____ Cell Number: _____

Current E-mail Address: _____

Classification: _____Prospective Student Semester you will begin: _____

_____Current Student

What is the nature of your impairment? (Check all that apply)

_____ Learning Disability
_____ Attention Deficit/Hyperactivity Disorder
_____ Medical/Physical Impairment
_____ Psychological Impairment Other: _____

Please list in the space below and/or on the attached sheet the accommodation(s) you will likely request. Explain why and how it relates to your disability/impairment:

_____

_____

In what semester are you requesting these accommodations to begin? _____

RELEASE OF INFORMATION

In order to explore possible coverage and reasonable accommodations, it is at times necessary for the Office of Disability Services to make appropriate disclosures of the documentation the student has submitted to our office (DARF, Medical Verification Documentation, diagnosis, personal requests/statements) to providers such as licensed physicians, psychologists or other qualified professionals, and to discuss the student's impairment with other faculty and professional staff at MSM on a need-to-know basis. I hereby give permission for the Office of Disability Services to exchange information regarding the documentation I have submitted to the ODS with my provider(s) (physician, psychologist, or other qualified professional), and to discuss my impairment with the School's faculty and professional staff. This authorization will remain in effect for the duration of the student's enrollment. I understand that I may revoke this release of information privilege at any time by informing the ODS. I understand that this information is desired in order to assist those who are helping with my education and request for accommodation(s), and that my refusal to authorize consent may result in a denial of specific accommodations. I also understand that my disability documentation will be kept on file for five years and that I should keep a copy of any records pertaining to my disability.

_____ _____
(Student Signature) (Date)

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 8:

456a – 520a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

Requested Accommodations

Please indicate the accommodation(s) you are requesting. Academic accommodations and other services are addressed and provided on an individual basis based on the documents received from a licensed professional.

- ☐ Letter listing approved accommodations for students to provide to faculty
- ☐ Special meeting with Course Instructor for breakdown in Syllabi and/or assignments
- ☐ Extended time, readers, or scribes for in class coursework and examinations
- ☐ Alternative testing environment
- ☐ Enlarged-print exams
- ☐ Note takers
- ☐ Interpreters for the deaf
- ☐ Assistive technology
- ☐ Supportive counseling
- ☐ Accessibility information
- ☐ Registration assistance
- ☐ Referral to other campus and community resources
- ☐ Consultation with faculty and staff regarding on-campus situations which constitute an accommodation challenge
- ☐ Other Accommodations not listed above:

MOREHOUSE SCHOOL OF MEDICINE

AUTHORIZATION FOR RELEASE OF INFORMATION

I, (print student name) _____ ID#: _____

Address: _____

City, State, Zip Code: _____

do hereby authorize, **(Name/contact information of the certified diagnostician or doctor)**

Name of individual or institution: _____

Address: _____

City, State, Zip Code: _____

to release the following information to:

Morehouse School of Medicine
Office of Disability Services
720 Westview Drive, Harris Building, Room 132
Atlanta, GA 30310
Phone: (404) 756-5200 Fax: (404) 752-1639

The following information (please check all that apply):

____Medical Reports ____ Medical History ____ Social History

____Teacher Progress Reports ____ School Transcripts ____ I.E.P.'s/Transition Plan

____Psychological Evaluation ____ Other: _____

I understand that I have the right to inspect and to copy any or all of the above information, which is to be used to determine appropriate educational and/or supportive services.

This authorization is limited to the information specified above. I understand that I have the right to revoke this authorization at any time by submitting a written request and that my refusal to consent to the release of these records will prevent disclosure to the individual or institution named above. I also understand that certain refusals to authorize disclosure may result in MSM having insufficient information to assess my academic adjustment requests and, in some instances, may impact its ability to award an academic adjustment.

Signature: _____ Date: _____

Office of Disability Services
720 Westview Drive
Harris Building, Room 132
Atlanta, GA 30310
Phone: (404) 756-5200
Fax: (404) 752-1639

MOREHOUSE SCHOOL OF MEDICINE

CONFIDENTIALITY STATEMENT

Disability documentation submitted to the Office of Disability Services (ODS) is considered confidential information and does not become part of a student's permanent record. Disability information is housed in a confidential file in the ODS. Students should retain a copy of their disability documentation for their personal records. Information related to a disability may be disclosed only with the permission of the student or as permitted by federal and state law. At the same time, however, a student's right to privacy must still be balanced against the institution's need to know the information in order to provide requested and recommended services; academic adjustments and accommodations. Therefore, in the interest of serving the needs of the student, the provision of services may involve the ODS disclosing disability information to appropriate School personnel who are participating in the accommodation process, including requests for academic adjustments. The amount of information that may be released is determined on a case-by-case basis. Disability related information will be treated in a confidential manner in accordance with federal and state regulations.

MOREHOUSE SCHOOL OF MEDICINE

GUIDELINES FOR DOCUMENTATION OF SPECIFIC LEARNING DISABILITIES

Under the Americans with Disabilities Act (ADA) of 1990, as amended as amended by the Americans with Disabilities Act Amendment Act (ADAAA), and Section 504 of the Rehabilitation Act of 1973, individuals with learning disabilities are guaranteed certain protections and rights to reasonable academic adjustments based upon documentation. The documentation must indicate the disability substantially limits some major life activity including learning. The following guidelines were developed by the *Association on Higher Education and Disability* (AHEAD), and are provided in the interest of assuring that documentation is appropriate to verify eligibility and to support requests for accommodations, academic adjustments and/or auxiliary aids.

THE NEUROPSYCHOLOGICAL OR PSYCHOEDUCATIONAL EVALUATION

The neuropsychological or psychoeducational evaluation for the diagnosis of a specific learning disability must be submitted on letterhead of the qualified professional, and it must provide clear and specific evidence of a learning disability. It is not acceptable to administer one test, nor is it acceptable to base a diagnosis on only one of the several subtests. Specifically, the evaluation must adhere to the following criteria:

1. Testing must be *current* (within the past three years).
2. Testing must indicate a *specific diagnosis from the DSM-IV* - please note that individual "learning styles", "learning differences", and "academic problems" in and of themselves do not constitute a learning disability. The nature and the severity of the disability must be supported by the psychoeducational assessment.
3. Actual test scores must be provided (standard scores for all normed measures or percentiles are accepted, grade equivalents are not unless standard scores/percentiles are also included).
4. Test scores must show evidence of *significant discrepancies (a minimum of 15 points)* and *intra-individual differences.*
5. A description of requested academic adjustments including the rationale must be provided.
6. A qualified professional must conduct the evaluation. They must indicate licensure or certification on the assessment.

Minimally, domains to be addressed must include the following:

A. *Aptitude*

A complete aptitude battery is required with all subtests and standard scores. This should include one of the following:
*Wechsler Adult Intelligence Scale (WAIS III Revised) (the preferred instrument)

*Woodcock Johnson Psychoeducational Battery-Revised: Test of Cognitive Ability
*Standard-Binet Intelligence Scale: Fourth Edition

Note: The Slosson Intelligence Test-Revised and the Kaufman Adult Intelligence Test do not constitute adequate intelligence test measures.

B. *Achievement*

A complete achievement battery is required with all subtest and standard scores. This battery may include current levels of academic functioning in reading (decoding and comprehension), mathematics, and written language. Acceptable instruments include, but are not limited to:
*Woodcock-Johnson Psychoeducational Battery-Revised: Tests of Achievement
*Wechsler Individual Achievement Test (WIAT)
*Stanford Test of Academic Skill (STAS)
*Scholastic Abilities Test for Adults (SATA)
*Specific achievement tests such as the Test of Written Language-2 (TOWL), Woodcock Reading Mastery Tests-Revised, or the Stanford Diagnostic Mathematics Test

Note: The Wide Range Achievement Test-Revised is not a comprehensive measure of achievement, and therefore is not acceptable if used as the sole measure of achievement. Also, the Nelson-Deny is not an appropriate diagnostic measure of reading achievement. It is a useful screening instrument when administered under standardized conditions, but it should not be used as a basis for a diagnosis.

C. *Information Processing*

Specific areas so information processing (i.e. short- and long- term memory, sequential memory, auditory and visual perception/processing, processing speed, executive functioning, motor ability) ability is assessed. Acceptable instruments include but are not limited to:
*Detroit Test of Learning Aptitude-3 (DTLA-3)
*Information from subtests of the WAIS III, or the Woodcock-Johnson Tests of Cognitive Ability
*Other instruments relevant to the present learning problem

These guidelines are designed to assist individuals who have documented learning disabilities in receiving reasonable academic adjustments under the law. By providing a current and comprehensive battery of tests which support the requests for academic adjustment on the basis of substantial limitation to learning, each individual will be provided an opportunity to demonstrate his/her abilities at the post-secondary, graduate and professional level as well as with testing and licensing agencies.

MOREHOUSE SCHOOL OF MEDICINE

GUIDELINES FOR DOCUMENTATION OF ATTENTION-DEFICIT/HYPERACTIVITY DISORDERS

Under the Americans with Disabilities Act (ADA) of 1990, as amended by the American with Disabilities Act Amendments Act (ADAAA), and Section 504 of the Rehabilitation Act of 1973, individuals with attention-deficit/hyperactivity disorders (AD/HD) are guaranteed certain protections and rights to reasonable academic adjustments based upon documentation. The documentation must indicate the disability substantially limits some major life activity including learning. The following guidelines were developed to ensure documentation is appropriate to verify eligibility and to support requests for accommodations, academic adjustments and/or auxiliary aids.

Evaluator's Qualifications

Professionals conducting assessments, rendering the diagnosis of AD/HD, and making recommendations for academic adjustments must be qualified. In general, clinical psychologists, neuropsychologists, and psychiatrists would be considered qualified to evaluate and diagnose AD/HD. The name, title, and professional credentials of the evaluator, including license or certification number, must be clearly stated on submitted documentation. The professional should have experience with an adolescent or adult AD/HD population. It is not considered appropriate to evaluate members of their families. Documentation from a family member will not be accepted.

Documentation

The impact of AD/HD on an individual changes over time, therefore in order to provide the most appropriate accommodation(s), AD/HD documentation must be current. Documentation should be within the last three years. If current documentation is found to be incomplete, an update may be required. In order for documentation to be complete, the following items should be included in the documentation:

- Evidence of early impairment as AD/HD is first exhibited in childhood and is manifested in various settings.
- Description of current manifestations, including evidence of ongoing impulsive/hyperactive or inattentive behavior that has impaired functioning and limited the student in learning.
- Diagnosis and corresponding DSM-IV codes with the date of the diagnosis.
- An explanation of how the disability and/or related medication and treatments interfere with participation in courses, programs or services.
- Information on any current medication, including dosage and frequency.

Other supporting documentation may be accepted along with the above items to better understand the student's need for reasonable academic adjustments. These documents may include but are not limited to: records on standardized tests, transcripts, and previous psycho-educational evaluation.

Office of Disability Services
Harris Building, Room 132
Atlanta, GA 30310
Phone: (404) 756-5200
Fax: (404) 752-1639
E-Mail: ODS@msm.edu

MOREHOUSE SCHOOL OF MEDICINE

GUIDELINES FOR DOCUMENTATION OF MEDICAL AND PHYSICAL DISABILITIES

Under the Americans with Disabilities Act of 1990, as amended by the American with Disabilities Act Amendments Act (ADAAA), and Section 504 of the Rehabilitation Act of 1973, Individuals with medical and physical disabilities are guaranteed certain protections and rights to reasonable academic adjustments based upon documentation. The documentation must indicate the disability substantially limits some major life activity. The following guidelines were developed by the Association on Higher Education and Disability (AHEAD), and are provided in the interest of assuring that documentation is appropriate to verify eligibility and to support request for accommodations, academic adjustments and/or auxiliary aids.

Evaluator's Qualifications

Professionals conducting assessments, rendering the diagnosis of medical and physical conditions, and making recommendations for appropriate academic adjustments, must be qualified to do so. These are physicians, including neurologists, psychiatrists and other medical specialists with experience and expertise in the area for which accommodation are being requested. All documentation must be presented on the professional's letterhead, typed, dated, signed, and legible. It is not considered appropriate for professionals to evaluate members of their families. Documentation from a family member will not be accepted.

Documentation

Any physical or medical disability may include but is not limited to:
- Sensory Impairments: Visual or Hearing
- Mobility Impairments: The need for a wheelchair, cane, or crutches, and impaired hand coordination
- Chronic Illness: Cancer, AIDS, Multiple Sclerosis, Cerebral Palsy, Muscular Dystrophy, Chemical Sensitivities
- Acquired Brain injuries

Reasonable academic adjustments are approved based on the current impact of a disability. The age of acceptable documentation is dependent on the disabling condition, the current status of the student and the student's request for academic adjustments; however documentation that is older than one-year old will not be accepted.

Documentation should include, but is not limited to:
- A statement of the medical diagnosis of the medical condition or physical disability.
- Thorough medical history, including previous medications and treatments.
- Description of the current impairment.
- Any documentation of assistive devices or technology used, and the effectiveness of the device.
- Other medical information relating to the student that would have an impact on the student's ability to meet the demands at the post-secondary level.

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App. 463a

MOREHOUSE SCHOOL OF MEDICINE

GUIDELINES FOR DOCUMENTATION OF PSYCHOLOGICAL DISABILITIES

Under the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act (ADAAA), and Section 504 of the Rehabilitation Act of 1973, Individuals with psychological disabilities are guaranteed certain protections and rights to reasonable academic adjustments based upon documentation. The documentation must indicate the disability substantially limits some major life activity. The following guidelines were developed by the Association on Higher Education and Disability (AHEAD), and are provided in the interest of assuring that documentation is appropriate to verify eligibility and to support requests for accommodations, academic adjustments and/or auxiliary aids.

Evaluator's Qualifications

Professionals conducting assessments, rendering the diagnosis of psychiatric/psychological, behavioral, and emotional disorders and syndromes, and making recommendations for appropriate academic adjustments, must be qualified to do so. These are licensed professionals with comprehensive training and expertise in the field of mental health, skilled in differential diagnosis of psychological disorders. The name, title, and professional credentials of the evaluator, including license or certification number, must be clearly stated on submitted documentation. All documentation must be presented on the professional's letterhead, typed, dated, signed, and legible. It is not considered appropriate for professionals to evaluate members of their families. Documentation from a family member will not be accepted.

Documentation

Psychological disorders and syndromes refer to many different conditions. In addition, psychological disorders are changeable in nature and often difficult to categorize. Documentation of psychological disorders must therefore be thorough, giving a full picture of the individual, not simply a diagnosis.

Diagnosis: A **clear** diagnosis of psychological disorder based on *DSM-IV* or *DSM-IV-TR* criteria must be rendered. The diagnosis must **clearly state** the disorder and the subtype if applicable, along with the appropriate *DSM-IV* or *DSM-IVTR* diagnostic code. Psychological disabilities include but are not limited to:

- Schizophrenia or other psychotic disorders
- Anxiety Disorders: ex. Post-Traumatic Stress Disorder
- Dissociate Disorders
- Chronic Eating Disorders
- Major Affective Disorders: ex. Depression or Bipolar Disorder
- Personality Disorders
- Substance Abuse or Alcoholism

A diagnosis alone is not a basis for providing an academic adjustment. Documentation should also have the history of symptoms, the duration and severity of the disorder, substantial medical and medication history, substantial developmental and familial information and how the individual's condition has an impact on the student's ability to meet the demands of the postsecondary environment.

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Psychological Instruments

Though not explicitly required, psychological instruments may be useful in helping the evaluator render a more accurate diagnosis and, therefore, better recommendations for academic adjustment. If such tests are used, they should be submitted with the evaluation. All tests should be current (documentation that is older than one-year old will not be accepted) with an explanation of validity, reliability, and the purpose for which they are being employed. Scores must be reported in raw, standardized, and/or percentile ranks, if applicable. No single test or subtest should form the basis of a diagnosis.

Supporting Documentation

The qualified evaluator's report, while necessary, is by no means the only documentation we can use to better understand and accommodate the student with a psychological disability. Other helpful documents include: records of previous academic adjustment, high school 504 plans or IEP's, previous psychological and psycho-educational evaluations, report cards, transcripts, and parent, teacher, tutor, or employer reports, where appropriate.

Office of Disability Services
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E-Mail: ODS@msm.edu

MOREHOUSE SCHOOL OF MEDICINE

App. 465a

Office of Disability Services

*****CONFIDENTIAL INFORMATION*****

Date: June 30, 2017

To: **PROFESSORS AND INSTRUCTORS**

CC: Mr. James Gregory Howell

From: Marla D. Thompson
Human Resources Manager
Office of Disability and Leave Services

RE: **ACCOMMODATIONS**
Student: Mr. James Gregory Howell
ID Number: [redacted]

Mr. James Gregory Howell is registered with Morehouse School of Medicine's Office of Disability Services (ODS). Mr. Howell has met the eligibility standards for the reasonable accommodations detailed below:

Classroom Accommodations:

- Private and/or distraction reduced testing room
- Designated note-taker in classes and access to audio taped lectures
- Double time for examinations and in-class assignments

The ODS has recommended that your student meet with you at the earliest time to discuss the successful execution of **Mr. Howell's** reasonable accommodations. Please note: The validity of this agreement is effective **July 3, 2017 through June 30, 2018.**

Please do not hesitate to contact me if you should have any questions. Thanks for your cooperation and support.

Thanks,

Marla D. Thompson
Human Resources Manager
Office of Disability and Leave Services

720 Westview Drive SW
Atlanta, GA 30310-1495
Telephone: (404) 752-1871
Fax: (404) 752-1639

App. 466a

MOREHOUSE SCHOOL OF MEDICINE

Office of Disability Services

*****CONFIDENTIAL INFORMATION*****

Date: October 25, 2018

To: **PROFESSORS AND INSTRUCTORS**

CC: Mr. James Gregory Howell

From: Marla D. Thompson
Human Resources Manager
Office of Disability and Leave Services

RE: **ACCOMMODATIONS**
Student: Mr. James Gregory Howell
ID Number: [redacted]

Mr. James Gregory Howell is registered with Morehouse School of Medicine's Office of Disability Services (ODS). Mr. Howell has met the eligibility standards for the reasonable accommodations detailed below:

Classroom Accommodations:

- Private and/or distraction reduced testing room
- Designated note-taker in classes and access to audio taped lectures
- Double time for examinations and in-class assignments

The ODS has recommended that your student meet with you at the earliest time to discuss the successful execution of **Mr. Howell's** reasonable accommodations. Please note: The validity of this agreement is effective **October 25, 2018 through June 30, 2019.**

Please do not hesitate to contact me if you should have any questions. Thanks for your cooperation and support.

Thanks,

Marla D. Thompson

Marla D. Thompson
Human Resources Manager
Office of Disability and Leave Services

720 Westview Drive SW
Atlanta, GA 30310-1495
Telephone: (404) 752-1871
Fax: (404) 752-1639

App. 467a

MOREHOUSE SCHOOL OF MEDICINE

Office of Disability Services

*****CONFIDENTIAL INFORMATION*****

Date: August 13, 2019

To: **PROFESSORS AND INSTRUCTORS**

CC: Mr. James Gregory Howell

From: Marla D. Thompson
Human Resources Manager
Office of Disability and Leave Services

RE: **ACCOMMODATIONS**
Student: Mr. James Gregory Howell
ID Number: [redacted]

Mr. James Gregory Howell is registered with Morehouse School of Medicine's Office of Disability Services (ODS). Mr. Howell has met the eligibility standards for the reasonable accommodations detailed below:

Classroom Accommodations:

- Private and/or distraction reduced testing room
- Breaks for examinations and in-class assignments
- Designated note-taker in classes and access to audio and video taped lectures
- Double time for examinations and in-class assignments
- Preferential seating for class

The ODS has recommended that your student meet with you at the earliest time to discuss the successful execution of **Mr. Howell's** reasonable accommodations. Please note: The validity of this agreement is effective **August 13, 2019 through June 30, 2020.**

Please do not hesitate to contact me if you should have any questions. Thanks for your cooperation and support.

Thanks,

Marla D. Thompson
Human Resources Manager
Office of Disability and Leave Services

720 Westview Drive SW
Atlanta, GA 30310-1495
Telephone: (404) 752-1871
Fax: (404) 752-1639

Howell, James

From: Thompson, Marla
Sent: Tuesday, August 1, 2017 4:41 PM
To: Howell, James
Subject: RE: Not receiving accommodations

Mr. Howell,

Thanks for your email. There may have been some questions that I revisited with you for clarity but we were ready to ensure your accommodations would be implemented seamlessly. This particular accommodation has required us to pivot and rethink the best and multiple ways we can accommodate this request. I know you previously suggested identifying a classmate that may be willing to share their notes but we have come up with some additional alternatives today that we will discuss in full on Friday so I can follow-up with you. As we shared during our meeting, our goal was to come up with the best plan and back-up plan for this accommodation. Please confirm if the issue of transcribing notes applies to all of your classes. I ask this question because we discussed in our meeting that the typed notes/summary that the instructor provides for at least one of your classes may be detailed enough to ensure you had notes in advance for the semester. If that is not the case, I want to be able to say to the team that it is a concern for all classes.

Dr. Knight who led the meeting you refer to was not able to join the larger meeting we had with everyone. I will reiterate to the group again to make sure updates are provided to me even if it is just notification. You can also provide updates/concerns directly to me so I can address issues in the manner you expect. Lastly, I want to reassure you that this process is confidential so while others may be engaging you to ensure your accommodations are being met, they are only aware of your required accommodations. Please allow me to provide follow-up by Friday on our intended next steps. Thanks.

From: Howell, James
Sent: Tuesday, August 01, 2017 3:36 PM
To: Thompson, Marla
Subject: Re: Not receiving accommodations

Ms. Thompson,

I would have kept you more involved but the last time everyone met, Ms. Carter was there and not yourself. I wasn't sure about how much you were still involved in it or if Ms. Carter was relaying everything to you. I wasn't sure if you wanted to be sent updates every few days, weekly, or whatever. You may have told me the contrary but these past few weeks have been pretty difficult on me so my memory is foggy.

Also I was being told that this was being worked on by staff so I felt no need to inform you about this because I figured you would have already known about it. So for these reasons, I saw no reason to tell you or even inform you about anything unless it was major. This has become a major problem.

There has been this hierarchy that has evolved, at least in my mind, since the meeting that you weren't present in that I see has become a problem. It seemed like you were only in communication with me when you had to tell what could or couldn't be done because someone asked you a question that I had previously asked them. I would prefer if you were to be more involved in all the processes because it seems you are ultimately the one who has the power.

I also wanted to give people time to accommodate me. I didn't want to come off as an ass by having them tell me they are working on it, and then email you about it, after which you would then email them about it seeing how it was going; thus making it seem like I don't trust them or was being pushy.

Again, being put into a position where I wanted to be seen as patient has put me in a difficult position. I wished these accommodations would have been ironed out before school started.

But alas, we're here and we can only go forward.

I look forward to hearing back from you.

James

From: Thompson, Marla
Sent: Tuesday, August 1, 2017 9:17:29 AM
To: Howell, James
Subject: RE: Not receiving accommodations

Mr. Howell,

I will review these concerns and follow-up with the individuals listed below. I had not been made aware that this accommodation was not being met by you or members of your academic team. Please feel free to engage me as often as necessary to ensure these concerns do not linger. I will do my best to follow-up this week. Thanks.

From: Howell, James
Sent: Tuesday, August 01, 2017 4:53 AM
To: Thompson, Marla
Subject: Not receiving accommodations

Ms. Thompson,

Ms. Thompson,

I am emailing you because I am not receiving certain accommodations.

To this day, at the start of the fifth week of class, I still do not have a notetaker.

I have been behind since the first week because my time is mainly spent transcribing audio into notes. I usually spend about 3-4 hours just transcribing for each lecture to make sure I have written down everything the professor says. This is just transcribing, not actually studying. As per my evaluation, you can see that my

working memory isn't the best so it is difficult to always be up to speed with writing down everything the professor says during lecture.

This is because we're told that around 70% of our grade comes from the lecture material and the rest comes through the book, though they say the book is just a reference for anything we don't understand during lecture.

This has made medical school quite unenjoyable, to say the least, because I've basically become just a scribe and not a student. I met with Ms. Carter, Dr. Roth, and Dr. Knight about 2-3 weeks ago and they were figuring out ways to get a notetaker. I have been very patient with this process but I have still not heard anything back about this, despite emailing about it.

Dr. Knight has been one of the leads in this process but I haven't been able to get in contact with her via email. I have not reached out to you until now because I thought Ms. Carter was keeping you informed and she was at that meeting, and I assumed it was being worked on.

Again, I have always been behind. I have contemplated just skipping all my lectures just so that I have extra time during the day to transcribe and actually study. Because right now, I don't see any benefit in actually going to class if they are all recorded.

While I have tried to be patient, these past 3 weeks have been very frustrating because I tried to get you my application for accommodations in March so as to get everything ironed out **before** class started.

I look forward to hearing back from you soon.

James

Howell, James

From: Knight, Brandi
Sent: Monday, July 24, 2017 7:50 AM
To: Howell, James
Subject: Re: Note taker

Hi James,

I know it's really frustrating. I'm sorry that you are feeling this way the morning of the examination. Try to focus on the exam – answer the questions first that you can and then tackle those that are more difficult.

I have had some luck with identifying a note taker in class. I have two students that I'm checking out their notes for clarity and precision. My original thought using tutors did not work out as planned because they are all relying on the audio lectures.

I was unaware that your request was made so early. Let me follow up with that in ODS.

Today, just focus on getting through the exam. This is just the first and we can work together to make adjustments for the next exams in the future.

Brandi Brandon Knight, PhD
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive
Atlanta, GA 30310
404.752.1085 - office
404.752.1064 - fax
bknight@msm.edu

From: "Howell, James" <JHowell@msm.edu>
Date: Monday, July 24, 2017 at 7:13 AM
To: "Knight, Brandi" <BKnight@msm.edu>
Subject: Note taker

Dr. Knight,

Any progress made on the note taker front?

I think this accommodation is quite critical. I spend so much time listening and re-listening to audio recordings to make sure I write down everything the professor says about something (In class I'll write down time stamps of things I missed). I spend roughly 2-3 hours for each lecture listening and writing down everything the professor says. This is before I even start studying.

I feel this, along with other strategies I've tried for the first exam have led me to this very day, a day in which I'm going to go bombing around on exam 1.

I really feel like I'm going to bomb this exam. I'm simply not ready. There are lectures I still haven't even gone over yet.

I'll email you later about some things I'm going to change for studying after this exam.

Also, did ODS not get in touch with you guys until a few weeks before school started? I sent my accommodations documentation back in March and am curious as to why things weren't ironed out before school started. Sorry, I'm venting.

See you on the other side.

James

App. 473a

Academic Transcript

[redacted] James G. Howell
Aug 08, 2020 12:52 pm

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Institution Credit Transcript Totals

Transcript Data

STUDENT INFORMATION

Name : James G. Howell

Birth Date: [redacted]

Student Type: Medical Student

Curriculum Information

Current Program

Doctor of Medicine

Program: Doctor of Medicine

Major and Department: Medicine, Medicine Dept

This is NOT an Official Transcript

DEGREE AWARDED

Sought: Doctor of Medicine **Degree Date:**

Curriculum Information

Primary Degree

Program: Doctor of Medicine

College: School of Medicine

Major: Med cine

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Institution:	93.000	74.000	74.000	92.000	186.0	2.022

INSTITUTION CREDIT -Top-

Term: Fall 2017

Major: Med cine

Student Type: Med cal Student

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
MEDI	530	GR	Bas c Prin of Human Biology	B	10.000	30.0		
MEDI	531	GR	Organ Systems I	C	10.000	20.0		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	20.000	20.000	20.000	20.000	50.0	2.500
Cumulative:	20.000	20.000	20.000	20.000	50.0	2.500

Exhibit AN Page 1 of 3

Unofficial Transcript

App. 474a

Term: Spring 2018

Major: Med cine

Student Type: Med cal Student

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
MEDI	509	GR	Community Health	A	4 000	16 0		
MEDI	511	GR	Fundamentals of Med cine I	B	7 000	21 0		
MEDI	532	GR	Organ Systems II	C	10 000	20 0		
MEDI	533	GR	Organ Systems III	D/C	10 000	20 0		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	31.000	31.000	31 000	31.000	77.0	2.484
Cumulative:	51.000	51.000	51 000	51.000	127.0	2.490

Unofficial Transcript

Term: Fall 2018

Major: Med cine

Student Type: Med cal Student

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
MEDI	601	GR	Nutrition	P	1.000	0.0		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	1 000	1 000	1 000	0 000	0 0	0 000
Cumulative:	52.000	52.000	52 000	51.000	127.0	2.490

Unofficial Transcript

Term: Spring 2019

Major: Med cine

Student Type: Med cal Student

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
MEDI	602	GR	Med. Microbiology & Immunology	B	7 000	21 0		
MEDI	603	GR	Med. Pharmacology & Toxicology	C	7 000	14 0		
MEDI	611	GR	Fundamentals of Med cine II	B	8 000	24 0		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	22.000	22.000	22 000	22.000	59.0	2.682
Cumulative:	74.000	74.000	74 000	73.000	186.0	2.548

Unofficial Transcript

Academic Transcript

App. 475a

Term: Spring 2020

Major: Med cine

Student Type: Med cal Student

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
MEDI	600	GR	Pathophysiology	F	7.000	0.0		
MEDI	606	GR	Pathology	F	12.000	0.0		

Term Totals (Graduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	19.000	0.000	0 000	19.000	0.0	0.000
Cumulative:	93.000	74.000	74 000	92.000	186.0	2.022

Unofficial Transcript

TRANSCRIPT TOTALS (GRADUATE) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	93.000	74.000	74.000	92 000	186.0	2.022
Total Transfer:	0.000	0.000	0.000	0 000	0.0	0.000
Overall:	93.000	74.000	74.000	92 000	186.0	2.022

Unofficial Transcript

Financial Aid Eligibility Menu | Request Printed Transcript | Transcript Request Status

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RELEASE: 8.7.1

SITE MAP

Exhibit AN Page 3 of 3

Howell, James

From: Knight, Brandi
Sent: Tuesday, January 22, 2019 9:01 AM
To: Howell, James
Subject: Re: Notes for you
Attachments: Antidepressants.docx; Sedatives.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Greg,

Here are some pharm lectures that I just received today.

The options of having the curriculum managers and staff participate is the quickest improvement that we can make. There are other students that receive notes and they all come to me. It's very tough for me to keep up with the timing of receiving and sending the notes. Students receiving the notes want them - and they should have them - in a 24h or less turn around. Sometimes that is just not feasible for me to accomplish.

Hiring individuals takes a long time with job posting and HR and training. So that is on the table for upcoming years, but not as a immediate solution.

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
404.752.1085 – office
404.752.1064 – fax
bknight@msm.edu

From: Howell, James
Sent: Tuesday, January 22, 2019 5:08:56 AM
To: Knight, Brandi
Subject: RE: Notes for you

Dr. Knight,

What has brought upon these changes as opposed to other options? I'm not currently opposed to this, I'm just curious. There's been a lot of unfortunate disconnect between everyone and I, and I'd like to know where everyone is at.

Hope you had a pleasant weekend and holiday.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Knight, Brandi <BKnight@msm.edu>
Sent: Monday, January 21, 2019 2:57 AM
To: Howell, James <JHowell@msm.edu>
Subject: Re: Notes for you

HI Greg,

I don't have a specific timeline for you, but we are currently working on the transition. I'm still loading notes as of today, so I assume the transition will occur through the next exam block.

Your OneNote is up to date!

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
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404.752.1064 – fax
bknight@msm.edu

From: Howell, James
Sent: Friday, January 18, 2019 6:21:02 PM
To: Knight, Brandi
Subject: RE: Notes for you

Thank you, Dr. Knight.

I look forward to any beneficial changes.

When do we foresee these changes happening?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015

Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Knight, Brandi <BKnight@msm.edu>
Sent: Thursday, January 17, 2019 11:55 AM
To: Howell, James <JHowell@msm.edu>
Subject: Notes for you

Hi Greg,

Here are the Micro and Pharm notes for this block.

As far as the hired notetaker, no one has been hired. The focus has been made to streamlining the process away from me and to the curriculum managers. You'll likely see other people sending you notes now as opposed to my emails. We would like to get your feedback on this as it changes.

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
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Atlanta, GA 30310
404.752.1085 – office
404.752.1064 – fax
bknight@msm.edu

Howell, James

From: Howell, James
Sent: Monday, February 17, 2020 1:44 PM
To: Anachebe, Ngozi
Subject: A Request to Meet with You
Attachments: Howell, James - Accommodation History Final.docx

Dr. Anachebe,

I would like to setup a time to meet with you this week concerning some important matters. The overall topic I want to discuss is concerning my future at Morehouse School of Medicine (MSM). The related individual issues are as follows:

- I am registered with the Office of Disability Services (ODS) as a student with accommodations.
- Prior to committing to MSM I asked ODS if they could meet certain accommodations of mine, including but not limited to a notetaker. They said they could.
- For almost the first two years at MSM, my notetaking accommodation was not consistently met in a satisfactorily and timely manner - I was apparently the first student to need a notetaker in the medical program despite my initial request asking if this accommodation could be met prior to my commitment to MSM.
- One of the main reasons why I decelerated was because of my lack of faith with the notetaking process. I also decelerated because of my poor performance in MD1 due in large part to my notetaking accommodation not being consistently met in a satisfactorily and timely manner.
- This has negatively impacted my grades when I already know I can achieve academic success when my accommodations are inline with my coursework.
- This has negatively impacted my knowledgebase.
- I am currently failing pathology and pathophysiology due to this impacted knowledgebase.
- I would like to meet with you to discuss my future and how best we can work together towards my goal of academic success, because I need your help, and I am willing to do whatever it takes to finish successfully.

Note: A highly detailed, non-bulleted, timeline is attached. It is just over seven (7) pages long and is easy to read and follow. I highly suggest you read it if you can find the time, but you may find it more helpful if we went through it together first. I also think we should meet just one-on-one first, but I am open to suggestions.

I am generally available any day after 10:30.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

Dr. Anachebe,

I've tried to write this so that it is both detailed and easy to follow. A lot of things have come to a head lately. I've been writing this document for the past week as I've contemplated many things. I've spent a lot of time writing this because it very well may be one of the most important documents I ever write concerning my medical career. This has also been a struggle to write because it just really puts me back into a lot of negative emotions I've struggled with in medical school.

I'd like to give you a brief history of my time at Morehouse School of Medicine (MSM) so we can talk about my future. This document is in no way a means to blame any individual person, nor is it my will nor wish for anyone to get in trouble based on what has happened, because that would just cause me more anxiety and frustration. Life is about going through experiences and learning. This document is to explain my situation so that we can forge a new future.

I ask that you if you're going to share this document with anyone, because it has my diagnosis in it, that you ask me about who you want to share it with please.

My accommodations at MSM:

I'm going to tell you my diagnosis because it may help the story. I was diagnosed with severe ADHD and mild OCD at a very young age. My mother and I have fought every step of the way to make sure I have every opportunity as everyone else. That's why I feel a sense of pride, because I can relate, in the mission of MSM in the need to increase the number of people of color in programs of education, research, and service, whom previously have been offered very few chances.

Prior to being accepted to MSM, I emailed the office of disability services (ODS) to see if they could meet my recommended accommodations in the event that I was accepted to MSM. I was told to ask again after being accepted. After being accepted, and prior to committing to MSM, I emailed ODS again asking if they could meet my recommended accommodations of extra time on assignments and exams, testing in a distraction reduced environment, a notetaker, etc. To which, ODS responded saying that they could meet my accommodations.

Since starting as MSM from 07/2017 to around 03/2019, for almost two years, I have never had consistent and timely notes with regards to my notetaking accommodations. This was despite of my initial enquiry prior to committing to MSM, and despite the adopted timeframe goal of receiving notes within 24-48 hours after every class.

MD1 Experiences:

Upon starting at MSM, I discovered that I was apparently the first ever medical student to request a notetaker and that the statement from ODS saying that they could meet my requested accommodations was said without fully knowing, particularly regarding the notetaker, if all of my accommodations could be timely met. I would come to learn later than there was possibly a previous GEBS student with a notetaking accommodation, but it is unknown to me if this

previous experience is what ODS relied upon in telling me that they could meet my accommodations prior to my committing to MSM. This caused some apprehension and anxiety because like I stated above, I asked ODS prior to committing to MSM if they could meet my recommended accommodations, which included a notetaker, to which they said they could. Now had ODS responded prior to my commitment to MSM by saying that they had never had a medical student need a notetaker before and that this was going to be a new process, and also explained the risks due to this, I would have possibly considered other schools over MSM.

I begrudgingly took on the role, for lack of a better word, of a guinea pig. In my first 2-3 months at MSM there were no notes. Dr. Knight wanted to be in charge of the process and decided that she wanted to wait until after Basic Principles (BP) to look at grade results in determining what students would be a good notetaking candidate. Now it wasn't a horrible idea in theory, but it still left me without notes for basic principles and good grades doesn't equal good notes, nor timely notes. I'm sure other things went into it, but this is all that was communicated to me about the process at that time. There also wasn't really a process in place for notetakers to submit notes and so IT was brought in to see what could be done. Thus, this was a new thing for MSM's medical school.

I didn't do that well in basic principles and I received poor grades during which time my notetaking accommodation was not met. These grades don't accurately represent what I can do as a student. I still don't know how I feel about receiving grades, that will show up in my residency applications, during times of which one of my previously requested accommodations was not met at all, but I put my faith in the process as I have heard repeatedly in my time at MSM concerning other matters.

As you may know, and as Dr. Elks has pointed out to me, MD1 is taught in a way that is not very reliant on books. Rather, it is taught in such a way that is reliant on lectures. I found that when going to class, lecture slides were formatted with key words and phrases, and that much of the explaining was done orally. Thus, as someone who has deficits as an auditory learner, this became a huge problem, especially with untimely notes.

All of MD1 classes initially became an Olympic competition to see if I could keep up in taking my own notes, which I never could keep up, and thus I wasn't actually processing what the professor was actually teaching as so much as I was just trying to pay attention to put their words to paper as I was trying to be the world's best transcriber. This turned into a disaster because then I hated going to class where it either became a nightmare transcribing event where I could never keep up, or I just listened and didn't retain anything.

On a side note, I was also the student who would come to make <u>all</u> lectures audio and visually recorded. Now why previous teachers at a learning institution would be against their lectures being recorded for students to watch and listen, either for a second or third time, or possibly the first time if that's how they learn better, is a topic for another day. I took some solace hearing how other students benefited from all of the lectures being audio and visually recorded.

After BP, from around 08/2017 to around 03/2019 (around the time Dr. Knight left), the timing of when I received notes was always inconsistent, and it became something I would often lose

faith in and a big cause of anxiety and frustration. The time it took me to get notes back varied from several days, to weeks, to even a month at times, and sometimes never. My notetaking accommodation became something I couldn't rely on when it was something so desperately needed. With as much material as medical students are supposed to know, and with as much new material gone over every day, I felt like I was always drowning.

My grades suffered and there was a lot of miscommunication, or lack of communication, between Dr. Knight and myself, between Dr. Knight and ODS, and between ODS and myself. Dr. Knight was my contact person with regards to the notes, as she was in charge of obtaining and uploading or sending me notes. But due to the untimeliness of notes, I began to feel like an afterthought, I became bored trying to be my own scribe, and I became irritated. I checked out at times and tried to do things my own way. Dr. Knight even acknowledges that she understood about the problem with the timing inconsistencies of the notes and that she understood that she was bottleneck in the process, but nothing really changed. She told me to reach out to her more often, but as shown below that didn't always have any effect. Thinking back this shouldn't have been my responsibility anyways and it seemed like this request was for me to serve as a reminder. And if that was the case, I could have just taped a sign on everyone's door that said, "notes please." MSM knew when I wasn't getting notes, and ODS should have known. If I can compare it to something: should an employee have to remind payroll to always send their paycheck? Further, you may recall an email I sent to you awhile ago about how to deal with people not responding to my emails. It was regarding this amongst other things too.

I didn't do well in really any of my MD1 classes and I received poor grades during which my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. I was always weeks behind and come near test time, I would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. It was a viscous cycle because I never learned nor retained anything I crammed for, nor did I really learn anything well. Thus, trying to learn things on my own, coupled with inconsistent notes, my knowledge became something like this: In an exam block, I would pretty well understand the things taught in the beginning of the exam block but never really understand anything, or have the time to understand anything, taught after around the halfway point of an exam block. Thus, if looking at a calendar, it literally became a roadway of smooth surfaces that represented the beginnings of each exam block, littered with huge potholes of empty knowledge in the later parts of the exam blocks. Further, because everything is built upon itself, the smoother surfaces became less and less smooth because my knowledge was so pot marked that I couldn't link anything together. Thus, my knowledge became less and less. Further, any subsequent information was taken in not by understanding, because I simply didn't understand, but by memorization - meaning it wasn't retained for very long.

This all led to a lot of anxiety and frustration because I was receiving poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, and I had a plethora of knowledge gaps about a lot of things.

A point I want to drive home is that lets say as a hypothetical example that notes were only inconsistent for one to two months regarding normal physiology. That's still one to two months

of material That I don't know well and that will cause problems in linking other information. It will also cause problems in learning additionally information about the same topic regarding pathology, pathophysiology, microbiology, and pharmacology. Now imagine this being an issue for all of MD1 and a majority of MD2's decelerated first year. That's kind of what I'm working through.

MD2, Decelerated Part 1:

The option to decelerate was presented to me by Dr. Knight a few weeks prior to the start of MD2. When considering decelerating, I spoke with you via email about the consequences of decelerating and how that would affect matching into residency programs. You forwarded me some matching statistics that showed the most important thing was your STEP 1 score. You also mentioned that failing any courses would negative effect residency matching, and that certain programs won't even download your application if a student took longer than four years.

Despite hearing about the difficulties and rigor of MD2, one of the major reasons why I decelerated was because of the lack of faith I had in my notetaking accommodations. I was already rightfully worried about my poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, coupled with the now inevitable possibility of my medical education taking longer than four years, it seemed to me that my last hope in matching well was getting a great score on STEP 1.

It was also around this time that Dr. Knight brought up the idea of looking into bringing in outside professional notetakers because she understood about the issues I faced in the previous year and she wanted to make sure I received timely notes for that year. She also expected any and all untimeliness and inconsistencies to further worsen upon pathophysiology starting in October of that year. This idea was quickly scraped due to the logistics and efficacy of bringing in outsiders to write down notes about topics they may not understand. In hindsight, it would have been prudent to find some 2020 students in MD2 to take notes (while I was in MD1 as a 2021 student) so as to prevent any issues with untimeliness because I wouldn't be taking those classes for another year.

In hindsight, I think it may have been more prudent to just repeat first year. But that wasn't brought up as an option, since I did eventually pass everything, nor did I understand the effects of the aforementioned MD1 issues on my understanding and placement in long-term memory of future topics.

Thus, I began MD2, decelerated part 1, taking microbiology, pharmacology, and FOM II. Again, there were many inconsistencies with the timeliness of notes until around 03/2019, around the time Dr. Knight left. Due to these inconsistencies, again I felt a lot of anxiety and frustration because I was again receiving poor/average grades during which time my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. Due to the aforementioned issues with MD1, there were a lot of further MD1 knowledge gaps which left linking concepts from pharmacology, microbiology, and FOM II very difficult. I reverted to using a lot of straight memorization than understanding to get by. This made my retention very poor. A lot of the same

cramming techniques from MD1 persisted. I was always weeks behind and come near test time, I would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. I just pushed through any struggle and obstacle and did the best I could.

My grades suffered and there was again a lot of miscommunication, or lack of quality communication. For example, if I didn't receive notes within a few days I would email Dr. Knight. Sometimes she would answer, and I would get an answer about when to expect notes or she would send notes, and sometimes she wouldn't immediately answer (sometimes she wouldn't answer at all). I never knew if she didn't answer, either immediately or entirely, because she didn't see my email, or if she saw my email and didn't have an answer for me so she would wait, and possibly forget, to email me back when she would later receive an answer about the timing of the notes. I would often wait a day or two to email her back if I hadn't heard anything back. Usually after a few emails, I would reach out to Mrs. Thompson at ODS. As you can see, this method could easily delay notes for more than a week if not longer, and that's if notes had already been received or completed.

For a few months, I kept track of the average time it took to receive notes during MD2, decelerated part 1, and it was greater than eight (8) days (Note: this was during a time when I had already been frustrated, and had already expressed my frustration, of the length of time it took for notes, thus it was higher before I started to keep track). After Dr. Knight left, on or around 03/2019, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is like 2 days.

One of the most potentially frustrating things I found out during the transition period after Dr. Knight left, was when Ms. Blossomgame and Dr. Redding told me that when they asked the notetakers if they could get notes sooner (I think Ms. Thompson was present too), they all responded saying it wouldn't be a problem. Now I don't know all the factors and I don't know all about what happened, but if this is true, it sounds like all the issues and hardships I faced, with regards to my notetaking accommodation, could have potentially never happened.

Lastly, as I stated above that when I was keeping track, it took greater than eight (8) days for notes. For arguments sake, this greater than eight (8) days would have been far more acceptable had I been told notes will takes eight (8) days and I never had to ask for them, and they were always on time (Granted greater than eight (8) is way too long to begin with). But this greater than eight (8) days came with everyone's initial goal of taking only 24-48 hours, and my constant emails to Dr. Knight and ODS, and the coupled frustration, anxiety, and complaints.

MD2, decelerated part 2:

Since the start of MD2, decelerated part 2, I have felt like a MD1 student trapped in a MD2 body. Due to the aforementioned events, I've never had a good understanding of normal physiology, anatomy, histology, microbiology, and pharmacology, and didn't realize how bad it was until the start of this year and that has made learning abnormal physiology and pathology very slow and arduous. I feel like up until this year, I've been ignorant of my lack of knowledge and the consequences that were as a result of my notetaking accommodation not consistently met

in a satisfactorily and timely manner. I've been ignorant in simply accepting this situation thinking I can just work past it and push through it, doing whatever it takes because I've always been a fighter. I also didn't know how to articulate my feelings about this until recently when it became somewhat of a necessity that I do so.

The general purpose of decelerating was to have more time to focus on the present studies but so much of my time is also spent on trying to learn what I never had the opportunity to learn in the past. So, in a sense I feel like both a MD1 and MD2 student at the same time and not only as a decelerated MD2 student.

As stated above, after Dr. Knight left, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is around 2 days or less. I also asked for and received all the notes that were taken for pathology and pathophysiology last year. Thus, I now receive new notes this year and have access to old notes as a backup just in case. These have been very helpful.

Due to the summation of all the issues presented with the consequences of my notetaking accommodation not consistently met in a satisfactorily and timely manner, and the knowledge gaps left by them, I am again receiving poor grades which I feel do not accurately represent how I can perform as a student. In fact, I am failing both pathology and pathophysiology, both of which are crucial not only on STEP 1, which is possibly the only thing that can make my application attractive to residency programs after everything already discussed above, but also critical in being a good doctor.

Future:

I would like to meet with you and discuss my future. Things I would like to discuss are outlined below. In our previous conversations via email, we have talked about some of the most important things residency programs consider in applicants: years spent in medical school, grades, and STEP 1 score.

The First Student

I've been for lack of a better word a guinea pig in a sense that I was the first student to receive a particular accommodation at MSM's medical school program: a notetaker. I was put into a crazy situation. Now I don't mind being the first student, the barrier breaker so to speak, but I feel like I'm being punished for it or it's not being acknowledged by anyone.

Though I ultimately do take some solace knowing that this was a great learning opportunity for a lot of people and that there are currently now other medical school students who also require a notetaker that don't have to go through what I have. Thus, the problems I've encountered and advised, coupled with the learning experience this school has received, has added a tremendous value to the medical school program in that there is now a dedicated program in place to satisfactorily accommodate students who require a notetaker.

But that doesn't change what has happened in my so-called trial run. I've experienced a lot of added fear, anxiety, and frustration in addition to what a normal medical school student already experiences.

My Grades

The recent SAPP emails have also prompted the writing of this email. My grades are terrible. I've basically received a C in every class. But this has been frustrating because I've received poor grades during times when my notetaking accommodation was not satisfactorily met, and thus these grades don't accurately represent what I can do as a student. Even more frustrating because people have seemed okay that I was graded on conditions when my notetaking accommodation was not satisfactorily met. And because everything in medical school really builds upon itself, I'm being graded on conditions now about information that is built upon the previous information that was in the curriculum during times when my notetaking accommodation was not satisfactorily met. This also makes any residency applications look unattractive. My previous poor grades are always on my mind as is my constant being behind because of my poor knowledgebase. Though I emphatically know I can achieve academic success when my accommodations are in place and lined up with my coursework.

Residency

As mentioned above, you've stated that some programs won't even download your application if you've taken longer than four years, and failing a class is also very detrimental on your application. As it looks now, my application will include both.

It's not until these past few weeks where I've actually thought, "Do I really think I have a chance? What programs would take me and what would my story even be?" This has also prompted my writing of this document.

Finances

I've heard that students requesting federal student loans can only do so for three years for the first two years of medical school and three years for the last two years of medical school. Thus, I've already used the maximum allocated amount of federal funds for my first two, in reality three, years of medical school. During which two of the three years my notetaking accommodation was not consistently met in a satisfactorily and timely manner. What's going to happen with my finances going forward?

Conclusion

As it looks now, I will ultimately need one more year in pathology and pathophysiology.

I don't want to make the argument that people did poor work. From what I've been told and from what I've seen, people wear a lot of hats at MSM, and so they may be overstretched. I also consider a lot of people that are part of my ODS process as friends. After working as a management/business consultant in my early career, I don't like to throw people under the bus. I

just want to get my point across and that this was a learning experience that has added tremendous value to MSM. But one of the big reasons on my checklist for why I came to MSM was that ODS told me they could meet all my recommended accommodations prior to my committing to MSM, and they could not. In the end, I value and respect everyone that I've worked with but that doesn't change that this has caused significant impairment in my learning experience. If I graduate, I will now potentially graduate with no one I know. All of this has caused a lot of stress and I don't know what to do. I look forward to speaking with you soon.

Howell, James

From: Howell, James
Sent: Tuesday, February 18, 2020 9:39 AM
To: Thompson, Marla
Subject: Meeting Request
Attachments: Howell, James - Accommodation History Final.docx

Mrs. Thompson,

I would like to setup a time to meet soon. I am generally free any day before 2:30.

Note: I emailed Dr. Anachebe and not you about some issues I thought only she had the power to remedy. She cc-ed you in her response back to me. It was by no means to circumvent you, I was just going straight to the person who I though had the most power about a lot of things and could answer my questions as quickly as possible.

In a quick summary, a lot of things have come to a head lately. I told her the following:

- "I am registered with the Office of Disability Services (ODS) as a student with accommodations.
- Prior to committing to MSM I asked ODS if they could meet certain accommodations of mine, including but not limited to a notetaker. They said they could.
- For almost the first two years at MSM, my notetaking accommodation was not consistently met in a satisfactorily and timely manner.
- One of the main reasons why I decelerated was because of my lack of faith with the notetaking process.
- This has negatively impacted my grades when I know I can achieve academic success when my accommodations are inline with my coursework.
- This has negatively impacted my knowledgebase.
- I am currently failing pathology and pathophysiology due to this impacted knowledgebase.
- I would like to meet with you to discuss my future and how best we can work together towards my goal of academic success.

Note: A highly detailed, non-bulleted, timeline is attached. It is eight (8) pages long and is easy to read and follow. I highly suggest you read it if you can find the time. I also think we should meet just one-on-one first, but I am open to suggestions."

As mentioned above, the document attached is very objective and is as impartial as I can make it. I laid everything out as best I could about the point I'm trying to make. I have explained that I don't want to throw anyone under the bus and that this was a learning experience, particularly for MSM, that has added value for other students. But it still had a negative impact on me, with a lot of effects not seen until this year, that has affected my grades, how long I'm in medical school, residency applications, and I'm also currently failing pathology and pathophysiology. There remains a lot of questions about my future with regards to medical school, finances, etc.

I hope your aunt is doing better.

Kind Regards,

James "Greg" Howell

Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

Dr. Anachebe,

I've tried to write this so that it is both detailed and easy to follow. A lot of things have come to a head lately. I've been writing this document for the past week as I've contemplated many things. I've spent a lot of time writing this because it very well may be one of the most important documents I ever write concerning my medical career. This has also been a struggle to write because it just really puts me back into a lot of negative emotions I've struggled with in medical school.

I'd like to give you a brief history of my time at Morehouse School of Medicine (MSM) so we can talk about my future. This document is in no way a means to blame any individual person, nor is it my will nor wish for anyone to get in trouble based on what has happened, because that would just cause me more anxiety and frustration. Life is about going through experiences and learning. This document is to explain my situation so that we can forge a new future.

I ask that you if you're going to share this document with anyone, because it has my diagnosis in it, that you ask me about who you want to share it with please.

My accommodations at MSM:

I'm going to tell you my diagnosis because it may help the story. I was diagnosed with severe ADHD and mild OCD at a very young age. My mother and I have fought every step of the way to make sure I have every opportunity as everyone else. That's why I feel a sense of pride, because I can relate, in the mission of MSM in the need to increase the number of people of color in programs of education, research, and service, whom previously have been offered very few chances.

Prior to being accepted to MSM, I emailed the office of disability services (ODS) to see if they could meet my recommended accommodations in the event that I was accepted to MSM. I was told to ask again after being accepted. After being accepted, and prior to committing to MSM, I emailed ODS again asking if they could meet my recommended accommodations of extra time on assignments and exams, testing in a distraction reduced environment, a notetaker, etc. To which, ODS responded saying that they could meet my accommodations.

Since starting as MSM from 07/2017 to around 03/2019, for almost two years, I have never had consistent and timely notes with regards to my notetaking accommodations. This was despite of my initial enquiry prior to committing to MSM, and despite the adopted timeframe goal of receiving notes within 24-48 hours after every class.

MD1 Experiences:

Upon starting at MSM, I discovered that I was apparently the first ever medical student to request a notetaker and that the statement from ODS saying that they could meet my requested accommodations was said without fully knowing, particularly regarding the notetaker, if all of my accommodations could be timely met. I would come to learn later than there was possibly a previous GEBS student with a notetaking accommodation, but it is unknown to me if this

previous experience is what ODS relied upon in telling me that they could meet my accommodations prior to my committing to MSM. This caused some apprehension and anxiety because like I stated above, I asked ODS prior to committing to MSM if they could meet my recommended accommodations, which included a notetaker, to which they said they could. Now had ODS responded prior to my commitment to MSM by saying that they had never had a medical student need a notetaker before and that this was going to be a new process, and also explained the risks due to this, I would have possibly considered other schools over MSM.

I begrudgingly took on the role, for lack of a better word, of a guinea pig. In my first 2-3 months at MSM there were no notes. Dr. Knight wanted to be in charge of the process and decided that she wanted to wait until after Basic Principles (BP) to look at grade results in determining what students would be a good notetaking candidate. Now it wasn't a horrible idea in theory, but it still left me without notes for basic principles and good grades doesn't equal good notes, nor timely notes. I'm sure other things went into it, but this is all that was communicated to me about the process at that time. There also wasn't really a process in place for notetakers to submit notes and so IT was brought in to see what could be done. Thus, this was a new thing for MSM's medical school.

I didn't do that well in basic principles and I received poor grades during which time my notetaking accommodation was not met. These grades don't accurately represent what I can do as a student. I still don't know how I feel about receiving grades, that will show up in my residency applications, during times of which one of my previously requested accommodations was not met at all, but I put my faith in the process as I have heard repeatedly in my time at MSM concerning other matters.

As you may know, and as Dr. Elks has pointed out to me, MD1 is taught in a way that is not very reliant on books. Rather, it is taught in such a way that is reliant on lectures. I found that when going to class, lecture slides were formatted with key words and phrases, and that much of the explaining was done orally. Thus, as someone who has deficits as an auditory learner, this became a huge problem, especially with untimely notes.

All of MD1 classes initially became an Olympic competition to see if I could keep up in taking my own notes, which I never could keep up, and thus I wasn't actually processing what the professor was actually teaching as so much as I was just trying to pay attention to put their words to paper as I was trying to be the world's best transcriber. This turned into a disaster because then I hated going to class where it either became a nightmare transcribing event where I could never keep up, or I just listened and didn't retain anything.

On a side note, I was also the student who would come to make <u>all</u> lectures audio and visually recorded. Now why previous teachers at a learning institution would be against their lectures being recorded for students to watch and listen, either for a second or third time, or possibly the first time if that's how they learn better, is a topic for another day. I took some solace hearing how other students benefited from all of the lectures being audio and visually recorded.

After BP, from around 08/2017 to around 03/2019 (around the time Dr. Knight left), the timing of when I received notes was always inconsistent, and it became something I would often lose

faith in and a big cause of anxiety and frustration. The time it took me to get notes back varied from several days, to weeks, to even a month at times, and sometimes never. My notetaking accommodation became something I couldn't rely on when it was something so desperately needed. With as much material as medical students are supposed to know, and with as much new material gone over every day, I felt like I was always drowning.

My grades suffered and there was a lot of miscommunication, or lack of communication, between Dr. Knight and myself, between Dr. Knight and ODS, and between ODS and myself. Dr. Knight was my contact person with regards to the notes, as she was in charge of obtaining and uploading or sending me notes. But due to the untimeliness of notes, I began to feel like an afterthought, I became bored trying to be my own scribe, and I became irritated. I checked out at times and tried to do things my own way. Dr. Knight even acknowledges that she understood about the problem with the timing inconsistencies of the notes and that she understood that she was bottleneck in the process, but nothing really changed. She told me to reach out to her more often, but as shown below that didn't always have any effect. Thinking back this shouldn't have been my responsibility anyways and it seemed like this request was for me to serve as a reminder. And if that was the case, I could have just taped a sign on everyone's door that said, "notes please." If I can compare it to something: should an employee have to remind payroll to always send their paycheck? Further, you may recall an email I sent to you awhile ago about how to deal with people not responding to my emails. It was regarding this amongst other things too.

I didn't do well in really any of my MD1 classes and I received poor grades during which my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. I was always weeks behind and come near test time, I would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. It was a viscous cycle because I never learned nor retained anything I crammed for, nor did I really learn anything well. Thus, trying to learn things on my own, coupled with inconsistent notes, my knowledge became something like this: In an exam block, I would pretty well understand the things taught in the beginning of the exam block but never really understand anything, or have the time to understand anything, taught after around the halfway point of an exam block. Thus, if looking at a calendar, it literally became a roadway of smooth surfaces that represented the beginnings of each exam block, littered with huge potholes of empty knowledge in the later parts of the exam blocks. Further, because everything is built upon itself, the smoother surfaces became less and less smooth because my knowledge was so pot marked that I couldn't link anything together. Thus, my knowledge became less and less. Further, any subsequent information was taken in not by understanding, because I simply didn't understand, but by memorization - meaning it wasn't retained for very long.

This all led to a lot of anxiety and frustration because I was receiving poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, and I had a plethora of knowledge gaps about a lot of things.

A point I want to drive home is that lets say as a hypothetical example that notes were only inconsistent for one to two months regarding normal physiology. That's still one to two months of material That I don't know well and that will cause problems in linking other information. It

will also cause problems in learning additionally information about the same topic regarding pathology, pathophysiology, microbiology, and pharmacology. Now imagine this being an issue for all of MD1 and a majority of MD2's decelerated first year. That's kind of what I'm working through.

MD2, Decelerated Part 1:

The option to decelerate was presented to me by Dr. Knight a few weeks prior to the start of MD2. When considering decelerating, I spoke with you via email about the consequences of decelerating and how that would affect matching into residency programs. You forwarded me some matching statistics that showed the most important thing was your STEP 1 score. You also mentioned that failing any courses would negative effect residency matching, and that certain programs won't even download your application if a student took longer than four years.

Despite hearing about the difficulties and rigor of MD2, one of the major reasons why I decelerated was because of the lack of faith I had in my notetaking accommodations. I was already rightfully worried about my poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, coupled with the now inevitable possibility of my medical education taking longer than four years, it seemed to me that my last hope in matching well was getting a great score on STEP 1.

It was also around this time that Dr. Knight brought up the idea of looking into bringing in outside professional notetakers because she understood about the issues I faced in the previous year and she wanted to make sure I received timely notes for that year. She also expected any and all untimeliness and inconsistencies to further worsen upon pathophysiology starting in October of that year. This idea was quickly scraped due to the logistics and efficacy of bringing in outsiders to write down notes about topics they may not understand. In hindsight, it would have been prudent to find some 2020 students in MD2 to take notes (while I was in MD1 as a 2021 student) so as to prevent any issues with untimeliness because I wouldn't be taking those classes for another year.

In hindsight, I think it may have been more prudent to just repeat first year. But that wasn't brought up as an option, since I did eventually pass everything, nor did I understand the effects of the aforementioned MD1 issues on my understanding and placement in long-term memory of future topics.

Thus, I began MD2, decelerated part 1, taking microbiology, pharmacology, and FOM II. Again, there were many inconsistencies with the timeliness of notes until around 03/2019, around the time Dr. Knight left. Due to these inconsistencies, again I felt a lot of anxiety and frustration because I was again receiving poor/average grades during which time my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. Due to the aforementioned issues with MD1, there were a lot of further MD1 knowledge gaps which left linking concepts from pharmacology, microbiology, and FOM II very difficult. I reverted to using a lot of straight memorization than understanding to get by. This made my retention very poor. A lot of the same cramming techniques from MD1 persisted. I was always weeks behind and come near test time, I

would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. I just pushed through any struggle and obstacle and did the best I could.

My grades suffered and there was again a lot of miscommunication, or lack of quality communication. For example, if I didn't receive notes within a few days I would email Dr. Knight. Sometimes she would answer, and I would get an answer about when to expect notes or she would send notes, and sometimes she wouldn't immediately answer (sometimes she wouldn't answer at all). I never knew if she didn't answer, either immediately or entirely, because she didn't see my email, or if she saw my email and didn't have an answer for me so she would wait, and possibly forget, to email me back when she would later receive an answer about the timing of the notes. I would often wait a day or two to email her back if I hadn't heard anything back. Usually after a few emails, I would reach out to Mrs. Thompson at ODS. As you can see, this method could easily delay notes for more than a week if not longer, and that's if notes had already been received or completed.

For a few months, I kept track of the average time it took to receive notes during MD2, decelerated part 1, and it was greater than eight (8) days (Note: this was during a time when I had already been frustrated, and had already expressed my frustration, of the length of time it took for notes, thus it was higher before I started to keep track). After Dr. Knight left, on or around 03/2019, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is like 2 days.

One of the most potentially frustrating things I found out during the transition period after Dr. Knight left, was when Ms. Blossomgame and Dr. Redding told me that when they asked the notetakers if they could get notes sooner (I think Ms. Thompson was present too), they all responded saying it wouldn't be a problem. Now I don't know all the factors and I don't know all about what happened, but if this is true, it sounds like all the issues and hardships I faced, with regards to my notetaking accommodation, could have potentially never happened.

Lastly, as I stated above that when I was keeping track, it took greater than eight (8) days for notes. For arguments sake, this greater than eight (8) days would have been far more acceptable had I been told notes will takes eight (8) days and I never had to ask for them, and they were always on time (Granted greater than eight (8) is way too long to begin with). But this greater than eight (8) days came with everyone's initial goal of taking only 24-48 hours, and my constant emails to Dr. Knight and ODS, and the coupled frustration, anxiety, and complaints.

MD2, decelerated part 2:

Since the start of MD2, decelerated part 2, I have felt like a MD1 student trapped in a MD2 body. Due to the aforementioned events, I've never had a good understanding of normal physiology, anatomy, histology, microbiology, and pharmacology, and didn't realize how bad it was until the start of this year and that has made learning abnormal physiology and pathology very slow and arduous. I feel like up until this year, I've been ignorant of my lack of knowledge and the consequences that were as a result of my notetaking accommodation not consistently met in a satisfactorily and timely manner. I've been ignorant in simply accepting this situation

thinking I can just work past it and push through it, doing whatever it takes because I've always been a fighter. I also didn't know how to articulate my feelings about this until recently when it became somewhat of a necessity that I do so.

The general purpose of decelerating was to have more time to focus on the present studies but so much of my time is also spent on trying to learn what I never had the opportunity to learn in the past. So, in a sense I feel like both a MD1 and MD2 student at the same time and not only as a decelerated MD2 student.

As stated above, after Dr. Knight left, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is around 2 days or less. I also asked for and received all the notes that were taken for pathology and pathophysiology last year. Thus, I now receive new notes this year and have access to old notes as a backup just in case. These have been very helpful.

Due to the summation of all the issues presented with the consequences of my notetaking accommodation not consistently met in a satisfactorily and timely manner, and the knowledge gaps left by them, I am again receiving poor grades which I feel do not accurately represent how I can perform as a student. In fact, I am failing both pathology and pathophysiology, both of which are crucial not only on STEP 1, which is possibly the only thing that can make my application attractive to residency programs after everything already discussed above, but also critical in being a good doctor.

Future:

I would like to meet with you and discuss my future. Things I would like to discuss are outlined below. In our previous conversations via email, we have talked about some of the most important things residency programs consider in applicants: years spent in medical school, grades, and STEP 1 score.

The First Student

I've been for lack of a better word a guinea pig in a sense that I was the first student to receive a particular accommodation at MSM's medical school program: a notetaker. I was put into a crazy situation. Now I don't mind being the first student, the barrier breaker so to speak, but I feel like I'm being punished for it or it's not being acknowledged by anyone.

Though I ultimately do take some solace knowing that this was a great learning opportunity for a lot of people and that there are currently now other medical school students who also require a notetaker that don't have to go through what I have. Thus, the problems I've encountered and advised, coupled with the learning experience this school has received, has added a tremendous value to the medical school program in that there is now a dedicated program in place to satisfactorily accommodate students who require a notetaker.

But that doesn't change what has happened in my so-called trial run. I've experienced a lot of added fear, anxiety, and frustration in addition to what a normal medical school student already experiences.

My Grades

The recent SAPP emails have also prompted the writing of this email. My grades are terrible. I've basically received a C in every class. But this has been frustrating because I've received poor grades during times when my notetaking accommodation was not satisfactorily met, and thus these grades don't accurately represent what I can do as a student. Even more frustrating because people have seemed okay that I was graded on conditions when my notetaking accommodation was not satisfactorily met. And because everything in medical school really builds upon itself, I'm being graded on conditions now about information that is built upon the previous information that was in the curriculum during times when my notetaking accommodation was not satisfactorily met. This also makes any residency applications look unattractive. My previous poor grades are always on my mind as is my constant being behind because of my poor knowledgebase. Though I emphatically know I can achieve academic success when my accommodations are in place and lined up with my coursework.

Residency

As mentioned above, you've stated that some programs won't even download your application if you've taken longer than four years, and failing a class is also very detrimental on your application. As it looks now, my application will include both.

It's not until these past few weeks where I've actually thought, "Do I really think I have a chance? What programs would take me and what would my story even be?" This has also prompted my writing of this document.

Finances

I've heard that students requesting federal student loans can only do so for three years for the first two years of medical school and three years for the last two years of medical school. Thus, I've already used the maximum allocated amount of federal funds for my first two, in reality three, years of medical school. During which two of the three years my notetaking accommodation was not consistently met in a satisfactorily and timely manner. What's going to happen with my finances going forward?

Conclusion

As it looks now, I will ultimately need one more year in pathology and pathophysiology.

I don't want to make the argument that people did poor work. From what I've been told and from what I've seen, people wear a lot of hats at MSM, and so they may be overstretched. I also consider a lot of people that are part of my ODS process as friends. After working as a management/business consultant in my early career, I don't like to throw people under the bus. I

just want to get my point across and that this was a learning experience that has added tremendous value to MSM. But one of the big reasons on my checklist for why I came to MSM was that ODS told me they could meet all my recommended accommodations prior to my committing to MSM, and they could not. In the end, I value and respect everyone that I've worked with but that doesn't change that this has caused significant impairment in my learning experience. If I graduate, I will now potentially graduate with no one I know. All of this has caused a lot of stress and I don't know what to do. I look forward to speaking with you soon.

REPORT DETAILS

Report Submission Date
3/28/2020

Reported Company/Branch Information
Location 720 Westview Drive
City/State/Zip: Atlanta, GA, 30310, USA)

Relationship to Institution
Student

Please identify the person(s) engaged in this behavior:
Marla Thompson - Title IX Coordinator
Brandi Knight - Former Director of Office of Student Learning and Educational Resources (OSLER)

Do you suspect or know that a supervisor or management is involved?
Do Not Know / Do Not Wish To Disclose

Is management or the department aware of this problem?
Yes

What is the general nature of this matter?
For approximately the first two (2) years of my medical school education, there have been issues with one of my approved 504 accommodations, a notetaker. There were issues in getting the notetaker accommodations in a timely and complete manner. As a result, it has affected my current academics.

Where did this incident or violation occur?
Morehouse School of Medicine

Please provide the specific or approximate time this incident occurred:
From my current analysis, the timeliness and completeness of my notetaking accommodation is as follows:

[2017-2018 Academic School Year]
The total average turnaround time of notes for any particular class was 4.17 days.
Out of the total 323 applicable classes that I should have received notes for, I only received notes for 188 classes (60.99%). Thus, I did not receive notes for 39.01% of applicable classes.

[2018-2019 Academic School Year]
The total average turnaround time of notes for any particular class was greater than 14.61 days.
Out of the total 133 applicable classes that I should have received notes for, I only received notes for 113 classes (87.97%). Thus, I did not receive notes for 12.03% of applicable classes.

I have Excel files of all my analysis as well as PDFs of all emails concerning notes.

How long do you think this problem has been going on?
More than a year

How did you become aware of this violation?
It happened to me

Please identify any persons who have attempted to conceal this problem and the steps they took to conceal it:
This is a deeply flawed situation where this is not an environment where I believe there is open and honest communication.

On 02/17/2020, I sent an email to Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) in an attempt to explain my concerns and issues regarding the problems I have faced with receiving one of my accommodations. My email was as follows:
"Dr. Anachebe, I would like to setup a time to meet with you this week concerning some important matters. The overall topic I want to discuss is concerning my future at Morehouse School of Medicine (MSM). The related individual issues are as follows:

- I am registered with the Office of Disability Services (ODS) as a student with accommodations.
- Prior to committing to MSM I asked ODS if they could meet certain accommodations of mine, including but not limited to a notetaker. They said they could.
- For almost the first two years at MSM, my notetaking accommodation was not consistently met in a satisfactorily and timely manner - I was apparently the first student to need a notetaker in the medical program despite my initial request asking if this accommodation could be met prior to my commitment to MSM.
- One of the main reasons why I decelerated was because of my lack of faith with the notetaking process. I also decelerated because of my poor performance in MD1 due in large part to my notetaking accommodation not being consistently met in a satisfactorily and timely manner.
- This has negatively impacted my grades when I already know I can achieve academic success when my accommodations are inline with my coursework.
- This has negatively impacted my knowledgebase.
- I am currently failing pathology and pathophysiology due to this impacted knowledgebase.
- I would like to meet with you to discuss my future and how best we can work together towards my goal of academic success, because I need your help, and I am willing to do whatever it takes to finish successfully.

Note: A highly detailed, non-bulleted, timeline is attached. It is just over seven (7) pages long and is easy to read and follow. I highly suggest you read it if you can find the time, but you may find it more helpful if we went through it together first. I also think we should meet just one-on-one first, but I am open to suggestions. I am generally available any day after 10:30."

On 02/18/2020, Dr. Anachebe responded saying " Please know that I do not handle accommodations and you should contact the Office of Disability Services for any issues you are having. I copied Ms. [Marla] Thompson to inform her of this discussion."

In my meetings with Marla Thompson (Title IX Coordinator) on 02/19/2020 and 02/26/2020, we discussed the issues I brought up in my email to Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs). These included, but were not limited to, issues that have arisen due to the problems with my notetaking accommodation, namely, poor grades, current poor academic performance, the need to repeat this current academic year, and financial issues. These were the issues that the Office of Disability Services (ODS), namely Marla Thompson, said she could not make a decision on, and that these issues needed to be forwarded to Dr. Ngozi Anachebe. I stated that I understood this because that was the reason why I sent it to Dr. Ngozi Anachebe in the first place. Marla Thompson said she was going to reach out to Dr. Ngozi Anachebe in attempt to resolve the issues.

On 03/05/2020, Marla Thompson (Title IX Coordinator) stated to me via email that she had "completed [her] discussion with Dr. Anachebe regarding [my] concerns," and that I needed to setup a meeting with Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) by contacting her Administrative Assistant, LaRonda Evans. When I asked Marla Thompson what Dr. Ngozi Anachebe said during their discussion, Marla Thompson stated the Dr. Ngozi Anachebe "was presented information per our discussion. She did not render an immediate response to that information; instead, she confirmed that she understand [sic] correctly the concern(s)."

On 03/13/2020, I met with Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs). Upon starting our meeting, I asked what she had heard for the sake of brevity and time. She said she had only heard that I wasn't doing well academically.

On 03/13/2020, after my meeting with Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs), Dr. Ngozi Anachebe sent an email to Marla Thompson (Title IX Coordinator), to which I was cc-ed to, stating:
"[I]t appears there is some misunderstanding of what our meeting is about. I was under the impression our meeting was to help him understand our academic policy regarding satisfactory academic progress and procedures for students who do not meet these. I explained to him that my role is not to discuss his personal medical situation, disability and/or accommodations. I also explained to him our academic policies regarding satisfactory progress, leave of absence, and the SAPP Committee's role These were not what he had in mind. I informed him he could contact our Chief Compliance Office, Mr. Keith Henderson, to file a grievance, should he choose to do so."

On 03/13/2020, after my meeting with Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs), I sent an email to Marla Thompson (Title IX Coordinator) where I expressed my frustration about my ineffective meeting with Dr. Ngozi Anachebe, stating:
"I met with Dr. Anachebe not too long ago. Prior to our starting our discussion, I asked her what she had heard, to which she said she was told by you that I was not doing well academically. One of your previous emails said that Dr. Anachebe was presented information per our discussion, and that she confirmed she understood my concerns. However, it seems she hasn't heard my concerns or didn't express to me that she had heard all of my concerns So I was left in a very uncomfortable situation where I was meeting with someone who didn't want to, or couldn't, hear my concerns (because my accommodations are a crux of the matter). I'm left perplexed here because I don't know who can help me, let alone discuss these matters with me."

Marla Thompson (Title IX Coordinator) responded via email on 03/16/2020, in which she reiterated that " [t]he concerns you identified that I confirmed to be non-ODS decisions were shared with Dr. Anachebe."

Yet in my meeting with that Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) on 03/13/2020, Dr. Ngozi Anachebe acknowledged that she was only aware that I was not doing well academically. Dr. Ngozi Anachebe even acknowledges in an email to Marla Thompson (Title IX Coordinator) on 03/13/2020 that she (Dr. Ngozi Anachebe) "was under the impression our meeting was to help him (me) understand our academic policy regarding satisfactory academic progress and procedures for students who do not meet these. I explained to him that my role is not to discuss his personal medical situation, disability and/or accommodations."

The whole purpose of my meeting with Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) was to discuss the issues that have arisen due to the problems with my notetaking accommodation, namely, poor grades, current poor academic performance, the need to repeat this current academic year, financial issues, and to work out some remedies. These were the things I discussed with Marla Thompson (Title IX Coordinator) on 02/19/2020 and 02/26/2020. These were the issues that Marla Thompson said were "non-ODS decisions" and outside of the scope of the Office of Disability Services (ODS). These were the issues why Marla Thompson said she needed to meet with Dr. Ngozi Anachebe. And finally, these were the issues why I was asked by Marla Thompson to setup a meeting with Dr. Ngozi Anachebe to discuss these issues to work out some remedies.

Marla Thompson (Title IX Coordinator) says things were shared and Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) says things were not shared. Only one of these situations can be the truth, and irregardless to whichever one it is, there is a lack of open and honest communication with me from some, or all, of the parties.

Additionally, in my meeting on 02/26/2020 with Marla Thompson (Title IX Coordinator), I asked if I could record our conversation for my own records, as this is a very important matter in my life/career. She said it was against Office of Disability Services (ODS) policy, so I didn't record it. Interestingly, halfway through my meeting with Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) on 03/13/2020, Dr. Ngozi Anachebe rather abruptly asked me if I was recording the conversation because she does not give her consent. I surprisingly responded saying I was not recording the conversation (I had previously chosen not to attempt to record the conversation, and thus precluded the need to ask prior to the meeting starting if I could do so, because I had very high hopes about the outcome of the meeting). Though I found it extremely odd, and later disheartening, that Dr. Ngozi Anachebe asked because it seems this was certainly shared between the two parties, but whether other things were shared between the two parties is still unknown to me at this time.

Lastly, if the remedies to my current issues, due to the problems with my notetaking accommodation, were truly outside of the scope of Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs), why didn't Dr. Ngozi Anachebe tell that to Marla Thompson (Title IX Coordinator), and why didn't Marla Thompson subsequently then tell me (thus precluding the need to meet with Dr. Ngozi Anachebe)? It feels like I'm being run around in an environment where there isn't open and honest communication. It has been roughly six (6) weeks since I first emailed Dr. Ngozi Anachebe about this issue and I'm still no closer in talking with anyone who has any apparent authority over this matter.

At the advisement of Dr. Ngozi Anachebe (Associate Dean of Admission and Student Affairs) from our 03/13/2020 meeting, I emailed Keith Henderson (Chief Compliance Officer) on 03/16/2020. I stated that I was registered with the Office of Disability Services (ODS) as a student with accommodations and that I needed to speak with him to talk about a complaint regarding one of my accommodations. I said my situation was pretty somber and that I didn't know the correct protocols regarding an ODS student making complaints about their accommodations. I said I had 100% availability any time from 03/17/2020 to 03/20/2020.

I never heard back from Keith Henderson (Chief Compliance Officer).

Details

My Accommodations at MSM:

Prior to being accepted to MSM, I emailed the office of disability services (ODS) to see if they could meet my recommended accommodations in the event that I was accepted to MSM. I was told to ask again after being accepted. After being accepted, and prior to committing to MSM, I emailed ODS again asking if they could meet my recommended accommodations of extra time on assignments and exams, testing in a distraction reduced environment, a notetaker, etc. To which, ODS responded saying that they could meet my accommodations.

Since starting as MSM from 07/2017 to around 03/2019, for almost two years, I have never had consistent and timely notes with regards to my notetaking accommodations. This was despite of my initial enquiry prior to committing to MSM, and despite the adopted timeframe goal by MSM of receiving notes within 24-48 hours after every class.

MD1 Experiences (2017-2018):

Upon starting at MSM, I discovered that I was apparently the first medical student in some time to request a notetaker (I believe I am the first medical student to request a notetaker for Marla Thompson) and that the statement from ODS saying that they could meet my requested accommodations was said without fully knowing, particularly regarding the notetaker, if all of my accommodations could be timely met. I would come to learn later than there was possibly a previous GEBS student with a notetaking accommodation, but it is unknown to me if this previous experience is what ODS relied upon in telling me that they could meet my accommodations prior to my committing to MSM. This caused some apprehension and anxiety because like I stated above, I asked ODS prior to committing to MSM if they could meet my recommended accommodations, which included a notetaker, to which they said they could. Now had ODS responded prior to my commitment to MSM by saying that they had haven't had a medical student need a notetaker in sometime and that this was going to be a new process, and also explained the risks due to this, I would have possibly considered other schools over MSM.

I begrudgingly took on the role, for lack of a better word, of a guinea pig. In my first 1-2 months at MSM there were no notes. Dr. Knight wanted to be in charge, or was put in charge by Marla Thompson, of the process and decided that she wanted to wait until after the first exams to look at grade results in determining what students would be a good notetaking candidate. Now it wasn't a horrible idea in theory, but it still left me without notes for the first 1-2 months and good grades doesn't equal good notes, nor timely notes. I'm sure other things went into it, but this is all that was communicated to me about the process at that time. There also wasn't really a process in place for notetakers to submit notes and so IT was brought in to see what could be done. Thus, this was a new thing for MSM's medical school and the creation/troubleshooting process began after I started medical school, not before I started.

From around 08/2017 to around 03/2019 (around the time Dr. Knight left), the timing of when I received notes was always inconsistent, and it became something I would often lose faith in and a big cause of anxiety and frustration. The time it took me to get notes varied from several days, to weeks, to even a month at times, and sometimes never. My notetaking accommodation became something I couldn't rely on when it was something so desperately needed. With as much material as medical students are supposed to know, and with as much new material gone over every day, I felt like I was always drowning.

My grades suffered and there was a lot of miscommunication, or lack of communication, between Dr. Knight and myself, between Dr. Knight and ODS, and between ODS and myself. Dr. Knight was my contact person with regards to the notes, as she was in charge of obtaining and uploading or sending me notes. But due to the untimeliness of notes, I began to feel like an afterthought, I became bored trying to be my own scribe, and I became irritated. I tried to do things my own way. Dr. Knight even acknowledges that she understood about the problem with the timing inconsistencies of the notes and that she understood that she was the bottleneck in the process, but nothing really changed.

I didn't do well in really any of my MD1 classes and I received poor grades during which my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. I was always weeks behind and come near test time, I would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. It was a viscous cycle because I never learned nor retained anything I crammed for, nor did I really learn anything well. Thus, trying to learn things on my own, coupled with inconsistent notes, my knowledge became something like this: In an exam block, I would pretty well understand the things taught in the beginning of the exam block but never really understand anything, or have the time to understand anything, taught after around the halfway point of an exam block. Thus, if looking at a calendar, it literally became a roadway of smooth surfaces that represented the beginnings of each exam block, littered with huge potholes of empty knowledge in the later parts of the exam blocks. Further, because everything is built upon itself, the smoother surfaces became less and less smooth because my knowledge was so pot marked that I couldn't link anything together. Thus, my knowledge became less and less. Further, any subsequent information was taken in not by understanding, because I simply didn't understand, but by memorization - meaning it wasn't retained for very long.

This all led to a lot of anxiety and frustration because I was receiving poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, and I had a plethora of knowledge gaps about a lot of things.

A point I want to drive home is that lets say as a hypothetical example that notes were only inconsistent for one to two months regarding normal physiology. That's still one to two months of material That I don't know well and that will cause problems in linking other information. It will also cause problems in learning additionally information about the same topic regarding pathology, pathophysiology, microbiology, and pharmacology. Now imagine this being an issue for all of MD1 and a majority of MD2's decelerated first year. That's kind of what I'm working through.

[2017-2018 Academic School Year]
The total average turnaround time of notes for any particular class was 4.17 days.
Out of the total 323 applicable classes that I should have received notes for, I only received notes for 188 classes (60.99%). Thus, I did not receive notes for 39.01% of applicable classes.

MD2, Decelerated Part 1 (2018-2019):

The option to decelerate was presented to me by Dr. Knight a few weeks prior to the start of MD2. When considering decelerating, I spoke with Dr. Ngozi Anachebe about the consequences of decelerating and how that would affect matching into residency programs. She forwarded me some matching statistics that showed the most important thing was your STEP 1 score. She also mentioned that failing any courses would negative effect residency matching, and that certain programs won't even download your application if a student took longer than four years.

Despite hearing about the difficulties and rigor of MD2, one of the major reasons why I decelerated was because of the lack of faith I had in my notetaking accommodations. I was already rightfully worried about my poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, coupled with the now inevitable possibility of my medical education taking longer than four years, it seemed to me that my last hope in matching well was getting a great score on STEP 1.

Thus, I began MD2, decelerated part 1, taking microbiology, pharmacology, and FOM II. Again, there were many inconsistencies with the timeliness of notes until around 03/2019, around the time Dr. Knight left. Due to these inconsistencies, again I felt a lot of anxiety and frustration because I was again receiving poor/average grades during which time my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. Due to the aforementioned issues with MD1, there were a lot of further MD1 knowledge gaps which left linking concepts from pharmacology, microbiology, and FOM II very difficult. I reverted to using a lot of straight memorization than understanding to get by. This made my retention very poor. A lot of the same cramming techniques from MD1 persisted. I was always

weeks behind and come near test time, I would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. I just pushed through any struggle and obstacle and did the best I could.

After Dr. Knight left, on or around 03/2019, the timing of receiving notes improved drastically. Ms. Dezarae Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is like 2 days.

One of the most potentially frustrating things I found out during the transition period after Dr. Knight left, was when Ms. Blossomgame and Dr. Redding told me that when they asked the notetakers if they could get notes sooner (I think Ms. Thompson was present too), they all responded saying it wouldn't be a problem. Now I don't know all the factors and I don't know all about what happened, but if this is true, it sounds like all the issues and hardships I faced, with regards to my notetaking accommodation, could have potentially never happened.

Mrs. Marla Thompson also shared that during the transition period when Dr. Knight was leaving, Dr. Knight shared with her steps in the overall notetaking accommodation process that Mrs. Thompson was not aware of, nor agreed to, which may have been delaying the timeliness of the notetaking accommodation. It has become more and more evident that Mrs. Thompson took a very hands-off approach to my notetaking accommodations when Dr. Knight was leading the process.

MD2, decelerated part 2 (2019-2020):

Since the start of MD2, decelerated part 2, I have felt like a MD1 student trapped in a MD2 body. Due to the aforementioned events, I've never had a good understanding of normal physiology, anatomy, histology, microbiology, and pharmacology, and didn't realize how bad it was until the start of this year and that has made learning abnormal physiology and pathology very slow and arduous. I feel like up until this year, I've been ignorant of my lack of knowledge and the consequences that were as a result of my notetaking accommodation not consistently met in a satisfactorily and timely manner. I've been ignorant in simply accepting this situation thinking I can just work past it and push through it, doing whatever it takes because I've always been a fighter. I also didn't know how to articulate my feelings about this until recently when it became somewhat of a necessity that I do so.

The general purpose of decelerating was to have more time to focus on the present studies but so much of my time is also spent on trying to learn what I never had the opportunity to learn in the past. So, in a sense I feel like both a MD1 and MD2 student at the same time, not as a decelerated MD2 student.

As stated above, after Dr. Knight left, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is around 2 days or less.

Due to the summation of all the issues presented with the consequences of my notetaking accommodation not consistently met in a satisfactorily and timely manner, and the knowledge gaps left by them, I am again receiving poor grades which I feel do not accurately represent how I can perform as a student. In fact, I am failing both pathology and pathophysiology, both of which are crucial not only on STEP 1, which is possibly the only thing that can make my application attractive to residency programs after everything already discussed above, but also critical in being a good doctor.

[2018-2019 Academic School Year]
The total average turnaround time of notes for any particular class was greater than 14.61 days.
Out of the total 133 applicable classes that I should have received notes for, I only received notes for 113 classes (87.97%). Thus, I did not receive notes for 12.03% of applicable classes.

In my search for a general rule for the turnaround time of notetaking accommodations, I spoke with the Office of Civil Rights (OCR) on or around late February of 2020. The OCR has found that generally a 24-48 hour turnaround time for notes is reasonable and notes taking longer than 4-5 days become useless for students because of how fast-paced medical school is and how everything builds upon itself.

Uploaded Files

1. 2017-08-17 BK - Email.pdf
   Exhibit/Attachment for 2020/03/31 Response at 09:11 AM
2. 2017-10-31 BK - Email - Notetaking Process.pdf
   Exhibit/Attachment for 2020/03/31 Response at 09:11 AM
3. 2017-12-07 BK - Email.pdf
   Exhibit/Attachment for 2020/03/31 Response at 09:11 AM
4. 2019-01-07 JH Email.pdf
   Exhibit/Attachment for 2020/03/31 Response at 09:11 AM
5. 2019-01-17 BK Email.pdf
   Exhibit/Attachment for 2020/03/31 Response at 09:11 AM
6. Calendar Example.pdf
   Exhibit/Attachment for 2020/03/31 Response at 09:11 AM
7. 2019-01-22 BK - Email.pdf
   Here is another email talking about the 24-48-hour turnaround time.
8. Howell, James - Discrimination Brief.pdf
   Case law and relevant facts
9. 2017 Student Information Guide.pdf
   Exhibit for Howell, James - Discrimination Brief.pdf
10. 2017-03-03 To ODS.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf

11. 2017-03-12 To ODS.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
12. 2017-03-21 To Thompson.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
13. 2017-04-05 To Thompson.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
14. 2017-06-16 FROM 1 RE_ Accommodations Request.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
15. 2017-08-01 From Thompson 02.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
16. 2017-08-04 From Knight - Note taker.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
17. 2017-10-31 BK - Email - Notetaking Process.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
18. 2017-18StudentHandbook.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
19. 2018-05-07 To Thompson - Talk About.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
20. 2018-07-20 - Accommodations - From Thompson.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
21. 2019-01-17 BK Email.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
22. 2019-01-22 BK Email.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
23. Academic Transcript.pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
24. J. Howell - Accommodations Letter to Faculty (2017-2018).pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
25. J. Howell - Accommodations Letter to Faculty (2018-2019).pdf
    Exhibit for Howell, James - Discrimination Brief.pdf
26. J. Howell - Accommodations Letter to Faculty (2019-2020).pdf
    Exhibit for Howell, James - Discrimination Brief.pdf

Follow-Up Notes

There are no additional notes for this report.

Follow-Up Questions/Comments

3/30/2020 10:20 AM posted by Organization

Thank you for your report. I apologize for the issues you have encountered due to the inconsistency of your note-taking request being met. I am looking into the expectations of a note-taker and the overall process, so that I can analyze your need with what is expected from the note-taking process. Once I receive this information I will work with HR and your Dean to address your concerns.

Thank you for your thorough explanation and the information you provided.

Regards,

Alecia Bell

3/30/2020 12:00 PM posted by Reporter

Alecia Bell:

Thank you for your response. I look forward to hearing from you soon.

Please let me know if I can provide any more information or clarify anything for you.

Kind Regards,

James Howell

3/30/2020 12:04 PM posted by Organization

I just received these responses to subsequent questions I posed regarding your concerns. Please let me know where you disagree with the response or have seen inconsistencies:

• How are note-takers selected
o Notetakers are identified by OSLER and approved by Course Directors (MD notetakers) or Program Director (MSMS).

• What occurs if or when a note-taker does not submit notes to a student, timely?
o There are two student note-takers in place per accommodations request. If a student note-taker is not able to submit notes as outlined in their position description, they are to contact OSLER immediately. From my involvement with this system in place, there has not been a time when student note-takers have not provided timely notes.

• If students are not receiving notes timely, what is their recourse or what other options do they have to not get behind?

o Students receive email notices when notes are uploaded each week. If a student is missing a lecture or has issues accessing notes, they are to reach out to OSLER immediately for assistance. There have been times that there have been technical difficulties with OneNote requiring OSLER (or the accommodated student) to re-sync their notebook to properly access notes. Students requesting notes are always encouraged to reach out to OSLER to express if they are not receiving the notes as needed, otherwise OSLER will continue uploading notes as expected on a weekly basis.

3/31/2020 9:10 AM posted by Reporter

Apologies for the wait. I wanted to make sure this was as clear as possible. Don't hesitate to ask me to clarify anything.

Under each answer you provided, I split everything up into individual sentences preceded by "[" and followed by "]". To make my response easier and clearer. My responses are preceded and followed by "***".

*** To start off, it might be helpful to us both if you find out how long these rules have been in place, because if they have only been in place since Dr. Knight left (~03/2019), then the rules don't apply to the 2017-2018 and 2018-2019 academic school years of which this complaint is about. My complaint isn't about this current academic year. ***

1.

• How are note-takers selected

o Notetakers are identified by OSLER and approved by Course Directors (MD notetakers) or Program Director (MSMS).

[Notetakers are identified by OSLER and approved by Course Directors (MD notetakers) or Program Director (MSMS).]

*** I won't dispute that this is the current rule. Though I wasn't aware, nor see the specific reason, of having the course directors involved. ***

2.

• What occurs if or when a note-taker does not submit notes to a student, timely?

o There are two student note-takers in place per accommodations request. If a student note-taker is not able to submit notes as outlined in their position description, they are to contact OSLER immediately. From my involvement with this system in place, there has not been a time when student note-takers have not provided timely notes.

[There are two student note-takers in place per accommodations request.]

*** This may be a new rule or an overall generalized rule. For the most part, I can confirm that I have had two student note-takers in place (though this year I think I only have one that I know of because I only receive notes for one sort of medium: OneNote). There was even a time when Dr. Knight was attempting to get a third note-taker (see 2017-10-31 BK - Email - Notetaking Process.pdf, 4th paragraph), though it never came to fruition. There was even talks about hiring an outside note-taker because of the problems with the timeliness I was facing in the academic year of 2018-2019 (see 2019-01-07 JH Email.pdf, 4th paragraph AND 2019-01-17 BK Email, 2nd paragraph). I also requested additional note-takers due to the untimeliness of notes in an attempt to either find faster note-takers, or to have a large enough group of note-takers, to where timeliness issues were minimized as much as possible. ***

[If a student note-taker is not able to submit notes as outlined in their position description, they are to contact OSLER immediately.]

*** Be this as it may, this isn't something I've been aware of, nor can I recall when OSLER/Dr. Knight has ever sent me notifications immediately to inform me when the student note-takers were not able to submit timely notes. The best example I can give for this is that in the 2018-2019 academic school year, the total average turnaround time of notes for any particular class was greater than 14.61 days, and I never received any notification from OSLER/Dr. Knight immediately informing me when student note-takers had told OSLER that they were not able to submit timely notes. And while this circumstance doesn't prove that student note-takers didn't inform OSLER when they couldn't submit timely notes, because they very well may have, but the fact that I wasn't informed if and when it did happen, when the notes were for my accommodations, makes this rule pretty meaningless, at least as it applies to the 2017-2018 and 2018-2019 academic school years. Lastly, I can't recall, nor find, ever being provided the official descriptions that the student note-takers were given, which they agree to, only that there was a goal of a 24-48-hour turnaround time for notes. Marla Thompson has commented multiple times that upon Dr. Knight's leaving, she informed my student note-takers of new, or clearer, descriptions of their roles and duties to fix the timeliness of my notes, which the note-takers then, in Marla Thompson's words, 'easily agreed to.' ***

[From my involvement with this system in place, there has not been a time when student note-takers have not provided timely notes.]

*** How long have they been involved? What is their definition of timely? The word "timely" has never been defined anywhere to me at MSM, only a goal of a 24-48-hour turnaround time for notes. I thought I had an email that specifically stated a 24-48 hour turnaround time (still looking for it, though it's been stated to me, and to others, verbally by Marla Thompson on numerous occasions), but an email on 2017-08-17 states that "The student [note-takers] said they will work on keeping up the time to complete them in that same day" (see 2017-08-17 BK - Email.pdf). ***

*** Further, I am assuming the answer to your response is from Dr. Redding or perhaps Ms. Blossomgame. Either way, the note-taking process, at least with regards to my accommodations, was handled by Dr. Knight who is no longer at MSM, and there were issues then. These issues were that student note-takers were not providing timely notes AND/OR the student note-takers were providing notes but the notes were not uploaded or sent to me in a timely fashion. ***

*** Upon information and belief, I am the first student to request a note-taking accommodation in some time. Upon information and belief, when I started at MSM in 07/2017, there was not a system in place for students with a notetaking accommodation (see 2017-10-31 BK - Email - Notetaking Process.pdf, 1st-3rd paragraphs). I even came to the point where I was okay with giving up my anonymity in an attempt to speed up this process (see 2017-10-31 BK - Email - Notetaking Process.pdf, pages 2-5), though ultimately it never came to that. I've been for lack of a better word a guinea pig in a sense that I was the first student to receive a particular accommodation at MSM's medical school program in some time: a notetaker. I was put into a crazy situation. Now I don't mind being the first student, the barrier breaker so to speak, but I feel like I'm being punished for it. Though I ultimately do take some solace knowing that this was a great learning opportunity for a lot of people and that there are currently now other medical school students who also require a note-taker that don't have to go through what I have. Thus, the problems I've encountered and advised upon, coupled with the learning experience this school has received, has added a tremendous value to the medical school program in that there is now a dedicated program in place to potentially satisfactorily accommodate students who require a notetaker. But that doesn't change what has happened in my so-called trial run. I've experienced a lot of added fear, anxiety, and frustration in addition to what a normal medical school student already experiences. All of this now coupled with the possibility that I'm going to fail out of medical school and/or severely hurt my chances to match into residency programs. ***

3.

• If students are not receiving notes timely, what is their recourse or what other options do they have to not get behind?

o Students receive email notices when notes are uploaded each week. If a student is missing a lecture or has issues accessing notes, they are to reach out to OSLER immediately for assistance. There have been times that there have been technical difficulties with OneNote requiring OSLER (or the accommodated student) to re-sync their notebook to properly access notes. Students requesting notes are always encouraged to reach out to OSLER to express if they are not receiving the notes as needed, otherwise OSLER will continue uploading notes as expected on a weekly basis.

[Students receive email notices when notes are uploaded each week.]

*** If this is true, it doesn't apply to me, nor has this ever been communicated to me nor is it something I have agreed to. I get notices now, since Dr. Knight left, at least twice a week from Ms. Blossomgame. Further, the stated goal for my accommodation is, and has always been, a 24-48-hour turnaround time which would preclude only a weekly upload. Further, it is my belief that even the Office of Civil Rights (OCR) would find notes provided on a weekly basis as unreasonable if they are to be for a student with a disability (see my original complaint at the very bottom where I mentioned my conversation with the OCR). Further, a clear example is in one of my attachments (see Calendar Example.pdf) where this would not be beneficial to any student because amongst the other classes for this specific week, a specific topic/class is talked about for four out of the five day week: respiratory physiology 5-8. Thus, weekly notes could pose a severe hurdle for students. ***

*** Though I must make a clarification. I found out in my last meeting with Marla Thompson (Title IX Coordinator) on 02/26/2020, that OSLER also provides notes to students registered with OSLER (not a 100% sure about this though). By that I mean students who are performing poorly in their classes can be mandated to join OSLER and thus they would then have access to OSLER's resources, such as notes from one of their note-takers, and not be, or need to be, registered with the Office of Disability Services (ODS) to receive said notes. Thus, this rule of a weekly update may just apply to students registered with OSLER and not ODS. Additionally, it was revealed to me by Marla Thompson in our meeting on 02/26/2020 that from this same process, OSLER has access to notes from previous years. Thus, it's extremely disheartening that some of my issues could have potentially been alleviated had I had access to older notes during the 2017-2018 and 2018-2019 academic school years which could have then been supplemented by current notes as they came in. ***

[If a student is missing a lecture or has issues accessing notes, they are to reach out to OSLER immediately for assistance.]

*** As I have, but in general, I'm only given what OSLER has received (see 2017-12-07 BK - Email.pdf). Additionally, in one of the answers to one of your responses above, the responder said, "From my involvement with this system in place, there has not been a time when student note-takers have not provided timely notes." Considering this statement includes the time when Dr. Knight was in charge, or even now when Dr. Knight is not charge (though my complaint is about times when Dr. Knight was in charge, but my response here applies to both situations -- when Dr. Knight was in charge and now after she is gone -- it is my belief that this answer they provided to you is only concerning the time after Dr. Knight left), how do they know if notes are provided in a timely fashion? What information do they rely on to tell them that notes are supplied to students in a timely fashion? Do they know what notes they should receive compared to what notes they have in fact received? Do they know who they have received the notes from? Do they know what student the notes have been sent to, and how long it took to get the notes to said student? If they don't know these things, how can they operate on an agreed to goal, in my case a 24-48-hour turnaround time, or in their aforementioned rule of on a weekly basis, or at the very least in a timely fashion? And if they do have all the aforementioned data and analysis done, why would a student ever need to contact OSLER if they were in fact missing notes? Because there shouldn't ever be a situation where a student was missing notes or not informed of when student note-takers were not able to submit timely notes to OSLER. Something I keep noticing in these answers provided to you is that OSLER doesn't really state that they have any responsibilities and/or duties about anything. If OSLER agrees to do something, how do they know if they're in fact doing something they agreed to? If ODS agrees to provide something, what internal systems are in place to make sure it's being provided?

[There have been times that there have been technical difficulties with OneNote requiring OSLER (or the accommodated student) to re-sync their notebook to properly access notes.]

*** Upon information and belief, this doesn't apply to this current complaint. ***

[Students requesting notes are always encouraged to reach out to OSLER to express if they are not receiving the notes as needed, otherwise OSLER will continue uploading notes as expected on a weekly basis.]

*** As I have. Also, as stated above, the weekly basis doesn't apply to me. ***

Chat Transcripts

There are no chat transcripts for this incident.

HOWELL, JAMES (ID # [redacted]) - THIS DOCUMENT CONTAINS PERSONAL MEDICAL INFORMATION. THIS DOCUMENT IS NOT TO BE SHARED TO ANYONE OUTSIDE THE MEMEBRS OF THE DISMISSAL HEARING.

The address MSM is mailing my notifications to is incorrect:

- The mailing address on the dismissal hearing notification is [redacted] Atlanta, GA [redacted]
- My address in Banner, as of June 2, 2020, is [redacted] Dacula, GA [redacted].
- What is happening here? Where is the incorrect address coming from?

MSM NOT PROVIDING ALREADY GRANTED ACCOMMODATIONS

1.

I have a life-long diagnosed history of a learning disorder.

2.

On or around March 1, 2017, I was accepted by MSM as a medical school student for the prospective class of 2021.

3.

I initiated the interactive accommodation review process with MSM's Office of Disability Service (hereafter referred to as "ODS") on March 3, 2017.

4.

During the interactive accommodation review process prior to school starting on or around July 3, 2017, I provided all the paperwork required for qualification as a student with a disability including, but not limited to, my 2014 psychological evaluation, a summary letter from my psychiatrist, and the completed Registration and Information Packet from MSM's ODS.

5.

During the interactive accommodation review process prior to school starting on or around July 3, 2017, I requested accommodations including, but not limited to, a notetaker.

6.

On or around June 16, 2017, Marla Thompson, Title IX Coordinator and ODS Manager, confirmed to me via email that my requested accommodations were approved and would be available upon my arrival to MSM.

7.

For the entirety of my medical school education at MSM (2017-2018, 2018-2019, and 2019-2020 academic school years), I have been registered with MSM's ODS as a student with a disability.

8.

For the entirety of my medical school education at MSM, the note-taking accommodation has been approved and granted by MSM, and the note-taking accommodation came with a 24-48-hour turnaround time goal for any class I was taking.

HOWELL, JAMES (ID # [redacted]) - THIS DOCUMENT CONTAINS PERSONAL MEDICAL INFORMATION. THIS DOCUMENT IS NOT TO BE SHARED TO ANYONE OUTSIDE THE MEMEBRS OF THE DISMISSAL HEARING.

9.

The note-taking accommodation was necessary to ameliorate my disability's effect of preventing meaningful access to MSM's medical school program.

10.

Marla Thompson put Dr. Brandi Knight, former Director of the Office of Student Learning and Educational Resources (hereafter referred to as "OSLER") in charge of my note-taking accommodation.

11.

Upon my beginning of medical school at MSM, on or around July 3, 2017, no system was already in place to provide me with notes, per my note-taking accommodation.

12.

During the interactive accommodation review process prior to medical school starting, Marla Thompson never warned me that the note-taking accommodation would be a new school process in providing notes for medical school students with accommodations, a service which had not been previously provided by Marla Thompson, and was not an established service.

13.

The classes for my 2017-2018 academic school year were taught with a heavy emphasis on lectures with very little emphasis placed on textbooks, and students were reliant on lectures, and taking notes, for obtaining all the necessary information they needed to know for their classes.

14.

Despite my beginning medical school on or around July 3, 2017, the first time I received notes for my note-taking accommodation was thirty-eight (38) days after school started, on or around August 10, 2017, and those notes were for classes nine (9) and ten (10) days prior.

15.

During the interactive accommodation review process prior to medical school starting on or around July 3, 2017, Marla Thompson never warned me that there would be an initial delay in providing notes to me per my note-taking accommodation.

16.

Problems persisted in satisfying my note-taking accommodation for the entire 2017-2018 academic school year.

17.

Throughout the 2017-2018 academic school year, I complained to Marla Thompson and Dr. Brandi Knight about the untimeliness of my note-taking accommodation.

18.

For the 2017-2018 academic school year at MSM, the average turnaround time of notes received—not all notes were ever received—for any class was 4.17 days for my note-taking accommodation.

19.

For the 2017-2018 academic school year at MSM, I received notes for only sixty-one percent (61%) of classes for my note-taking accommodation.

HOWELL, JAMES (ID # [redacted]) - THIS DOCUMENT CONTAINS PERSONAL MEDICAL INFORMATION. THIS DOCUMENT IS NOT TO BE SHARED TO ANYONE OUTSIDE THE MEMEBRS OF THE DISMISSAL HEARING.

20.

For the 2017-2018 academic school year at MSM, I received a 2.49 GPA.

21.

The 24-48-hour turnaround time goal for notes per my note-taking accommodation was never measured or evaluated by either Marla Thompson or Dr. Brandi Knight during the 2017-2018 academic school year at MSM.

22.

Due to my lack of faith mounting about MSM's ability to provide for my note-taking accommodation, coupled with the poor grades (2.48 first year GPA), and emotional turmoil I was experiencing, I elected to enter the decelerated second year medical curriculum, at the suggestion by MSM, though I would have preferred graduating on time while receiving the accommodations that were granted to me by MSM.

23.

Problems continued to persist in satisfying my note-taking accommodation for almost the entirety of the 2018-2019 academic school year.

24.

The classes for my 2018-2019 academic school year were taught with a heavy emphasis on lectures with very little emphasis placed on textbooks, and students were reliant on lectures, and taking notes, for obtaining all the necessary information they needed to know for their classes.

25.

Throughout the 2018-2019 academic school year, I complained to Marla Thompson and Dr. Brandi Knight about the untimeliness of my note-taking accommodation.

26.

For the 2018-2019 academic school year at MSM, the average turnaround time of notes received—not all notes were ever received—for any class was 14.61 days for my note-taking accommodation.

27.

For the 2018-2019 academic school year at MSM, I received notes for only eighty-eight percent (88%) of classes for my note-taking accommodation.

28.

For the 2018-2019 academic school year at MSM, I received a 2.68 GPA.

29.

The 24-48-hour turnaround time goal for notes per my note-taking accommodation was never measured or evaluated by either Marla Thompson or Dr. Brandi Knight during the 2018-2019 academic school year at MSM.

30.

For the 2019-2020 academic school year, MSM more or less adequately provided me with notes per my note-taking accommodation.

31.

The classes in my first two years (2017-2018 and 2018-2019 academic school years) were necessary in developing my understanding of normal human physiology.

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32.

The classes in my 2019-2020 academic school year were about developing my understanding of abnormal human physiology.

33.

I was unable to properly learn and understand normal human physiology in the 2017-2018 and 2018-2019 academic school years due to the failings of MSM in providing for my note-taking accommodation.

34.

I was unable to properly learn abnormal human physiology in the 2019-2020 academic school year due to the failings of MSM in providing for my note-taking accommodation in the 2017-2018 and 2018-2019 academic school years.

35.

MSM told its students, including me, that one cannot learn abnormal human physiology without first learning and understanding normal human physiology.

36.

I would end up failing my classes during the 2019-2020 academic school year due to the failings of MSM in providing for my note-taking accommodation in the 2017-2018 and 2018-2019 academics school years, and due to my time being spent on seeking resolutions for such failings including, but not limited to, as described in all paragraphs herein.

MSM NOT INVESTIGATING MY DISCRIMINATION COMPLAINTS

37.

MSM's 2017-2018 Student Handbook (Page 35), MSM's 2018-2019 Student Handbook (Page 37), and MSM's 2019-2020 Student Handbook (Page 40) states, under the "Disability Services" heading, that, "Any applicant, student, resident, or employee who believes he or she has been denied any service or benefit or otherwise discriminated against or harassed due to a disability may contact the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator."

38.

MSM's 2017-2018 Student Handbook (Page 65), MSM's 2018-2019 Student Handbook (Page 70), and MSM's 2019-2020 Student Handbook (Page 71) states, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "Morehouse School of Medicine is committed to providing academic and employment environments that are free from unlawful discrimination, including harassment, on the basis of protected characteristics, including race, color, national or ethnic origin, sex, age, disability, religion, veteran status, sexual orientation, genetic information, gender identity, or any other characteristic protected by applicable law in the administration of the School's programs and activities. The School encourages any individual who feels he or she has been discriminated against or harassed on any legally protected characteristic to promptly report the incident to the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator[.]"

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39.

MSM's 2017-2018 Student Handbook (Page 66), MSM's 2018-2019 Student Handbook (Page 70), and MSM's 2019-2020 Student Handbook (Page 71) states, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "MSM's general policy against discrimination, harassment and retaliation applies to conduct by and perpetrated against all faculty, staff, administration, supervisors, employees, residents, students, applicants, volunteers, patients and visitors to campus, including guests, patrons, independent contractors or clients of MSM ("Person(s)") that is prohibited by Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (including ADAAA amendments), and the Age Discrimination Act of 1975."

40.

MSM's 2017-2018 Student Handbook (Page 66), MSM's 2018-2019 Student Handbook (Page 71), and MSM's 2019-2020 Student Handbook (Page 72) states, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "Under MSM's general policy against discrimination, harassment and retaliation, if a complainant is able and feels safe, he or she should clearly explain to the alleged offender that the behavior is objectionable and request that it cease. Additionally, if the complainant is not able or does not feel safe confronting the alleged offender, or the behavior does not stop, or if the complainant believes some adverse employment or educational consequences may result from the discussion, he or she should contact the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator to make a complaint."

41.

MSM's 2017-2018 Student Handbook (Page 67), MSM's 2018-2019 Student Handbook (Page 71), and MSM's 2019-2020 Student Handbook (Page 72) states, under the "General Information" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "Any Person or non-MSM visitor, guest, patron, independent contractor, or client who fails to address or report any form of discrimination, harassment and/or retaliation allegedly perpetrated by or against MSM administrators, faculty, staff, supervisors, volunteers, students or employees of which they know or should have known may be subjected to sanctions."

42.

MSM's 2017-2018 Student Handbook (Page 67), MSM's 2018-2019 Student Handbook (Page 71), and MSM's 2019-2020 Student Handbook (Page 72) states, under the "Complaint Procedures" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "Complaints filed with the Title IX Coordinator [Marla Thompson] or the Deputy Title IX Coordinator[1] must be in writing and, specifically in cases involving incidents of sex discrimination, sexual harassment or sexual violence, provide the following information: (i) name of and contact information for the complaining Person(s) ("Complainant(s)"); (ii) nature, location and date of alleged violation; (iii) names of and contact information for the Person(s) accused of the alleged violation (where known) ("Respondent(s)"); (iv) requested relief or

[1] Both of MSM's 2018-2019 and 2019-2020 Student Handbooks do not include the phrase "or the Deputy Title IX Coordinator" in this statement.

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corrective action (specification of desired relief shall be the option of the Complainant); and (v) any other background or supplemental information that the Complainant believes to be relevant (e.g., names of other persons affected by the violation, etc.)."

43.

MSM's 2017-2018 Student Handbook (Page 67), MSM's 2018-2019 Student Handbook (Page 72), and MSM's 2019-2020 Student Handbook (Page 73) states, under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "All reports and complaints of discrimination and harassment will be promptly investigated, and appropriate corrective action will be taken as expeditiously as possible. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to an impartial investigator. MSM will make reasonable efforts to protect the rights of both the Complainant and the Respondent. MSM will respect the privacy of the Complainant(s), Respondent(s), and any witnesses in a manner consistent with the School's legal obligations to investigate, take appropriate corrective action, and comply with any discovery or disclosure obligations required by law. Any and all requests for confidentiality will be evaluated on a case-by-case basis and in the context of the school's responsibility to provide a safe and nondiscriminatory environment for the MSM community."

44.

MSM's 2017-2018 Student Handbook (Page 68), MSM's 2018-2019 Student Handbook (Page 72), and MSM's 2019-2020 Student Handbook (Page 73) states, under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, that, "The amount of time needed to conduct an investigation will depend in part on the nature of the allegation(s) and the evidence to be investigated (e.g., the number and/or availability of witnesses involved). Within 60 days of receipt of the complaint, the Title IX Coordinator [Marla Thompson] or Deputy Title IX Coordinator will provide an interim notice of the outcome of the investigation or will advise the parties of the additional estimated amount of time needed for the investigation. Within 10 business days following the completion of an investigation, the Title IX Coordinator [Marla Thompson] or Deputy Title IX Coordinator will simultaneously provide written notification to the Complainant and Respondent of the results of the investigation. If the investigation reveals that, by application of the preponderance of evidence standard, harassment, discrimination (or other inappropriate or unprofessional conduct even if not unlawful), or retaliation has occurred, disciplinary action may be taken by MSM. Written notice to the appropriate parties relating to discipline, resolutions, and/or final dispositions is deemed to be official correspondence from the School. Disciplinary sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator. MSM will take the appropriate corrective action based on results of the investigation and will follow up as appropriate to ensure that the remedial action is effective. Complainants are encouraged to report any reoccurrences of conduct that were found to violate MSM's nondiscrimination and anti-harassment policies or any other related concerns."

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45.

Failing to provide already granted accommodations for a student registered with ODS (in this case my note-taking accommodation that MSM's ODS already granted to me) is one of the legal definitions of discrimination with regards to disabilities.

46.

One of my initial written complaints to Marla Thompson via email on or around August 1, 2017, stated that, "to this day, at the start of the fifth week of class, I still do not have a notetaker (discrimination). I have been behind since the first week," that I have "always been behind," that the people put in charge of my note-taking accommodation were not answering my emails about what was going on with the process, that "while I have tried to be patient, these past 3 weeks have been very frustrating because I tried to get you my application for accommodations in March [of 2017] so as to get everything ironed out before class started," and that I would prefer if Marla Thompson was more involved in all the processes regarding my accommodations. See Exhibit B, Pages 1-3.

47.

On or around August 1, 2017, Marla Thompson subsequently responded to me via email stating that she would look into my issues, that MSM was "ready to ensure [my] accommodations would be implemented seamlessly" upon the start of my medical school education, and that "our goal was to come up with the best plan and back-up plan for this accommodation," and that she would reiterate to the group of people involved with my accommodations, including but not limited to Dr. Brandi Knight, to make sure updates were provided to her even if it was just a notification. See Exhibit B, Page 1.

48.

Despite MSM's commitments and policies as outlined in MSM's 2017-2018 Student Handbook (Pages 67-68), MSM's 2018-2019 Student Handbook (Page 72), and MSM's 2019-2020 Student Handbook (Page 73), under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, my discrimination complaint was not promptly investigated by Marla Thompson, Title IX Coordinator, MSM never provided me with any written notification regarding the results of any investigation, MSM did not take any appropriate corrective actions as expeditiously as possible, and MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

49.

Towards the end of the 2017-2018 academic school year, on or around May 7, 2018, I emailed Marla Thompson again with a written complaint about the untimeliness of my note-taking accommodation (discrimination), stressing the importance of the note-taking accommodation with requests including, but not limited to, a more proactive approach on her end, more accountability from Dr. Brandi Knight, and better communication in making sure MSM timely provided notes per my note-taking accommodation. See Exhibit C.

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50.

Despite MSM's commitments and policies as outlined in MSM's 2017-2018 Student Handbook (Pages 67-68), MSM's 2018-2019 Student Handbook (Page 72), and MSM's 2019-2020 Student Handbook (Page 73), under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, my discrimination complaint was not promptly investigated by Marla Thompson, Title IX Coordinator, MSM never provided me with any written notification regarding the results of any investigation, MSM did not take any appropriate corrective actions as expeditiously as possible, and MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

51.

On or around February 25, 2019, I emailed Marla Thompson additional written complaints about poor communication regarding Marla Thompson and Dr. Brandi Knight not responding to my emails, and about continuing issues regarding the untimeliness of my note-taking accommodation (discrimination). See Exhibit D, Pages 1-5.

52.

Despite MSM's commitments and policies as outlined in MSM's 2017-2018 Student Handbook (Pages 67-68), MSM's 2018-2019 Student Handbook (Page 72), and MSM's 2019-2020 Student Handbook (Page 73), under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, my discrimination complaint was not promptly investigated by Marla Thompson, Title IX Coordinator, MSM never provided me with any written notification regarding the results of any investigation, MSM did not take any appropriate corrective actions as expeditiously as possible, and MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

53.

On or around February 18, 2020, I emailed Marla Thompson the same comprehensive written complaint, with an almost identical attachment as used in the email sent to Dr. Ngozi Anachebe about my experiences at MSM, regarding the concerns and problems I had encountered, since I have been a student at MSM, regarding my note-taking accommodation (discrimination). See Exhibit E and Exhibit F.

54.

Despite MSM's commitments and policies as outlined in MSM's 2017-2018 Student Handbook (Pages 67-68), MSM's 2018-2019 Student Handbook (Page 72), and MSM's 2019-2020 Student Handbook (Page 73), under the "Investigation and Disposition of Complaints" subheading, under the "Nondiscrimination and Anti-Harassment Policies" heading, my discrimination complaint was not promptly investigated by Marla Thompson, Title IX Coordinator, MSM never provided me with any written notification regarding the results of any investigation, MSM did not take any appropriate corrective actions as expeditiously as possible, and MSM did not follow up as appropriate to ensure any remedial actions it instituted were effective.

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55.

Additionally, when I met with Marla Thompson on or around February 19, 2020 and February 26, 2020, she informed me that on or around March of 2019, she was informed by, and supposedly became first aware that, Dr. Brandi Knight. at all times during which I have had been a student at MSM, had access to notes from notetakers of previous years and chose not to provide—or reveal her possession thereof to either Marla Thompson or myself—these to me, as supplemental help, when Dr. Brandi Knight, at the same time, was providing untimely notes to me per my note-taking accommodation. In other words, students not registered with ODS, who are performing poorly academically, can be mandated to join OSLER, and thus they would then have access to OSLER's resources such as notes from one of the OSLER student notetakers, and Dr. Brandi Knight, as OSLER's then Director, had access to notes from previous years of the same classes I was taking.

56.

Despite MSM's commitments and policies as outlined in MSM's 2017-2018 Student Handbook (Pages 65-68), MSM's 2018-2019 Student Handbook (Page 70-72), and MSM's 2019-2020 Student Handbook (Page 71-73), no report was ever filed and no investigation was ever conducted, regarding the aforementioned incident, by anyone at MSM.

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Howell, James

From: Howell, James
Sent: Monday, February 25, 2019 4:16 AM
To: Thompson, Marla
Subject: Notes Situation

Mrs. Thompson,

I was drafting you an email about the notes situation. The last email containing notes I received from Dr. Knight was on 1/22/2019 – over a month.

I was composing a timeline of when I received notes, and for what class, and the time it takes for them to arrive. To make it easy on myself, I was just doing it for this current Spring semester. From the emails I have received notifying me of notes (mind you I haven't received an email in over a month), there is an average wait-time of 6.4 days to receive notes for a class.

However, come to find out, Dr. Knight has been uploading notes to a shared OneNote. I'm not told when she does this, unless she mentions it in the emails she sends to me notifying me of notes. Thus, I don't know when she uploads them. Thus, I really don't know what the real wait-time is that it takes to receive notes. It may be less, I just don't have any data to show that because I'm not always told when she uploads the notes to OneNote.

Though as much as I can tell, and despite not hearing from her for over a month, OneNote is currently missing at least a weeks-worth of notes, thus the average wait-time listed above seems to be about right then.

I implore you to see if we can establish some effective communication strategies between all parties and some rules of what I should do when someone doesn't respond to me. You'll see below that even text messages doesn't necessarily work.

Examples of issues with communication with Dr. Knight:

- 1/7/2019 – I replied to her email containing notes in which I ask about the current situation with the notes and what she think will happen in the future. She responded on 1/17/2019 (10 days later) and she brought up the fact that the whole process with the notes will change. I haven't seen anything yet.
- 11/6/2018 – I sent Dr. Knight an email saying the notes weren't showing up in OneNote. I never heard back. I sent her a text message about this on 11/11/2018. She said she would look into it. I never heard back.
- 10/17/2018 – I sent Dr. Knight an email asking to meet. I never heard back.

Also, in case you weren't aware, Dr. Knight will be leaving MSM on 3/1/2019. So again, I'm not entirely sure of what the notes situation will be. Have you heard anything?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015

[redacted]

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 9:

521a – 585a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

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Postbaccalaureate Premedical Program

Emory University, Goizueta Business School – Class of 2007

BBA – Finance, Consulting & Venture Management, Chinese Language & Literature

[redacted]

[redacted]

NOT TO BE SHARED TO ANYONE OUTSIDE THE MEMEBRS OF THE DISMISSAL HEARING

Howell, James

From: Howell, James
Sent: Monday, February 25, 2019 5:16 AM
To: Thompson, Marla
Subject: Our Communication

Mrs. Thompson,

I am writing you to discuss ways in which we can improve our communication. I very much want to be able to improve our communication and it's difficult bringing these issues up. That's because I'm already experiencing communication issues with other faculty and I stress about making things worse by bringing it up to them or you.

I need your help and I'm trying to be my greatest advocate.

(This email is the last of four emails I have sent you within the past hour)

To this date, I have sent you three emails that you have not responded to and one further email that you have not followed up on, at least to my knowledge.

The emails that you have not responded to were sent on the following dates:

- **11/27/18**

  Mrs. Thompson,

  I hope you had an amazing holiday.

  I wanted to bring something to your attention. I think from now on, we should try to meet with all my teachers. This is because they're all trying to use TurningPoint for extra credit questions, but only the ones we met with give everyone a little extra time, for me, to answer the questions.

  Now we don't have to meet all at the same time, and maybe just an email will suffice. What do you think we should do?

  Also, have you heard back from Dr. Knight about the notes situation?

  - **<u>This email was about</u>**:
    - NOTES
    - BEGINNING OF THE SEMESTER MEETINGS WITH FACULTY
    - TURNINGPOINT QUESTIONS
    - COMMUNICATION PROBLEMS

- **11/30/18**

  Mrs. Thompson,

  I haven't heard back from you since I sent this email to you on Tuesday.

  - **<u>This email was about</u>**: [redacted]

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- NOTES
- BEGINNING OF THE SMESTER MEETINGS WITH FACULTY
- TURNINGPOINT QUESTIONS
- COMMUNICATION PROBLEMS

- **11/30/18**

Mrs. Thompson,

Please find attached the results from my latest psychological evaluation.

The full report isn't ready yet but the results and suggested accommodations are attached. The full report should be ready by January, at the earliest. They said that if you need certain information to grant these suggested accommodations prior to the full report being ready, that they'll be more than happy to help in whatever way possible.

Let me know if we need to meet about this.

- **This email was about**:
  - NEW PSCYHOLOGICAL EVALUATION RESULTS
  - NEW ACCOMMODATIONS

The one email that hasn't been followed up on to me, was sent on **11/10/18**:

Mrs. Thompson,

Did you ever touch base with Dr. Knight about the notes?

I emailed her this past week about it but never heard back.

- **This email was about**:
  - NOTES
  - COOMUNICATION PROBLEMS

You responded on **11/12/18**:

Hello Mr. Howell,

Dr. Knight has been away for the past week. I did previously email her following our meeting. I will follow-up again this week.

I never heard back from you.

To summarize, these emails were about:

- NOTES – an issue that has yet to be resolved and which will change even more with Dr. Knight leaving MSM.
- COOMUNICATION PROBLEMS – an issue that still really bothers me.

[redacted]

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- At this point, I don't even know if you're getting my emails.
- We have discussed in the past, that if you don't know the answer to one of my questions, or if you need to follow up with someone, to please tell me that you are doing so.
- Again, communication problems are not just with you.
- Should I send you text messages?

- NEW PSCYHOLOGICAL EVALUATION RESULTS – an issue that needs to be discussed ASAP.
  - I just sent you the complete evaluation prior to this email as well as the evaluation results on 11/30/18.

- NEW ACCOMMODATIONS – an issue that needs to be discussed ASAP. There are some new accommodations that are asked for, for the benefit of me.

- BEGINNING OF THE SMESTER MEETINGS WITH FACULTY
  - We have not had beginning of the semester meetings with faculty that we had previously agreed about doing, despite:
    - We have started a new class in FOM, psychopathology, and;
    - FOM now has more involved patient experiences, with new faculty.
    - Pharmacology and Microbiology

How can we make things better between us?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
[redacted]

NOT TO BE SHARED TO ANYONE OUTSIDE THE MEMEBRS OF THE DISMISSAL HEARING

Howell, James

From: Howell, James
Sent: Tuesday, February 18, 2020 9:39 AM
To: Thompson, Marla
Subject: Meeting Request
Attachments: Howell, James - Accommodation History Final.docx

Mrs. Thompson,

I would like to setup a time to meet soon. I am generally free any day before 2:30.

Note: I emailed Dr. Anachebe and not you about some issues I thought only she had the power to remedy. She cc-ed you in her response back to me. It was by no means to circumvent you, I was just going straight to the person who I though had the most power about a lot of things and could answer my questions as quickly as possible.

In a quick summary, a lot of things have come to a head lately. I told her the following:

- "I am registered with the Office of Disability Services (ODS) as a student with accommodations.
- Prior to committing to MSM I asked ODS if they could meet certain accommodations of mine, including but not limited to a notetaker. They said they could.
- For almost the first two years at MSM, my notetaking accommodation was not consistently met in a satisfactorily and timely manner.
- One of the main reasons why I decelerated was because of my lack of faith with the notetaking process.
- This has negatively impacted my grades when I know I can achieve academic success when my accommodations are inline with my coursework.
- This has negatively impacted my knowledgebase.
- I am currently failing pathology and pathophysiology due to this impacted knowledgebase.
- I would like to meet with you to discuss my future and how best we can work together towards my goal of academic success.

Note: A highly detailed, non-bulleted, timeline is attached. It is eight (8) pages long and is easy to read and follow. I highly suggest you read it if you can find the time. I also think we should meet just one-on-one first, but I am open to suggestions."

As mentioned above, the document attached is very objective and is as impartial as I can make it. I laid everything out as best I could about the point I'm trying to make. I have explained that I don't want to throw anyone under the bus and that this was a learning experience, particularly for MSM, that has added value for other students. But it still had a negative impact on me, with a lot of effects not seen until this year, that has affected my grades, how long I'm in medical school, residency applications, and I'm also currently failing pathology and pathophysiology. There remains a lot of questions about my future with regards to medical school, finances, etc.

I hope your aunt is doing better.

Kind Regards,

James "Greg" Howell

[redacted]

Morehouse School of Medicine – Prospective Class of 2022
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Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA

[redacted]

[redacted]

NOT TO BE SHARED TO ANYONE OUTSIDE THE MEMEBRS OF THE DISMISSAL HEARING

Dr. Anachebe,

I've tried to write this so that it is both detailed and easy to follow. A lot of things have come to a head lately. I've been writing this document for the past week as I've contemplated many things. I've spent a lot of time writing this because it very well may be one of the most important documents I ever write concerning my medical career. This has also been a struggle to write because it just really puts me back into a lot of negative emotions I've struggled with in medical school.

I'd like to give you a brief history of my time at Morehouse School of Medicine (MSM) so we can talk about my future. This document is in no way a means to blame any individual person, nor is it my will nor wish for anyone to get in trouble based on what has happened, because that would just cause me more anxiety and frustration. Life is about going through experiences and learning. This document is to explain my situation so that we can forge a new future.

I ask that you if you're going to share this document with anyone, because it has my diagnosis in it, that you ask me about who you want to share it with please.

My accommodations at MSM:

I'm going to tell you my diagnosis because it may help the story. I was diagnosed with [redacted] at a very young age. My mother and I have fought every step of the way to make sure I have every opportunity as everyone else. That's why I feel a sense of pride, because I can relate, in the mission of MSM in the need to increase the number of people of color in programs of education, research, and service, whom previously have been offered very few chances.

Prior to being accepted to MSM, I emailed the office of disability services (ODS) to see if they could meet my recommended accommodations in the event that I was accepted to MSM. I was told to ask again after being accepted. After being accepted, and prior to committing to MSM, I emailed ODS again asking if they could meet my recommended accommodations of extra time on assignments and exams, testing in a distraction reduced environment, a notetaker, etc. To which, ODS responded saying that they could meet my accommodations.

Since starting as MSM from 07/2017 to around 03/2019, for almost two years, I have never had consistent and timely notes with regards to my notetaking accommodations. This was despite of my initial enquiry prior to committing to MSM, and despite the adopted timeframe goal of receiving notes within 24-48 hours after every class.

MD1 Experiences:

Upon starting at MSM, I discovered that I was apparently the first ever medical student to request a notetaker and that the statement from ODS saying that they could meet my requested accommodations was said without fully knowing, particularly regarding the notetaker, if all of my accommodations could be timely met. I would come to learn later than there was possibly a previous GEBS student with a notetaking accommodation, but it is unknown to me if this

previous experience is what ODS relied upon in telling me that they could meet my accommodations prior to my committing to MSM. This caused some apprehension and anxiety because like I stated above, I asked ODS prior to committing to MSM if they could meet my recommended accommodations, which included a notetaker, to which they said they could. Now had ODS responded prior to my commitment to MSM by saying that they had never had a medical student need a notetaker before and that this was going to be a new process, and also explained the risks due to this, I would have possibly considered other schools over MSM.

I begrudgingly took on the role, for lack of a better word, of a guinea pig. In my first 2-3 months at MSM there were no notes. Dr. Knight wanted to be in charge of the process and decided that she wanted to wait until after Basic Principles (BP) to look at grade results in determining what students would be a good notetaking candidate. Now it wasn't a horrible idea in theory, but it still left me without notes for basic principles and good grades doesn't equal good notes, nor timely notes. I'm sure other things went into it, but this is all that was communicated to me about the process at that time. There also wasn't really a process in place for notetakers to submit notes and so IT was brought in to see what could be done. Thus, this was a new thing for MSM's medical school.

I didn't do that well in basic principles and I received poor grades during which time my notetaking accommodation was not met. These grades don't accurately represent what I can do as a student. I still don't know how I feel about receiving grades, that will show up in my residency applications, during times of which one of my previously requested accommodations was not met at all, but I put my faith in the process as I have heard repeatedly in my time at MSM concerning other matters.

As you may know, and as Dr. Elks has pointed out to me, MD1 is taught in a way that is not very reliant on books. Rather, it is taught in such a way that is reliant on lectures. I found that when going to class, lecture slides were formatted with key words and phrases, and that much of the explaining was done orally. Thus, as someone who has deficits as an auditory learner, this became a huge problem, especially with untimely notes.

All of MD1 classes initially became an Olympic competition to see if I could keep up in taking my own notes, which I never could keep up, and thus I wasn't actually processing what the professor was actually teaching as so much as I was just trying to pay attention to put their words to paper as I was trying to be the world's best transcriber. This turned into a disaster because then I hated going to class where it either became a nightmare transcribing event where I could never keep up, or I just listened and didn't retain anything.

On a side note, I was also the student who would come to make <u>all</u> lectures audio and visually recorded. Now why previous teachers at a learning institution would be against their lectures being recorded for students to watch and listen, either for a second or third time, or possibly the first time if that's how they learn better, is a topic for another day. I took some solace hearing how other students benefited from all of the lectures being audio and visually recorded.

After BP, from around 08/2017 to around 03/2019 (around the time Dr. Knight left), the timing of when I received notes was always inconsistent, and it became something I would often lose

faith in and a big cause of anxiety and frustration. The time it took me to get notes back varied from several days, to weeks, to even a month at times, and sometimes never. My notetaking accommodation became something I couldn't rely on when it was something so desperately needed. With as much material as medical students are supposed to know, and with as much new material gone over every day, I felt like I was always drowning.

My grades suffered and there was a lot of miscommunication, or lack of communication, between Dr. Knight and myself, between Dr. Knight and ODS, and between ODS and myself. Dr. Knight was my contact person with regards to the notes, as she was in charge of obtaining and uploading or sending me notes. But due to the untimeliness of notes, I began to feel like an afterthought, I became bored trying to be my own scribe, and I became irritated. I checked out at times and tried to do things my own way. Dr. Knight even acknowledges that she understood about the problem with the timing inconsistencies of the notes and that she understood that she was bottleneck in the process, but nothing really changed. She told me to reach out to her more often, but as shown below that didn't always have any effect. Thinking back this shouldn't have been my responsibility anyways and it seemed like this request was for me to serve as a reminder. And if that was the case, I could have just taped a sign on everyone's door that said, "notes please." If I can compare it to something: should an employee have to remind payroll to always send their paycheck? Further, you may recall an email I sent to you awhile ago about how to deal with people not responding to my emails. It was regarding this amongst other things too.

I didn't do well in really any of my MD1 classes and I received poor grades during which my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. I was always weeks behind and come near test time, I would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. It was a viscous cycle because I never learned nor retained anything I crammed for, nor did I really learn anything well. Thus, trying to learn things on my own, coupled with inconsistent notes, my knowledge became something like this: In an exam block, I would pretty well understand the things taught in the beginning of the exam block but never really understand anything, or have the time to understand anything, taught after around the halfway point of an exam block. Thus, if looking at a calendar, it literally became a roadway of smooth surfaces that represented the beginnings of each exam block, littered with huge potholes of empty knowledge in the later parts of the exam blocks. Further, because everything is built upon itself, the smoother surfaces became less and less smooth because my knowledge was so pot marked that I couldn't link anything together. Thus, my knowledge became less and less. Further, any subsequent information was taken in not by understanding, because I simply didn't understand, but by memorization - meaning it wasn't retained for very long.

This all led to a lot of anxiety and frustration because I was receiving poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, and I had a plethora of knowledge gaps about a lot of things.

A point I want to drive home is that lets say as a hypothetical example that notes were only inconsistent for one to two months regarding normal physiology. That's still one to two months of material That I don't know well and that will cause problems in linking other information. It

will also cause problems in learning additionally information about the same topic regarding pathology, pathophysiology, microbiology, and pharmacology. Now imagine this being an issue for all of MD1 and a majority of MD2's decelerated first year. That's kind of what I'm working through.

MD2, Decelerated Part 1:

The option to decelerate was presented to me by Dr. Knight a few weeks prior to the start of MD2. When considering decelerating, I spoke with you via email about the consequences of decelerating and how that would affect matching into residency programs. You forwarded me some matching statistics that showed the most important thing was your STEP 1 score. You also mentioned that failing any courses would negative effect residency matching, and that certain programs won't even download your application if a student took longer than four years.

Despite hearing about the difficulties and rigor of MD2, one of the major reasons why I decelerated was because of the lack of faith I had in my notetaking accommodations. I was already rightfully worried about my poor grades during times of which my notetaking accommodation was not consistently met in a satisfactorily and timely manner, coupled with the now inevitable possibility of my medical education taking longer than four years, it seemed to me that my last hope in matching well was getting a great score on STEP 1.

It was also around this time that Dr. Knight brought up the idea of looking into bringing in outside professional notetakers because she understood about the issues I faced in the previous year and she wanted to make sure I received timely notes for that year. She also expected any and all untimeliness and inconsistencies to further worsen upon pathophysiology starting in October of that year. This idea was quickly scraped due to the logistics and efficacy of bringing in outsiders to write down notes about topics they may not understand. In hindsight, it would have been prudent to find some 2020 students in MD2 to take notes (while I was in MD1 as a 2021 student) so as to prevent any issues with untimeliness because I wouldn't be taking those classes for another year.

In hindsight, I think it may have been more prudent to just repeat first year. But that wasn't brought up as an option, since I did eventually pass everything, nor did I understand the effects of the aforementioned MD1 issues on my understanding and placement in long-term memory of future topics.

Thus, I began MD2, decelerated part 1, taking microbiology, pharmacology, and FOM II. Again, there were many inconsistencies with the timeliness of notes until around 03/2019, around the time Dr. Knight left. Due to these inconsistencies, again I felt a lot of anxiety and frustration because I was again receiving poor/average grades during which time my notetaking accommodation was not consistently met in a satisfactorily and timely manner. These grades don't accurately represent what I can do as a student. Due to the aforementioned issues with MD1, there were a lot of further MD1 knowledge gaps which left linking concepts from pharmacology, microbiology, and FOM II very difficult. I reverted to using a lot of straight memorization than understanding to get by. This made my retention very poor. A lot of the same cramming techniques from MD1 persisted. I was always weeks behind and come near test time, I

would cram as much as I could, barely pass, and then start the new material without being able to learn the old material. I just pushed through any struggle and obstacle and did the best I could.

My grades suffered and there was again a lot of miscommunication, or lack of quality communication. For example, if I didn't receive notes within a few days I would email Dr. Knight. Sometimes she would answer, and I would get an answer about when to expect notes or she would send notes, and sometimes she wouldn't immediately answer (sometimes she wouldn't answer at all). I never knew if she didn't answer, either immediately or entirely, because she didn't see my email, or if she saw my email and didn't have an answer for me so she would wait, and possibly forget, to email me back when she would later receive an answer about the timing of the notes. I would often wait a day or two to email her back if I hadn't heard anything back. Usually after a few emails, I would reach out to Mrs. Thompson at ODS. As you can see, this method could easily delay notes for more than a week if not longer, and that's if notes had already been received or completed.

For a few months, I kept track of the average time it took to receive notes during MD2, decelerated part 1, and it was greater than eight (8) days (Note: this was during a time when I had already been frustrated, and had already expressed my frustration, of the length of time it took for notes, thus it was higher before I started to keep track). After Dr. Knight left, on or around 03/2019, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is like 2 days.

One of the most potentially frustrating things I found out during the transition period after Dr. Knight left, was when Ms. Blossomgame and Dr. Redding told me that when they asked the notetakers if they could get notes sooner (I think Ms. Thompson was present too), they all responded saying it wouldn't be a problem. Now I don't know all the factors and I don't know all about what happened, but if this is true, it sounds like all the issues and hardships I faced, with regards to my notetaking accommodation, could have potentially never happened.

Lastly, as I stated above that when I was keeping track, it took greater than eight (8) days for notes. For arguments sake, this greater than eight (8) days would have been far more acceptable had I been told notes will takes eight (8) days and I never had to ask for them, and they were always on time (Granted greater than eight (8) is way too long to begin with). But this greater than eight (8) days came with everyone's initial goal of taking only 24-48 hours, and my constant emails to Dr. Knight and ODS, and the coupled frustration, anxiety, and complaints.

MD2, decelerated part 2:

Since the start of MD2, decelerated part 2, I have felt like a MD1 student trapped in a MD2 body. Due to the aforementioned events, I've never had a good understanding of normal physiology, anatomy, histology, microbiology, and pharmacology, and didn't realize how bad it was until the start of this year and that has made learning abnormal physiology and pathology very slow and arduous. I feel like up until this year, I've been ignorant of my lack of knowledge and the consequences that were as a result of my notetaking accommodation not consistently met in a satisfactorily and timely manner. I've been ignorant in simply accepting this situation

thinking I can just work past it and push through it, doing whatever it takes because I've always been a fighter. I also didn't know how to articulate my feelings about this until recently when it became somewhat of a necessity that I do so.

The general purpose of decelerating was to have more time to focus on the present studies but so much of my time is also spent on trying to learn what I never had the opportunity to learn in the past. So, in a sense I feel like both a MD1 and MD2 student at the same time and not only as a decelerated MD2 student.

As stated above, after Dr. Knight left, the timing of receiving notes improved drastically. Ms. Blossomgame was critical in getting notes, uploading notes, and letting me know when notes were available. The average time now to receive notes is around 2 days or less. I also asked for and received all the notes that were taken for pathology and pathophysiology last year. Thus, I now receive new notes this year and have access to old notes as a backup just in case. These have been very helpful.

Due to the summation of all the issues presented with the consequences of my notetaking accommodation not consistently met in a satisfactorily and timely manner, and the knowledge gaps left by them, I am again receiving poor grades which I feel do not accurately represent how I can perform as a student. In fact, I am failing both pathology and pathophysiology, both of which are crucial not only on STEP 1, which is possibly the only thing that can make my application attractive to residency programs after everything already discussed above, but also critical in being a good doctor.

Future:

I would like to meet with you and discuss my future. Things I would like to discuss are outlined below. In our previous conversations via email, we have talked about some of the most important things residency programs consider in applicants: years spent in medical school, grades, and STEP 1 score.

The First Student

I've been for lack of a better word a guinea pig in a sense that I was the first student to receive a particular accommodation at MSM's medical school program: a notetaker. I was put into a crazy situation. Now I don't mind being the first student, the barrier breaker so to speak, but I feel like I'm being punished for it or it's not being acknowledged by anyone.

Though I ultimately do take some solace knowing that this was a great learning opportunity for a lot of people and that there are currently now other medical school students who also require a notetaker that don't have to go through what I have. Thus, the problems I've encountered and advised, coupled with the learning experience this school has received, has added a tremendous value to the medical school program in that there is now a dedicated program in place to satisfactorily accommodate students who require a notetaker.

But that doesn't change what has happened in my so-called trial run. I've experienced a lot of added fear, anxiety, and frustration in addition to what a normal medical school student already experiences.

My Grades

The recent SAPP emails have also prompted the writing of this email. My grades are terrible. I've basically received a C in every class. But this has been frustrating because I've received poor grades during times when my notetaking accommodation was not satisfactorily met, and thus these grades don't accurately represent what I can do as a student. Even more frustrating because people have seemed okay that I was graded on conditions when my notetaking accommodation was not satisfactorily met. And because everything in medical school really builds upon itself, I'm being graded on conditions now about information that is built upon the previous information that was in the curriculum during times when my notetaking accommodation was not satisfactorily met. This also makes any residency applications look unattractive. My previous poor grades are always on my mind as is my constant being behind because of my poor knowledgebase. Though I emphatically know I can achieve academic success when my accommodations are in place and lined up with my coursework.

Residency

As mentioned above, you've stated that some programs won't even download your application if you've taken longer than four years, and failing a class is also very detrimental on your application. As it looks now, my application will include both.

It's not until these past few weeks where I've actually thought, "Do I really think I have a chance? What programs would take me and what would my story even be?" This has also prompted my writing of this document.

Finances

I've heard that students requesting federal student loans can only do so for three years for the first two years of medical school and three years for the last two years of medical school. Thus, I've already used the maximum allocated amount of federal funds for my first two, in reality three, years of medical school. During which two of the three years my notetaking accommodation was not consistently met in a satisfactorily and timely manner. What's going to happen with my finances going forward?

Conclusion

As it looks now, I will ultimately need one more year in pathology and pathophysiology.

I don't want to make the argument that people did poor work. From what I've been told and from what I've seen, people wear a lot of hats at MSM, and so they may be overstretched. I also consider a lot of people that are part of my ODS process as friends. After working as a management/business consultant in my early career, I don't like to throw people under the bus. I

just want to get my point across and that this was a learning experience that has added tremendous value to MSM. But one of the big reasons on my checklist for why I came to MSM was that ODS told me they could meet all my recommended accommodations prior to my committing to MSM, and they could not. In the end, I value and respect everyone that I've worked with but that doesn't change that this has caused significant impairment in my learning experience. If I graduate, I will now potentially graduate with no one I know. All of this has caused a lot of stress and I don't know what to do. I look forward to speaking with you soon.

Howell, James

From: Montgomery Rice, Valerie
Sent: Tuesday, September 15, 2020 5:16 PM
To: Howell, James
Cc: Anachebe, Ngozi; Elks, Martha
Subject: Appeal Decision
Attachments: James Howell 9-15-2020.pdf

James
Thank you for meeting with me on Thursday.
Please find attached my decision for your appeal.

Best regards
VMR

MOREHOUSE SCHOOL OF MEDICINE

Office of the President and Dean

September 15, 2020

SENT VIA EMAIL AND FED EX MAIL
Email: [redacted]
FED EX Tracking: [redacted]
James Greg Howell
[redacted]

RE: James Greg Howell

Dear Mr. Howell:

As President and Dean of Morehouse School of Medicine ("MSM"), I am writing to you in response to your appeal of the Student Academic Progress and Promotions ("SAPP") Committee's decision to dismiss you from the MSM Medical Degree Program ("MD Program"). My final determination of your appeal is based upon my careful review of the record, including but not limited to the written information presented to the SAPP Committee. Additionally, my final determination is based upon my careful review of the documentation submitted in support of your stated basis of appeal.

In the 2019-2020 academic year you failed the courses Pathology and Pathophysiology. The school policy states that "if a student on the decelerated track receives a final grade of "D" or "F", they will have to appear before the SAPP at the end of the 2019-2020 academic year for a dismissal hearing". On or around May 29, 2020, you received notice of a dismissal hearing from the SAPP Committee Chair Brenda J. Klement, Ph.D. You later received notice that the dismissal hearing was going to be rescheduled at the request of the MSM Compliance Department.

On July 13, 2020 you received notice that the dismissal hearing was re-scheduled to July 30, 2020. On July 30, 2020, you received the notice of outcome of the dismissal hearing which confirmed you were dismissed from the MD program. On the evening of July 13, 2020, you sent my office your letter of intent to appeal the July 30, 2020 dismissal. Inadvertently, my office was delayed in the scheduling of your appeal. On September 10, 2020, I met with you regarding your appeal pursuant to student appeals section outlined on page 141 of the 2020-2021 Student Handbook

I find, among other things, that the record shows that the SAPP Committee was aware that when you started the MSM MD Program in July of 2017, you were approved for academic accommodations, which included a note-taker. The SAPP Committee was also aware that during your academic years 2017-2018 and 2018-2019 that you did not receive written notes from the note-taker within 24-48 hours of your courses/classes. The committee was also aware that as of the end of March 2019, you did begin to receive written notes through the note-taker within 24-48 hours.

720 Westview Drive SW
Atlanta, GA 30310-1495

Telephone: 404-752-1740
Fax: 404-756-8974
www.msm.edu

While I find there is sufficient evidence to support the SAPP Committee's decision to schedule you for a dismissal hearing, I additionally find the delay in the completion of your hearing was not proper. In addition, I find there is not sufficient evidence to support the SAPP Committee's decision to dismiss you from the MD program. For these reasons, I am reversing the SAPP Committee's decision to dismiss you from the MD program, effective immediately. Dr. Ananchebe and Dr. Elks will be contacting you, soon, to discuss option for your reentry into the MSM MD Program.

Morehouse School of Medicine wishes you all the best.

Valerie Montgomery Rice, MD, FACOG
President and Dean, Morehouse School of Medicine

Cc: Dean of Student Affairs, Nogzi Anachebe, MD
Chair of SAPP Committee Brenda J. Klement, Ph.D

Howell, James

From: Thompson, Marla
Sent: Monday, March 16, 2020 9:51 AM
To: Howell, James
Subject: RE: Follow-up

Mr. Howell,

Thanks for your email. I must share again that the ODS office does not receive in writing or participate in any conversation that would provide me with an awareness of your academic status. The concerns you identified that I confirmed to be non-ODS decisions were shared with Dr. Anachebe. For example, your concern involving tuition is not a matter that the ODS is able to decide. You should use all your available resources to include your student handbook as a resource to get resolution to that particular question. Please let me know how I can further help or guide you to a resource to include reaching back out to Dr. Anachebe.

From: Howell, James <JHowell@msm.edu>
Sent: Friday, March 13, 2020 5:01 PM
To: Thompson, Marla <mthompson@msm.edu>
Subject: RE: Follow-up

Mrs. Thompson,

I met with Dr. Anachebe not too long ago. Prior to our starting our discussion, I asked her what she had heard, to which she said she was told by you that I was not doing well academically. One of your previous emails said that Dr. Anachebe was presented information per our discussion, and that she confirmed she understood my concerns. However, it seems she hasn't heard my concerns or didn't express to me that she had heard all of my concerns.

So I was left in a very uncomfortable situation where I was meeting with someone who didn't want to, or couldn't, hear my concerns (because my accommodations are a crux of the matter). I'm left perplexed here because I don't know who can help me, let alone discuss these matters with me.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

From: Thompson, Marla <mthompson@msm.edu>
Sent: Thursday, March 5, 2020 5:21 PM
To: Howell, James <JHowell@msm.edu>
Subject: RE: Follow-up

Mr. Howell,

Please keep me posted once you have completed your meeting with Dr. Anachebe. If you have questions that I need to address, please do not hesitate to contact me. Thanks.

From: Howell, James <JHowell@msm.edu>
Sent: Thursday, March 5, 2020 5:19 PM
To: Thompson, Marla <mthompson@msm.edu>
Subject: RE: Follow-up

Mrs. Thompson,

Noted. Thanks.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

From: Thompson, Marla <mthompson@msm.edu>
Sent: Thursday, March 5, 2020 5:07 PM
To: Howell, James <JHowell@msm.edu>
Subject: RE: Follow-up

Hello Mr. Howell,

Dr. Anachebe would not normally have me present when having a conversation with a student that may involve some of the topics that could come up in your discussion. In an effort to stay consistent with our normal procedures, she is going to meet with you 1X1. She was presented information per our discussion. She did not render an immediate response to that information; instead, she confirmed that she understand correctly the concern(s). I hope this information helps. Thanks.

From: Howell, James <JHowell@msm.edu>
Sent: Thursday, March 5, 2020 4:41 PM
To: Thompson, Marla <mthompson@msm.edu>
Subject: RE: Follow-up

Mrs. Thompson,

Thank you for your email.

You said you would ask Dr. Anachebe about the possibility of us all initially meeting together. What was Dr. Anachebe's response to this?

So what did Dr. Anachebe say during your discussion?

I will reach out to Ms. Evans.

I look forward to your response. Thanks.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

From: Thompson, Marla <mthompson@msm.edu>
Sent: Thursday, March 5, 2020 2:36 PM
To: Howell, James <JHowell@msm.edu>
Subject: RE: Follow-up

Hello Mr. Howell,

I am writing to advise that I completed my discussion with Dr. Anachebe regarding your concerns. You should contact her Administrative Assistant, LaRonda Evans to schedule time on her calendar. I noted in our meeting that she does have some time that is already committed due to her clinical schedule and other business travel. Her administrative assistant will work with you to find the best date and time for this meeting. In accordance with our normal procedures, she is not permitted to discuss any confidential health information as a protection to you and us. I am available if there are questions.

From: Howell, James <JHowell@msm.edu>
Sent: Thursday, February 27, 2020 11:35 AM
To: Thompson, Marla <mthompson@msm.edu>
Subject: RE: Follow-up

Mrs. Thompson,

Thank you for keeping me updated. I look forward to hearing back from you.

Get some lunch today if you can ☺

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

From: Thompson, Marla <mthompson@msm.edu>
Sent: Thursday, February 27, 2020 9:42 AM
To: Howell, James <JHowell@msm.edu>
Subject: Follow-up

Hello Mr. Howell,

I am writing as follow-up to our meeting on yesterday. While I did not reach Dr. Anachebe by telephone to speak with her, I was able to hold a time on her calendar for this week. My plan is to reach back to her again today. My ability to write back on yesterday was impacted by connectivity issues. I am available If there are questions.

Marla D. Thompson

Howell, James

From: Thompson, Marla
Sent: Monday, March 16, 2020 10:13 AM
To: Anachebe, Ngozi
Cc: Howell, James
Subject: RE: Meeting with Mr. Greg Howell

Thank you for making me aware of the outcome of your conversation. He wrote to me and I followed up with him.

From: Anachebe, Ngozi <nanachebe@msm.edu>
Sent: Friday, March 13, 2020 4:42 PM
To: Thompson, Marla <mthompson@msm.edu>
Cc: Howell, James <JHowell@msm.edu>
Subject: Meeting with Mr. Greg Howell

Hello Mrs. Thompson,

I met with Greg today and it appears there is some misunderstanding of what our meeting is about. I was under the impression our meeting was to help him understand our academic policy regarding satisfactory academic progress and procedures for students who do not meet these. I explained to him that my role is not to discuss his personal medical situation, disability and/or accommodations. I also explained to him our academic policies regarding satisfactory progress, leave of absence, and the SAPP Committee's role.

These were not what he had in mind. I informed him he could contact our Chief Compliance Office, Mr. Keith Henderson, to file a grievance, should he choose to do so.

All the best!

Success is no accident. It takes a persistent hunger to improve oneself, passion for excellence, and dogged attention to the little things that position one for the opportunity when it shows itself.

Ngozi F. Anachebe

MOREHOUSE
SCHOOL OF MEDICINE

2017-2018
STUDENT HANDBOOK

Immunization Services

All MSM students are required to provide proof of receiving a set of immunizations prior to enrollment or to receive the required immunizations within thirty days of enrollment. Students who have not received required immunizations will be provided those immunizations. The cost of immunizations will be covered by immunization fees (previously the student health service fee).

Please note it is incumbent upon each student to get all required documentation expedited in a timely manner. Attendance during Immunization sessions is therefore **MANDATORY**. All students in the MD and MSMS programs are required to complete the AAMC Standardized Immunization Form. These students will be given 30 days from orientation to provide the immunization document provided in new student orientation. Due to the requirement to have complete immunizations in order to be in required clinical sites at a certain campus, a student who does not comply with immunization standards cannot complete these requirements, which may result in failure to pass a course.

Non-MD students will complete the Morehouse School of Medicine Immunization Form. During program orientation, students' immunization records will be reviewed, and students will have a grace period to complete their immunizations (listed as non-compliant annually by October 15). Subsequently, non-compliant students will NOT be allowed to register pending release of the Immunization HOLD by Student Employee Health Services.

All medical and MSMS students are required to receive the annual influenza vaccine. This vaccination is provided during October of each academic year.

A list of required immunizations and all infection control policies can be found on the MSM Student Employee Health Services-Infection Control Webpage:
http://www msm.edu/Current_Students/SEHC-IC.php

Tuberculin Skin-testing: PPD

Screening for tuberculosis is required annually for medical students and students who have contact with patients. Entering students are required to present certified evidence of screening within 12 months before enrollment or thirty days after enrollment.

Travelers' Healthcare: The SEHS-IC will provide services to MSM faculty, students and staff that require vaccinations and medications for travel. It is recommended that you allow 6 weeks prior to travels for immunizations.
For additional questions or concerns, please contact SEHS-IC at 404.756.1241.

Disability Services

Morehouse School of Medicine's Office of Disability Services (ODS) serves as the primary resource for students with documented disabilities, disability concerns, and making requests for reasonable academic adjustments and accommodations. The ODS works in collaboration with faculty, staff and departments throughout MSM to develop successful strategies for maximizing students' academic achievement and participation in extracurricular activities and programs. Services and reasonable accommodations are designed to meet the individual needs of each student in accordance with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the ADAAA. These regulations require that any qualified person receive academic adjustments that are necessary and effective, and which do not compromise the academic standards of the School, to ensure equal access to educational opportunities, services, programs and activities at the

School. MSM will not provide an academic adjustment or accommodation that is not reasonable or that would result in an undue hardship to the School or otherwise fundamentally alter the program. Any applicant, student, resident, or employee who believes he or she has been denied any service or benefit or otherwise discriminated against or harassed due to a disability may contact the Title IX Coordinator or the Deputy Title IX Coordinator.

Students having questions about or seeking to make requests for reasonable accommodations and academic adjustments based on a disability should contact:

Manager for the Office of Disability Services
Morehouse School of Medicine
720 Westview Drive, SW
Harris Building H-132
Atlanta, GA 30310
Direct Dial: (404) 756-5200
Fax: (404) 752-1639
Email: ODS@msm.edu

The Office of Disability Services (ODS) is located on the Westview Campus, Harris Building, room H-132. The ODS is open Monday -Friday between 8:30 am and 5:00 pm. Further information on the ODS can be found on the Web at:
http://www msm.edu/Administration/HumanResources/disabilityservices/index.php

Students requesting academic adjustments or accommodations based on a covered disability must register with the ODS prior to course registration (or as soon as practicable) and follow all ODS procedures for requesting academic adjustments and accommodations. Students should be aware that they are responsible for making requests for reasonable academic adjustments and for submitting all necessary documentation in support of those requests.

The Office of Disability Services has been designated to review disability documentation and to determine eligibility for appropriate accommodations. Faculty members must not provide any disability-related academic adjustments to any student until s/he has received notification by letter to do so from the ODS.

Disabilities of a temporary nature may not be eligible for academic adjustments with the ODS, but ODS will assist the School staff and faculty in efforts to minimize academic disruptions. Students making requests for excused absences and emergency notification should first contact the Office of Student Affairs and, if the report relates to a disability-related issue, the Office of Student Affairs will communicate with ODS regarding the same. For more information, contact the Dean for Student Affairs at (404) 752-1651.

Office of International Program Services

The Office of International Program Services (OIPS) provides assistance to students, faculty and staff from foreign countries that study and/or work at MSM. This office serves as the official liaison for U.S. Departments of State, Homeland Security, and Labor. A Manager who functions as the Principal Designated School Official at MSM for F-1 students and is the Responsible Official for MSM's Exchange Visitor Program for J-1 students heads OIPS. The Office of International Program Services Manager is available to all international students for immigration counseling, for addressing issues

7. In some situations, the Mediator or Council might be justified in communicating ordinarily confidential information to other MSM officials, provided there is a legitimate "need to know".
8. The accuser and accused are not allowed to bring lawyers to Council meetings as advocates, advisors, or observers, nor may they bring any other persons, except witnesses.
9. This process is intramural and is anticipated to avoid complaints being filed outside the Institution.
10. When the Council finds that, in their view of the facts, serious mistreatment has occurred, a report of findings will be sent from the Council to the dean. The dean will then decide what action to take.
11. The dean or the dean's designee (perhaps the Mediator) will advise the accused and accuser concerning the final disposition of the matter.
12. Decisions about whether a report of findings should be sent to the dean should be made on a case-by-case basis. It is a matter of judgment by the Council, based on the degree of offensiveness of the behavior and the strength of evidence that the behavior occurred.
13. When the council is aware of a history of recurring mistreatment behavior by a given individual, a report of findings to the dean might be warranted, even if each occurrence of mistreatment behavior considered alone, would not be regarded as serious enough to justify a report to the dean.
14. In general, if the conflicting parties resolve the matter between themselves, the Council might decide that a report to the dean is not warranted. On the other hand, if the offense is serious or recurring, a report to the dean might be appropriate even if the conflicting parties have reached reconciliation. In exceptional circumstances it might be appropriate for the Mediator to inform the dean concerning a complaint before the Council meets.
15. If in the mediator's judgment the council should be brought into a case, the accused does not have the right to prevent the council from meeting. A function of the council is to decide whether the matter should be brought to the attention of the dean.
16. It is in the best interest of the accused to meet with the Council to attempt to prevent a report to the dean. If the accused refuses to attend the Council meeting, the council will still meet to decide if a report should be sent to the dean.
17. If a student who believes he/she has been mistreated approaches a Council member, the council member will refer the student to the Mediator.

Nondiscrimination and Anti-Harassment Policies
General Information

Morehouse School of Medicine is committed to providing academic and employment environments that are free from unlawful discrimination, including harassment, on the basis of protected characteristics, including race, color, national or ethnic origin, sex, age, disability, religion, veteran status, sexual orientation, genetic information, gender identity, or any other characteristic protected by applicable law in the administration of the School's programs and activities. The School encourages any individual who feels he or she has been discriminated against or harassed on any legally protected characteristic to promptly report the incident to the Title IX Coordinator or the Deputy Title IX Coordinator, who may be contacted as follows:

Marla Thompson
Title IX Coordinator
Morehouse School of Medicine
720 Westview Drive, SW
Harris Building
Atlanta, GA 30310
Direct Dial: (404) 752-1871
Fax: (404) 752-1639
Email: mthompson@msm.edu

Irma Stewart
Deputy Title IX Coordinator
Morehouse School of Medicine
720 Westview Drive, SW
Harris Building
Atlanta, GA 30310
Direct Dial: (404) 752-1606
Fax: (404) 752-1639
Email: istewart@msm.edu

MSM's general policy against discrimination, harassment and retaliation applies to conduct by and perpetrated against all faculty, staff, administration, supervisors, employees, residents, students, applicants, volunteers, patients and visitors to campus, including guests, patrons, independent contractors or clients of MSM ("Person(s)") that is prohibited by Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (including ADAAA amendments), and the Age Discrimination Act of 1975.

MSM also does not discriminate on the basis of sex in its employment decisions and education programs and activities (such as all academic and extracurricular activities and programs) as required under Title IX of the Education Amendments of 1972 and in its implementing regulations, and in part under Title VII, as well as any other applicable federal and state laws or local ordinances. Accordingly, MSM has also adopted a Sex/Gender Nondiscrimination and Sexual Harassment Policy, which covers all employment and admissions decisions affecting any member of the MSM community as they relate to any conduct prohibited under Title IX, such as sex or gender discrimination, retaliation and all types of sexual misconduct, including, but not limited to sexual harassment and sexual violence.

Under MSM's general policy against discrimination, harassment and retaliation, if a complainant is able and feels safe, he or she should clearly explain to the alleged offender that the behavior is objectionable and request that it cease. Additionally, if the complainant is not able or does not feel safe confronting the alleged offender, or the behavior does not stop, or if the complainant believes some adverse employment or educational consequences may result from the discussion, he or she should contact the Title IX Coordinator or the Deputy Title IX Coordinator to make a complaint.

Under MSM's Sex/Gender Nondiscrimination and Sexual Harassment Policy, any Person, or any individual or group acting on behalf of a Person, who knows or receives a report of an incident specifically involving sex discrimination, sexual harassment or sexual violence, or seeks to raise general concerns with individual or institutional sex-based discrimination, sexual harassment or sexual violence, may report the incident to or file a formal complaint with the Title IX Coordinator or the Deputy Title IX Coordinator. Details about the procedures a victim of sex discrimination, sexual

harassment or sexual violence should follow immediately following the occurrence of such conduct, as well as for reporting incidents and/or filing, investigating and resolving complaints of sex discrimination, sexual harassment, sexual violence, and other Title IX-related grievances are outlined in Human Resources Policy H.R. 1.00 (revised 10-1-2014), which can be accessed on the Morehouse School of Medicine website at:
http://www msm.edu/Administration/HumanResources/humanResources/HRDocuments/SexGenderNondiscriminationandSexualHarassmentPolicy2015.pdf

All members of the MSM community are subject to MSM's Sex/Gender Nondiscrimination and Sexual Harassment Policy, including the investigatory and disciplinary procedures described therein.

Under both policies, reports or complaints of harassment of any form should be made to or initiated with the Title IX Coordinator or the Deputy Title IX Coordinator as soon as possible after the most recent incident. Anyone who knowingly makes a false accusation of discrimination, harassment, or retaliation will be subject to appropriate sanctions. However, failure to prove a claim of discrimination, harassment, or retaliation does not, in and of itself, constitute proof of a knowing false accusation. No Person should assume that an official of MSM knows about a particular situation. Any Person or non-MSM visitor, guest, patron, independent contractor, or client who fails to address or report any form of discrimination, harassment and/or retaliation allegedly perpetrated by or against MSM administrators, faculty, staff, supervisors, volunteers, students or employees of which they know or should have known may be subjected to sanctions.

Complaint Procedures

Complaints filed with the Title IX Coordinator or the Deputy Title IX Coordinator must be in writing and, specifically in cases involving incidents of sex discrimination, sexual harassment or sexual violence, provide the following information: (i) name of and contact information for the complaining Person(s) ("Complainant(s)"); (ii) nature, location and date of alleged violation; (iii) names of and contact information for the Person(s) accused of the alleged violation (where known) ("Respondent(s)"); (iv) requested relief or corrective action (specification of desired relief shall be the option of the Complainant); and (v) any other background or supplemental information that the Complainant believes to be relevant (e.g., names of other persons affected by the violation, etc.).

Investigation and Disposition of Complaints

All reports and complaints of discrimination and harassment will be promptly investigated, and appropriate corrective action will be taken as expeditiously as possible. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to an impartial investigator. MSM will make reasonable efforts to protect the rights of both the Complainant and the Respondent. MSM will respect the privacy of the Complainant(s), Respondent(s), and any witnesses in a manner consistent with the School's legal obligations to investigate, take appropriate corrective action, and comply with any discovery or disclosure obligations required by law. Any and all requests for confidentiality will be evaluated on a case-by-case basis and in the context of the school's responsibility to provide a safe and nondiscriminatory environment for the MSM community.

MSM reserves the right to investigate and resolve a complaint or report of discrimination and/or harassment regardless of whether the complainant ultimately desires the School to pursue the complaint. In such cases, the parties shall be informed of the status of the investigation at reasonable times until the School's final disposition of the investigation.

The amount of time needed to conduct an investigation will depend in part on the nature of the allegation(s) and the evidence to be investigated (e.g., the number and/or availability of witnesses involved). Within 60 days of receipt of the complaint, the Title IX Coordinator or Deputy Title IX Coordinator will provide an interim notice of the outcome of the investigation or will advise the parties of the additional estimated amount of time needed for the investigation. Within 10 business days following the completion of an investigation, the Title IX Coordinator or Deputy Title IX Coordinator will simultaneously provide written notification to the Complainant and Respondent of the results of the investigation. If the investigation reveals that, by application of the preponderance of evidence standard, harassment, discrimination (or other inappropriate or unprofessional conduct even if not unlawful), or retaliation has occurred, disciplinary action may be taken by MSM. Written notice to the appropriate parties relating to discipline, resolutions, and/or final dispositions is deemed to be official correspondence from the School. Disciplinary sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator. MSM will take the appropriate corrective action based on results of the investigation and will follow up as appropriate to ensure that the remedial action is effective. Complainants are encouraged to report any reoccurrences of conduct that were found to violate MSM's nondiscrimination and anti-harassment policies or any other related concerns.

Prohibition Against Retaliation

Anyone who, in good faith, reports what s/he believes to be discrimination or harassment, who participates or cooperates in any investigation, or who otherwise opposes unlawful conduct believed to be in violation of this policy will not be subjected to retaliation. Anyone who believes he or she has been the victim of retaliation for reporting discrimination or harassment, participating or cooperating in an investigation or otherwise opposing unlawful conduct believed to be in violation of this policy should immediately contact the Title IX Coordinator or the Deputy Title IX Coordinator, who have authority to investigate all such claims. Any individual found to have retaliated against another individual who engaged in conduct consistent with the protections afforded under this Policy will be in violation of this policy and will be subject to disciplinary action.

STUDENT CONSUMER INFORMATION

The Morehouse School of Medicine (MSM) desires to resolve student grievances, complaints and concerns in an expeditious, fair and amicable manner. Complaints regarding any aspect of operations should be filed internally to MSM authorities first and then, if necessary, to external authorities. Contact information for filing complaints is given below.

MSM fully complies with the federal Family Educational and Privacy Act of 1974 as amended (20 U.S.C. § 1232g; 34 CFR Part 99), which gives students access to their educational records. Individuals who have particular questions or wish to view a copy of the Act are urged to contact the Office of the Registrar or the Dean's Office. Students can arrange to review their records by making an appointment with the Registrar located on the first floor of the Hugh M. Gloster Building, adjacent to the Office of Admissions and Student Affairs.

Internal MSM Contacts for General Consumer and Other Complaints

- **Academic Affairs**
  Dr. Sandra Harris-Hooker
  Executive Vice Dean for Academic Affairs
  sharris-hooker@msm.edu

Admissions Policy & Selection

Morehouse School of Medicine encourages applications from, and gives full consideration to, all applicants for admission and financial aid without regard to gender, race, handicap, color, creed, or national or ethnic origin. The school is committed to recruiting, enrolling and educating substantial numbers of persons from racial minorities and from educationally and socioeconomically deprived groups. The Committee selects those applicants who are more likely, in its opinion, to become the best students, and physicians, biomedical or public health scientists, who will fulfill the mission of the school.

Admission to each degree program is decided by separate Admissions Committees for students entering the Morehouse School of Medicine. Each program maintains its own admissions criteria and process. However, all applications are processed through the **Office of Admissions and Student Affairs.**

**MSM reserves the right to terminate or modify program requirements, content, and the sequence of program offering from semester to semester or year to year for educational reasons which it deems sufficient to warrant such actions. Further, MSM reserves the right to terminate programs for financial or other reasons, which it determines warrants such action. The content, schedule, requirements and means of presentation of course may be changed at any time by the School of Medicine for educational reasons which it determines are sufficient to warrant such action. Programs, services or other activities of the School may be terminated at any time due to reasons beyond the control of the School including, but not limited to, acts of God, natural disasters, destruction of premises, labor disturbances, governmental orders, financial insolvency, or other reasons or circumstances beyond the control of the School of Medicine.*

Doctor of Medicine (MD) Program

Admission Standards

New Students

The selection of students by the Admissions committee is made after considering many factors: intelligence, preparedness, motivation, and aptitude. The Medical College Admission Test (MCAT) and a bachelor's degree, or equivalent, from a U.S. school accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA) or the U.S. Department of Education, or from an appropriately accredited non-U.S. institution.

Applicants who have completed coursework at, or hold a bachelor's or advanced degree from an institution of higher learning outside the United States must have their transcript(s) certified for equivalency to U.S. degrees or coursework by a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES). Applicants who have completed coursework at, or hold degrees from, a postsecondary institution in Australia, Canada (except Quebec), New Zealand, or the United Kingdom will normally not need to have their academic transcripts evaluated and certified for equivalency.

Any applicant seeking transfer of credits from an institution outside the United States into a Morehouse School of Medicine program must have a course-by-course evaluation of relevant transcripts completed by a member of NACES. Applicants are encouraged to have a broad educational background, yet no specific major is deemed superior to another.

Coursework must include one year of:
Biology with Laboratory
General Chemistry with Laboratory
Organic Chemistry with Laboratory
College Level Mathematics
College Physics with Laboratory
English (including composition)

An accepted student is responsible for completing all prerequisite course work prior to matriculation.

Transfer Students

Transfer admissions are rare. However, applications are accepted from students in LCME accredited U.S. and Canadian schools of medicine, who are currently enrolled in good academic standing in such a school, have the full approval for the transfer from the dean of their current school, and have a cogent reason for requesting transfer. Admission is contingent upon space availability therefore, academically qualified applicants can still be denied admission due to lack of space. **The School of Medicine does not accept applications for advanced standing from students attending non-Canadian foreign medical schools, osteopathic or veterinary schools. MSM does not accept applications for transfer beyond the second year. Therefore, admission to the third and fourth year medical classes is not possible.**

Technical Standards for Medical School Admissions and Graduation

Medical education requires that the accumulation of scientific knowledge be accompanied by the simultaneous acquisition of skills and professional attitudes and behavior. Medical school faculties have a responsibility to society to matriculate and graduate the best possible physicians, and thus admission to medical school has been offered to those who present the highest qualifications for the study and practice of medicine. Technical standards have been established as prerequisites for admission and graduation from MSM. All courses in the curriculum are required in order to develop essential skills required to become a competent physician.

Graduates of medical school must have the knowledge and skills to function in a broad variety of clinical situations and to render a wide spectrum of patient care.

MSM acknowledges Section 504 of the 1973 Vocational Rehabilitation Act and PL 101-336, the Americans with Disabilities Act (ADA), but ascertains that certain minimum technical standards must be present in the prospective candidates.

A candidate for the M.D. degree must have aptitude, abilities, and skills in five areas: observation; communication; motor; conceptual, integrative and quantitative; and behavior and social. Technological compensation can be made for some handicaps in these areas, but a candidate should be able to perform in a reasonably independent manner.

Observation: Observation necessitates the functional use of the sense of vision and other sensory modalities. The candidate must be able to observe demonstrations and participate in experiments in the basic sciences. The candidate must also be able to observe a patient accurately at a distance and close at hand.

Communication: Communication includes not only speech, but includes reading and writing. A candidate must be able to communicate effectively and sensitively with patients and all members of the health care team.

Motor Coordination or Function: Candidates should have sufficient motor functions to elicit information from patients by palpation, auscultation, percussion, and other diagnostic maneuvers. A candidate should be able to do basic laboratory tests, carry out diagnostic procedures, and read EKGs and X-rays. A candidate should be able to execute motor movements reasonably required to provide general care and emergency treatment to patients. Such actions require coordination of both gross and fine muscular movements, equilibrium and functional use of the senses of touch and vision.

Intellectual-Conceptual, Integrative, and Quantitative Abilities: These abilities include measurement, calculation, reasoning, analysis, and synthesis. Problem solving, the critical skill demanded of physicians, requires all of these intellectual abilities. In addition, the candidate should be able to comprehend three-dimensional relations and to understand the spatial relationships of structures.

Behavioral and Social Attributes: Candidates must possess the emotional health required for full use of their intellectual abilities, the exercise of good judgment, the prompt completion of all responsibilities attendant to the diagnosis and care of patients, and the development of mature, sensitive and effective relationships with patients. Candidates must be able to tolerate physically taxing workloads and to function effectively when stressed. They must be able to adapt to changing environments, to display flexibility, and to learn to function in the face of uncertainties inherent in the clinical problems of many patients.

will delay clinical course progress. Failure to meet certain standards may prevent a student from being able to complete the academic program.

MD Student Registration Policy

All currently enrolled MD students are required to be officially registered by the first day of classes or clinical clerkships. If a student has not registered for his/her respective MD year curriculum due to an outstanding balance, the student will not be authorized to attend classes, clinical clerkships or receive credit. In addition, the student's MSM ID card, Blackboard and Examsoft access will be provisionally suspended. Students who have not been registered will be considered to have unexcused absences for those sessions requiring attendance.

Approval to attend classes or clinical clerkships is contingent on outstanding balance being paid or if a payment agreement is established with the MSM Controller's Office.

Prior to the start of each semester, it is the responsibility of the student to make certain an outstanding balance is paid in full. If circumstances result in a delay in registration beyond the student's control, the student is required to meet with the Associate Dean for Student Affairs. However, this does not excuse the student from adhering to the registration policy guidelines.

Educational Objectives of the Medical Curriculum

The undergraduate medical program requires that candidates for the MD degree acquire certain knowledge, skills, and attitudes that are essential for functioning in a broad variety of clinical situations. To render a wide spectrum of primary care, a graduate must develop:

1. A mastery of the concepts necessary for the prevention, diagnosis, treatment, and management of common medical problems, specifically display:
    a. Knowledge of the normal development, structure and physiological function of the body, organ systems, tissues and cells, and their interrelationships
    b. Knowledge of the molecular, biochemical, cellular, and physiological mechanisms that are important in maintaining the body's homeostasis
    c. Knowledge of the biochemical, immunologic, pharmacologic, and microbiologic principles related to issues of disease, laboratory tests, and therapeutics
    d. Knowledge of the various etiologies (genetic, developmental, metabolic, toxic, iatrogenic, microbiologic, autoimmune, neoplastic, degenerative, and traumatic) of diseases (pathogenesis), the associated altered structure and function (pathology and pathophysiology) and characteristic pathologic and laboratory manifestations
    e. Knowledge of common epidemiologic and risk factors for diseases and the role and impact of psychological, behavioral, social, economic, and cultural factors on health and disease
    f. Knowledge of the ethical, legal, and economic issues that impact health and medical care

2. Basic skills, including the ability to:
    a. Perform and record a complete and accurate history, sensitive to patient needs and the nature of the situation
    b. Perform and record an accurate and complete physical examination, sensitive to patient needs and the nature of the situation

c. Develop an appropriate diagnostic and therapeutic plan, appropriately using information resources, laboratory and imaging testing

d. Communicate (in writing and orally) effectively and respectfully with peers, faculty, colleagues, and other members of the healthcare team, understanding the role of consultations and referrals

e. Communicate and interact with patients in an effective, respectful, and compassionate manner, including counseling them on risks, prevention, lifestyle and therapy issues

f. Obtain, analyze, and use the medical literature and other information resources to address medical questions and to sustain professional growth

g. Apply techniques of population health, including methods of analysis of the health and health problems of defined populations and development of interventions to improve the health of populations.

Throughout training, a candidate must demonstrate medical professionalism including ethical behavior, moral reasoning, honesty, integrity, dependability, and commitment to service.

Curriculum for the Doctor of Medicine Program

FIRST YEAR MEDICAL CURRICULUM

Fall and Spring Semesters	**Semester Credit Hours**	
Molecules, Structures, Mechanisms	Curriculum	
Basic Principles	(Unit 1)	10.0
Organ Systems 1	(Unit 2)	10.0
Organ Systems 2	(Unit 3)	10.0
Organ Systems 3	(Unit 4)	10.0
Community Health		4.0
Fundamentals of Medicine		7.0
		51.0

SECOND YEAR CURRICULUM

Course	**Semester Credit Hours**
Pathophysiology	7.0
Microbiology and Immunology	7.0
Pathology	12.0
Pharmacology	7.0
Nutrition	1.0
Fundamentals of Medicine II	8.0
	42.0

THIRD YEAR CURRICULUM

Course	**Semester Credit Hours**	
Internal Medicine	(12 weeks)	15.0
Pediatrics	(8 weeks)	10.0
Obstetrics/Gynecology	(8 weeks)	10.0
Psychiatry	(6 weeks)	8.0
Surgery	(8 weeks)	10.0
Family Medicine/Rural Health	(6 weeks)	8.0
Fundamentals of Medicine III		2.0
		63.0

FOURTH YEAR CURRICULUM

Course	Semester Credit Hours	
Senior Selective	(4 weeks)	5.0
Elective Rotations	(Six electives of 4 weeks duration	30.0
		35.0
Total Credits for MD Program:		**191.0**

***Senior selective. The senior selective requirement may be fulfilled by completing any of the following courses at MSM (grading for this required course is LETTER grade):*
An MSM intensive inpatient experience with overnight and weekend call duty. This would include:

- *Sub internship/acting internship/ward rotation*
- *Intensive care rotations*
- *Ambulatory Adult Medicine*
- *Rural Health senior elective*
- *Emergency Medicine*

Morehouse School of Medicine - University of Washington Medical Scientist Training Program (MSTP)

This unique Medical Scientist Training Program (MSTP) was developed through collaborative efforts of the University of Washington (UW) and Morehouse School of Medicine (MSM). Both institutions bring unique strengths to a program that will provide exceptional biomedical research training at one of this nation's premier research institutions for students enrolled at an HBCU medical school renowned for training students from groups underrepresented in medicine to address the health-care needs of medically underserved populations. **The program's goal is to develop leaders in academic medicine and biomedical research uniquely equipped to create and advance health equity, locally, nationally, and globally.**

Continued support is contingent on sustained academic and research excellence and timely progression through the program. The funding is intended to attract the most talented students and to reduce their debt burden as they complete this extensive training. This will allow students to focus their future careers on providing leadership and new discoveries. Both at MSM and UW, students in this program will be provided targeted career guidance and support to help them navigate the combined curricula and move effectively toward their degrees and career goals.

In this program, selected students will earn both M.D. and Ph.D. degrees as they learn the art and science of medicine and develop expertise in identifying and solving the most challenging problems in biomedical research. M.D. training will take place at MSM in Atlanta, Georgia and Ph.D. training will be completed at UW in Seattle, Washington. Students will complete their first two years of preclinical, medical training at MSM, then spend 3-5 years completing their Ph.D. (research) training at UW. After earning their PhD at UW, students will return to MSM to complete their final two years of clinical training. Graduates will then enter residency training in the field of their choice. A variety of qualifications will be reviewed in selecting successful applicants. These include:

- Career interest in biomedical research and academic medicine
- Academic Excellence
- Evidence of research interest (e.g., participation in research programs as an undergraduate or having a MS degree requiring a thesis in an area of biomedical research)

Interested students should contact Dr. Martha Elks (melks@msm.edu, 404-752-1881) or Dr. Douglas Paulsen (dpaulsen@msm.edu, 404-752-1559) for more information on the program and about the application process.

Scholastic Non-Cognitive Evaluation

Certain personal characteristics, as set forth on the Scholastic Non-Cognitive Evaluation Form, are important to individuals preparing for a career in medicine. Therefore, scholastic non-cognitive evaluations are designed to point out the outstanding, adequate, or the inadequate personal characteristics of students. While the majority of students accepted to medical school will possess these characteristics, it is important to have a method to recognize either outstanding students or the unusual student who does not possess the character traits necessary to practice medicine. For this reason, scholastic non-cognitive evaluations may be given. Evaluations may be made by faculty members of each course and will be submitted to the Associate Dean of Student Affairs.

Components of Non-Cognitive Evaluation

Professionalism

Responsibility - Interpersonal interchanges are carried out in a reliable and trustworthy manner. The student can be counted on to keep his agreements.

Ethics - The student manifests the highest standards of ethics and behavior.

Maturity - The student functions as an adult avoiding childish self-centeredness and adolescent over-reactivity to stressful situations. A significantly mature student is not excessively loud or boisterous and refrains from rude, obscene or inappropriate behavior in the classroom and laboratory. Books, equipment and other educational aids are used with respect.

Personal Appearance - The student's personal hygiene and dress reflect the high standards expected of a physician in-training.

Communication and Interpersonal Skills

Communication - The student demonstrates an ability to communicate effectively with peers, teachers, patients, and others.

Demeanor - The student has a positive, open attitude towards peers, teachers, patients and others during the course of his medical studies. The student demonstrates humility through open mindedness and respect for the ideas, opinions, and feelings of others.

Authority - A student shows appropriate respect for those placed in authority over him/her both with the School and in our society.

Life-Long Learning

Attentiveness - The student regularly attends class where attendance is needed. All extended absences are for relevant and serious reasons and approved, where applicable, by the appropriate authority. The student is alert during the presentation and demonstrates attentiveness by taking notes and asking appropriate questions.

Inquisitiveness - The student acquires an interest in his/her courses and curricular subjects, demonstrating individual pursuit of further knowledge.

Teamwork

Cooperation - The student demonstrates his/her ability to work effectively in large and small groups, and with other members of the health team, giving and accepting freely in the interchange of information.

Future Potential - The student shows an ability to make rational and logical decisions regarding options, reflecting his/her ability to make intelligent decisions in his/her personal life and in clinical problems.

Moral Turpitude (adherence to laws and standards) - The student respects the rights and privacy of other individuals and does not violate the laws or the accepted customs and mores of our society. The student is not in violation of the Controlled Substance Act of the United States and is not guilty of an alcohol related offense.

Use of non-cognitive evaluation

A. When a student receives his/her first scholastic non-cognitive performance evaluation with one or more inadequate categories indicated, the Dean of Student Affairs or other designated official will meet with the student to discuss the report.
B. If the student receives subsequent inadequate evaluations the Dean of Student Affairs will undertake the following action:
    i. Notify the student in writing that he or she has received an excessive number of inadequate evaluations.
    ii. Require the student to arrange an interview within one week with the Dean of Student Affairs.
    iii. Forward to SAPP the results of this interview, including the student's explanation for his/her behavior.

The SAPP committee may then choose any or several of the following:

1. To take no further action;
2. To counsel the student in writing only;
3. To interview and counsel the student and to place him/her on suspension or leave of absence;
4. To interview and counsel the student and to place him/her on scholastic non-cognitive probation;
5. To interview the student and require that the student repeat a course in which problems arose or take other remedial steps;
6. To interview the student and require that student to repeat the entire academic year;
7. To interview the student and recommend his/her dismissal from the school; or
8. To interview the student and take other steps deemed appropriate by the SAPP Committee.

promotion, non-promotion, probation or dismissal. All such information and discussion of such information concerning any and all individual students shall be strictly confidential.

The following are policies utilized by the Promotions Committee (MD program):

a. The Maximum number of years allowed for matriculation shall be six years, excluding any leave of absence.
b. The 1st and 2nd Year curriculum will consist of no more than 36 months excluding any leave of absence and the 3rd and 4th year curriculum will consist of no more than 36 months excluding any leave of absence.
c. Students must pass Step 1 within 12 months of completing the 2nd Year Curriculum (a passing score must be posted by June 30 of the next academic year after completion of year 2). Students are allowed no more than 3 attempts to take and pass Step 1. Students are allowed maximum of 3 attempts to take and pass Step 2 CK (Clinical Knowledge) and CS (Clinical Skills). Students must pass Step 2 CK and CS within four months of completing the 4th Year Curriculum.
d. Before promotion to the next year a student must have achieved a grade of C or better in all required courses. Students cannot initiate second or third year courses without completing/passing all courses of the prior year. Only one 4th Year elective (and only non-clinical) may be taken for credit prior to completion of all third year courses. No clinical electives can be taken for credit at MSM or elsewhere prior to completion of the third year curriculum.
e. A student must complete all third year clerkships prior to beginning fourth year clerkships. A student may complete ONE (non-clinical) elective prior to fourth year.
f. All missed exams must be made up as soon as possible at the end of the year, but at least by June 15th, for 1st and 2nd year MD students, and by three weeks after the last 3rd year clerkship has been completed.
g. Incomplete coursework (including missed exams) must be completed by June 15th for 1st and 2nd year, and by three weeks after the last 3rd year clerkship has been completed. If not completed, deficiencies will convert to "zero" and final grade of D or F. Incomplete coursework must be completed prior to orientation for the next academic year, in order to be eligible for promotion.
h. A student receiving a final grade of D or F in a particular course will be placed on academic probation for a period of time specified by the SAPP Committee. Probation indicates marginal academic performance and can lead to dismissal unless grades improve. Academic progress also includes a student's conduct of professionalism in response to these warning.
i. For promotion to the third year, a student must have achieved a passing score on the USMLE, Step 1 examination. For graduation (receipt of the M.D. degree) a student must have achieved a passing score on the USMLE, Step 2- CK and CS examinations. (Passing scores subject to change)
j. A student cannot remediate 2 grades of D or one grade of F. Students with more than one final grade of D or a single grade of F will be required to repeat the course(s) to be eligible for promotion.
k. Students failing the USMLE, Step 1 or Step 2 examination must gain approval of the SAPP Committee prior to rescheduling. Written request is required; SAPP will respond in writing.
l. Course remediation plans as outlined in the course syllabus should be followed in consultation with the Course Director. Course remediation plans require the authorization and approval of the SAPP Committee. All course remediation must be completed before

orientation of the next academic year (for those entering 2nd year) or USMLE exam (after 2nd or 3rd year). It is the student's responsibility to work with the Course Directors to complete all remediation requirements.

m. If on the decelerated track, any student with a warning letter or midterm deficiency in any course will automatically be placed on academic probation.

n. When action is taken following a review of a student's academic progress, students are informed verbally by the Associate Dean of Student Affairs of the Committee's recommendation as soon as practical after the committee meeting and written notification is subsequently sent by the Chair of SAPP.

o. A student must pass the MSM standardized patient exam (OSCE), when it is administered at the end of the third year. Graduating students must also pass the USMLE Step 2 Clinical Skills exam.

The Student Academic Progress & Promotion Committee (SAPP)

a. Responsibilities & Duties

The Student Academic Progress and Promotion Committee (MD) (SAPP) is a standing committee of the Academic Policy Council (APC). The committee is charged to monitor the academic performance of each student throughout the curriculum. This includes monitoring of unprofessional conduct, and instances of academic dishonesty and cheating. The SAPP committee shall evaluate and make recommendation for each student in accordance with the guidelines established and approved by the faculty and included in this Student Handbook.

The SAPP Committee also has the special responsibility of reviewing the entire academic records of senior medical students in order to ascertain each student has met all requirements and technical standards (cognitive and non-cognitive) for the degree of Doctor of Medicine. Following this review, the SAPP Committee shall make appropriate recommendations to the Academic Policy Council, which is responsible for certifying that each student has met all requirements for the degree of Doctor of Medicine. This certification serves as the validation presented by the Dean, the President, and Chairman of the Board of Trustees during the Commencement ceremony.

b. Review Process

The Committee convenes at periodic intervals to monitor the personal and professional development of all students and make appropriate decisions and recommendations. The committee considers interim and final grades, mini-boards, qualitative and non-cognitive evaluations, professionalism, USMLE scores, as well as additional evidence submitted by the student or others that might have a bearing on the student's progress.

All decisions are communicated in writing to the student, the student's advisor, and/or others deemed appropriate by the chair of the SAPP committee. Upon review of unsatisfactory information, the SAPP Committee can take one or more of the following actions, or take other actions in its discretion.

Sanctions

a. Academic Warning

Formal warning shall take the form of written notice from the SAPP Committee Chairperson and may be issued when there is a perceived trend toward increasing cognitive and/or non-cognitive difficulty. The notice shall set out the problem (s) in reasonable detail and shall indicate possible consequences.

b. Academic Probation

Academic Probation is a condition other than in good standing, which shall be established for a specified period of time with specified contingencies that must be met before the student is removed from the probationary status. Academic Probation implies that if these contingencies are not met, a recommendation for dismissal from the School of Medicine will follow. A student may be placed on Academic Probation for deficiencies in Academic Performance, Professional Behavior and/or Academic Honesty. Any student placed on probation will meet with the Associate Dean of Student Affairs to discuss the terms of the probationary period. The terms of the probationary period include ineligibility to hold any elected office, limitation of the student's participation in institutionally recognized, organized and/or sponsored extra-curricular activities, participation in intra or extramural summer programs or/and to be a representative of MSM at meetings and conferences. This condition is also automatically applied to students receiving a final grade of D or F in any course.

Dismissal and Suspension

A student's registration at MSM will be terminated by the Student Academic Progress and Promotion Committee (SAPP) or by administrative action if any student's performance or behavior is not consistent with his or her ability to become a competent, adequately informed and responsible physician. All of the following situations below will be reviewed by SAPP (unless there is a serious violation of the rules of conduct, in which case the Dean of the School may terminate the registration of a student by administrative action):

i. If a student's academic performance indicates an inability to master the material and all the procedures as outlined in the academic guidelines have been observed (e.g., failure to meet probationary requirements; failure to meet leave of absence conditions; academic and/or skill potential for a career in medicine is inadequate).
ii. A student who does not successfully complete required remedial work or who is repeating first or second year course work will be considered for dismissal if she or he does not achieve a grade of "C." Students will not be granted unlimited opportunities for remediation of academically deficient work.
iii. If a student on the decelerated track has a final grade of "D" or "F".
iv. If the student does not pass USMLE, Step 1 within twelve months of completion of the second year curriculum; or, the student fails to pass the USMLE, Step 2 CS and CK within four months following completion of the fourth curricular year.
v. If a student is determined to be ineligible to sit for the USMLE, Step 1 or Step 2 because of unsatisfactory performance in coursework which has yet to be remediated, and that student opts to sit for the Step 1 examination against MSM policy, then this student would be in jeopardy of disciplinary action which includes automatic dismissal from the school.
vi. If a student manifests a lack of responsible honesty, attitude or conduct in regards to his or her academic or clinical duties, including professional, ethical, or other non-cognitive skills. In case of serious violation, the Dean of the School may terminate the registration of a student by administrative action.
vii. If a student fails to complete degree requirements within the allowed 6 years of matriculation (excluding any permitted leaves of absence).
viii. Any student receiving 2 or more final grade deficiencies will be considered for dismissal by the SAPP Committee. Students on academic probation who continue to make unsatisfactory progress and receive one or more additional final grades of D or F will be considered for dismissal. Students receiving two or more final grade deficiencies (D or F) will automatically

within 10 working days of receipt of the letter from the SAPP Committee Chairperson regarding the SAPP decision.

d. The student must present the basis for the appeal to the President/Dean in his/her notification of the request for an appeal. The only new evidence/grounds for reversal that the student may present to the Dean will be:
   1. Failure of the SAPP Committee to follow proper procedures or;
   2. Prejudice toward the student by faculty or administrative members of the SAPP committee.

e. Each appeal by the student will be heard by the President/Dean within 10 working days of receipt of the student's written notification of intent to appeal.

f. The President/Dean will determine the merits of the case based on a review of the information presented to the SAPP Committee and the student's appeal notice. Neither witnesses nor legal counsel will be allowed at the meeting.

The written decision of the President/Dean will be conveyed to the student, the Dean for Student Affairs, and the chair of the SAPP Committee within 5 working days of meeting.

Leaves of Absence Students are expected to complete the course of study for the MD degree within four years. Students may request a leave of absence (LOA) for medical, military or other compelling reasons if they find it necessary to interrupt study temporarily. Time spent on LOA is excluded from the 'six-year rule' from matriculation to graduation. Please see the section on LEAVES OF ABSENCE in this Student Handbook.

Withdrawal A Student may withdraw or be requested to withdraw for academic, medical or personal reasons. Official voluntary withdrawal requires that the student submit a letter to the Dean of Student Affairs stating the reasons. Additionally, the student must clear all financial obligations to the school before the withdrawal becomes official and the school will release the student's transcript. See section on Financial Policies regarding refund and time of withdrawal. Withdrawal means that the student will no longer remain enrolled as a student and their name will be officially and permanently removed from the roster.

Transfer to Other Medical Schools

The school usually does not actively support the transfer of its students to other medical schools. A Dean's letter or other official letter of recommendation on behalf of the student who wishes to transfer may not be sent. Individual circumstances, however, will be heard and considered by the Dean for Student Affairs.

A student who believes that he or she has a cogent personal reason for the support of transfer should submit a written petition to the Dean for Student Affairs indicating reasons why the policy of the school should be exempted. Any student considering transfer is required to have an interview with the Dean for Student Affairs. Transcripts or certification of academic credit will not be released until such a meeting has taken place.

Clinical-Third and Fourth Year Issues

MSM Work Hour Rules for Clinical Clerkships and Electives

Maximum Hours of Work per Week: Duty hours must be limited to 80 hours per week, averaged over a four week period, inclusive of all in-house call activities. Students may be required to come in every day, but should be afforded the equivalent of one full day or two half-days off in seven days (or more time off)

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MOREHOUSE SCHOOL OF MEDICINE

Travelers' Healthcare: Travel vaccines and counseling are available at Morehouse Healthcare 1800 Howell Mill Road Suite 550 Atlanta, Georgia 30318. It is recommended that you allow 6 weeks prior to travels for immunizations.

For additional questions or concerns, please refer to the MSM Website – Student Employee Wellness Center (http://www.msm.edu/Current_Students/StudentandEmployeeHealth.php) or call the Student Employee Wellness Center directly at 404.756.1241.

Non-MD students will complete the Morehouse School of Medicine Immunization Form. During program orientation, students' immunization records will be reviewed, and students will have a grace period to complete their immunizations (listed as non-compliant annually by October 15). Subsequently, non-compliant students will NOT be allowed to register pending release of the Immunization HOLD by Student Employee Health Services.

All medical and MSMS students are required to receive the annual influenza vaccine. This vaccination is provided during October of each academic year.

A list of required immunizations and all infection control policies can be found on the MSM Student Employee Health Services-Infection Control Webpage:
http://www.msm.edu/Current_Students/SEHC-IC.php

Tuberculin Skin-testing: PPD
Screening for tuberculosis is required annually for medical students and students who have contact with patients. Entering students are required to present certified evidence of screening within 12 months before enrollment or thirty days after enrollment.

Disability Services

Morehouse School of Medicine's Office of Disability Services (ODS) serves as the primary resource for students with documented disabilities, disability concerns, and making requests for reasonable academic adjustments and accommodations. The ODS works in collaboration with faculty, staff and departments throughout MSM to develop successful strategies for maximizing students' academic achievement and participation in extracurricular activities and programs. Services and reasonable accommodations are designed to meet the individual needs of each student in accordance with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the ADAAA. These regulations require that any qualified person receive academic adjustments that are necessary and effective, and which do not compromise the academic standards of the School, to ensure equal access to educational opportunities, services, programs and activities at the School. MSM will not provide an academic adjustment or accommodation that is not reasonable or that would result in an undue hardship to the School or otherwise fundamentally alter the program. Any applicant, student, resident, or employee who believes he or she has been denied any service or benefit or otherwise discriminated against or harassed due to a disability may contact the Title IX Coordinator or the Deputy Title IX Coordinator.

Students having questions about or seeking to make requests for reasonable accommodations and academic adjustments based on a disability should contact:

Marla Thompson
Manager for the Office of Disability Services
Morehouse School of Medicine
720 Westview Drive, SW
Harris Building H-132
Atlanta, GA 30310
Direct Phone: (404) 752-1871
Fax: (404) 752-1639
Email: ODS@msm.edu

The Office of Disability Services (ODS) is located on the Westview Campus, Harris Building, room H-132. The ODS is open Monday -Friday between 8:30 am and 5:00 pm. Further information on the ODS can be found on the Web at:
http://www.msm.edu/Administration/HumanResources/disabilityservices/index.php

Students requesting academic adjustments or accommodations based on a covered disability must register with the ODS prior to course registration (or as soon as practicable) and follow all ODS procedures for requesting academic adjustments and accommodations. Students should be aware that they are responsible for making requests for reasonable academic adjustments and for submitting all necessary documentation in support of those requests.

The Office of Disability Services has been designated to review disability documentation and to determine eligibility for appropriate accommodations. Faculty members must not provide any disability-related academic adjustments to any student until s/he has received notification by letter to do so from the ODS.

Disabilities of a temporary nature may not be eligible for academic adjustments with the ODS, but ODS will assist the School staff and faculty in efforts to minimize academic disruptions. Students making requests for excused absences and emergency notification should first contact the Office of Student Affairs and, if the report relates to a disability-related issue, the Office of Student Affairs will communicate with ODS regarding the same. For more information, contact the Dean for Student Affairs at (404) 752-1651.

Office of International Program Services

The Office of International Program Services (OIPS) provides assistance to students, faculty and staff from foreign countries that study and/or work at MSM. This office serves as the official liaison for U.S. Departments of State, Homeland Security, and Labor. A Manager who functions as the Principal Designated School Official at MSM for F-1 students and is the Responsible Official for MSM's Exchange Visitor Program for J-1 students heads OIPS. The Office of International Program Services Manager is available to all international students for immigration counseling, for addressing issues such as international travel, practical training/off-campus employment, changing status, or planning for future adjustment to permanent residency status.

16. It is in the best interest of the accused to meet with the Council to attempt to prevent a report to the dean. If the accused refuses to attend the Council meeting, the council will still meet to decide if a report should be sent to the dean.
17. If a student who believes he/she has been mistreated approaches a Council member, the council member will refer the student to the Mediator.

Nondiscrimination and Anti-Harassment Policies
General Information

Morehouse School of Medicine is committed to providing academic and employment environments that are free from unlawful discrimination, including harassment, on the basis of protected characteristics, including race, color, national or ethnic origin, sex, age, disability, religion, veteran status, sexual orientation, genetic information, gender identity, or any other characteristic protected by applicable law in the administration of the School's programs and activities. The School encourages any individual who feels he or she has been discriminated against or harassed on any legally protected characteristic to promptly report the incident to the Title IX Coordinator or the Deputy Title IX Coordinator, who may be contacted as follows:

Marla Thompson, MPA
Title IX Coordinator
Morehouse School of Medicine
Harris Building
Direct Dial: (404) 752-1871
Fax: (404) 752-1639
Email: mthompson@msm.edu

Valerie Walton
Deputy Title IX Coordinator
Morehouse School of Medicine
Harris Building
Direct Dial: (404) 752-1606
Fax: (404) 752-1639
Email: vjwalton@msm.edu

MSM's general policy against discrimination, harassment and retaliation applies to conduct by and perpetrated against all faculty, staff, administration, supervisors, employees, residents, students, applicants, volunteers, patients and visitors to campus, including guests, patrons, independent contractors or clients of MSM ("Person(s)") that is prohibited by Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (including ADAAA amendments), and the Age Discrimination Act of 1975.

MSM also does not discriminate on the basis of sex in its employment decisions and education programs and activities (such as all academic and extracurricular activities and programs) as required under Title IX of the Education Amendments of 1972 and in its implementing regulations, and in part under Title VII, as well as any other applicable federal and state laws or local ordinances. Accordingly, MSM has also adopted a Sex/Gender Nondiscrimination and Sexual Harassment Policy, which covers all employment and admissions decisions affecting any member of the MSM community as they relate to any conduct prohibited under Title IX, such as sex or gender discrimination, retaliation and all types of sexual misconduct, including, but not limited to sexual harassment and sexual violence.

Under MSM's general policy against discrimination, harassment and retaliation, if a complainant is able and feels safe, he or she should clearly explain to the alleged offender that the behavior is objectionable and request that it cease. Additionally, if the complainant is not able or does not feel safe confronting the alleged offender, or the behavior does not stop, or if the complainant believes some adverse employment or educational consequences may result from the discussion, he or she should contact the Title IX Coordinator or the Deputy Title IX Coordinator to make a complaint.

Under MSM's Sex/Gender Nondiscrimination and Sexual Harassment Policy, any Person, or any individual or group acting on behalf of a Person, who knows or receives a report of an incident specifically involving sex discrimination, sexual harassment or sexual violence, or seeks to raise general concerns with individual or institutional sex-based discrimination, sexual harassment or sexual violence, may report the incident to or file a formal complaint with the Title IX Coordinator or the Deputy Title IX Coordinator. Details about the procedures a victim of sex discrimination, sexual harassment or sexual violence should follow immediately following the occurrence of such conduct, as well as for reporting incidents and/or filing, investigating and resolving complaints of sex discrimination, sexual harassment, sexual violence, and other Title IX-related grievances are outlined in Human Resources Policy H.R. 1.00 (revised 10-1-2014), which can be accessed on the Morehouse School of Medicine website at:
https://msmconnect msm.edu/group/mycampus/41

And click into "Employee Relations and Title IX"

All members of the MSM community are subject to MSM's Sex/Gender Nondiscrimination and Sexual Harassment Policy, including the investigatory and disciplinary procedures described therein.

Under both policies, reports or complaints of harassment of any form should be made to or initiated with the Title IX Coordinator or the Deputy Title IX Coordinator as soon as possible after the most recent incident. Anyone who knowingly makes a false accusation of discrimination, harassment, or retaliation will be subject to appropriate sanctions. However, failure to prove a claim of discrimination, harassment, or retaliation does not, in and of itself, constitute proof of a knowing false accusation. No Person should assume that an official of MSM knows about a particular situation. Any Person or non-MSM visitor, guest, patron, independent contractor, or client who fails to address or report any form of discrimination, harassment and/or retaliation allegedly perpetrated by or against MSM administrators, faculty, staff, supervisors, volunteers, students or employees of which they know or should have known may be subjected to sanctions.

Complaint Procedures
Complaints filed with the Title IX Coordinator must be in writing and, specifically in cases involving incidents of sex discrimination, sexual harassment or sexual violence, provide the following information: (i) name of and contact information for the complaining Person(s) ("Complainant(s)"); (ii) nature, location and date of alleged violation; (iii) names of and contact information for the Person(s) accused of the alleged violation (where known) ("Respondent(s)"); (iv) requested relief or corrective action (specification of desired relief shall be the option of the Complainant); and (v) any other background or supplemental information that the Complainant believes to be relevant (e.g., names of other persons affected by the violation, etc.).

Investigation and Disposition of Complaints

All reports and complaints of discrimination and harassment will be promptly investigated, and appropriate corrective action will be taken as expeditiously as possible. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to an impartial investigator. MSM will make reasonable efforts to protect the rights of both the Complainant and the Respondent. MSM will respect the privacy of the Complainant(s), Respondent(s), and any witnesses in a manner consistent with the School's legal obligations to investigate, take appropriate corrective action, and comply with any discovery or disclosure obligations required by law. Any and all requests for confidentiality will be evaluated on a case-by-case basis and in the context of the school's responsibility to provide a safe and nondiscriminatory environment for the MSM community.

MSM reserves the right to investigate and resolve a complaint or report of discrimination and/or harassment regardless of whether the complainant ultimately desires the School to pursue the complaint. In such cases, the parties shall be informed of the status of the investigation at reasonable times until the School's final disposition of the investigation.

The amount of time needed to conduct an investigation will depend in part on the nature of the allegation(s) and the evidence to be investigated (e.g., the number and/or availability of witnesses involved). Within 60 days of receipt of the complaint, the Title IX Coordinator or Deputy Title IX Coordinator will provide an interim notice of the outcome of the investigation or will advise the parties of the additional estimated amount of time needed for the investigation. Within 10 business days following the completion of an investigation, the Title IX Coordinator or Deputy Title IX Coordinator will simultaneously provide written notification to the Complainant and Respondent of the results of the investigation. If the investigation reveals that, by application of the preponderance of evidence standard, harassment, discrimination (or other inappropriate or unprofessional conduct even if not unlawful), or retaliation has occurred, disciplinary action may be taken by MSM. Written notice to the appropriate parties relating to discipline, resolutions, and/or final dispositions is deemed to be official correspondence from the School. Disciplinary sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator. MSM will take the appropriate corrective action based on results of the investigation and will follow up as appropriate to ensure that the remedial action is effective. Complainants are encouraged to report any reoccurrences of conduct that were found to violate MSM's nondiscrimination and anti-harassment policies or any other related concerns.

Prohibition Against Retaliation

Anyone who, in good faith, reports what s/he believes to be discrimination or harassment, who participates or cooperates in any investigation, or who otherwise opposes unlawful conduct believed to be in violation of this policy will not be subjected to retaliation. Anyone who believes he or she has been the victim of retaliation for reporting discrimination or harassment, participating or cooperating in an investigation or otherwise opposing unlawful conduct believed to be in violation of this policy should immediately contact the Title IX Coordinator or the Deputy Title IX Coordinator, who have authority to investigate all such claims. Any individual found to have retaliated against another individual who engaged in conduct consistent with the protections afforded under this Policy will be in violation of this policy and will be subject to disciplinary action.

Admissions Policy & Selection

Morehouse School of Medicine encourages applications from, and gives full consideration to, all applicants for admission and financial aid without regard to gender, race, handicap, color, creed, or national or ethnic origin. The school is committed to recruiting, enrolling and educating substantial numbers of persons from racial minorities and from educationally and socioeconomically deprived groups. The Committee selects those applicants who are more likely, in its opinion, to become the best students, and physicians, biomedical or public health scientists, who will fulfill the mission of the school.

Admission to each degree program is decided by separate Admissions Committees for students entering the Morehouse School of Medicine. Each program maintains its own admissions criteria and process. However, all applications are processed through the **Office of Admissions and Student Affairs**.

**MSM reserves the right to terminate or modify program requirements, content, and the sequence of program offering from semester to semester or year to year for educational reasons which it deems sufficient to warrant such actions. Further, MSM reserves the right to terminate programs for financial or other reasons, which it determines warrants such action. The content, schedule, requirements and means of presentation of course may be changed at any time by the School of Medicine for educational reasons which it determines are sufficient to warrant such action. Programs, services or other activities of the School may be terminated at any time due to reasons beyond the control of the School including, but not limited to, acts of God, natural disasters, destruction of premises, labor disturbances, governmental orders, financial insolvency, or other reasons or circumstances beyond the control of the School of Medicine.*

Doctor of Medicine (MD) Program

Admission Standards

New Students

The selection of students by the Admissions committee is made after considering many factors: intelligence, preparedness, motivation, and aptitude. The Medical College Admission Test (MCAT) and a bachelor's degree, or equivalent, from a U.S. school accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA) or the U.S. Department of Education, or from an appropriately accredited non-U.S. institution.

Applicants who have completed coursework at, or hold a bachelor's or advanced degree from an institution of higher learning outside the United States must have their transcript(s) certified for equivalency to U.S. degrees or coursework by a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES). Applicants who have completed coursework at, or hold degrees from, a postsecondary institution in Australia, Canada (except Quebec), New Zealand, or the United Kingdom will normally not need to have their academic transcripts evaluated and certified for equivalency.

Applicants are encouraged to have a broad educational background, yet no specific major is deemed superior to another.

Coursework must include one year of:
Biology with Laboratory
General Chemistry with Laboratory
Organic Chemistry with Laboratory
College Level Mathematics
College Physics with Laboratory
English (including composition)

*An accepted student is responsible for completing all prerequisite course work prior to matriculation.

* Only citizens of the United States of America and legal permanent residents are accepted into the M.D. program of study.

Transfer Students

Transfer admissions are rare. However, applications are accepted from students in LCME accredited U.S. and Canadian schools of medicine, who are currently enrolled in good academic standing in such a school, have the full approval for the transfer from the dean of their current school, and have a cogent reason for requesting transfer. Admission is contingent upon space availability therefore, academically qualified applicants can still be denied admission due to lack of space. **The School of Medicine does not accept applications for advanced standing from students attending non-Canadian foreign medical schools, osteopathic or veterinary schools. MSM does not accept applications for transfer beyond the second year. Therefore, admission to the third and fourth year medical classes is not possible.**

Technical Standards for Medical School Admissions and Graduation

Medical education requires that the accumulation of scientific knowledge be accompanied by the simultaneous acquisition of skills and professional attitudes and behavior. Medical school faculties have a responsibility to society to matriculate and graduate the best possible physicians, and thus admission to medical school has been offered to those who present the highest qualifications for the study and practice of medicine. Technical standards have been established as prerequisites for admission and graduation from MSM. All courses in the curriculum are required in order to develop essential skills required to become a competent physician.

Graduates of medical school must have the knowledge and skills to function in a broad variety of clinical situations and to render a wide spectrum of patient care.

MSM acknowledges Section 504 of the 1973 Vocational Rehabilitation Act and PL 101-336, the Americans with Disabilities Act (ADA), but ascertains that certain minimum technical standards must be present in the prospective candidates.

A candidate for the M.D. degree must have aptitude, abilities, and skills in five areas: observation; communication; motor; conceptual, integrative and quantitative; and behavior and social. Technological compensation can be made for some handicaps in these areas, but a candidate should be able to perform in a reasonably independent manner.

Observation: Observation necessitates the functional use of the sense of vision and other sensory modalities. The candidate must be able to observe demonstrations and participate in experiments in the basic sciences. The candidate must also be able to observe a patient accurately at a distance and close at hand.

Communication: Communication includes not only speech, but includes reading and writing. A candidate must be able to communicate effectively and sensitively with patients and all members of the health care team.

Motor Coordination or Function: Candidates should have sufficient motor functions to elicit information from patients by palpation, auscultation, percussion, and other diagnostic maneuvers. A candidate should be able to do basic laboratory tests, carry out diagnostic procedures, and read EKGs and X-rays. A candidate should be able to execute motor movements reasonably required to provide general care and emergency treatment to patients. Such actions require coordination of both gross and fine muscular movements, equilibrium and functional use of the senses of touch and vision.

Intellectual-Conceptual, Integrative, and Quantitative Abilities: These abilities include measurement, calculation, reasoning, analysis, and synthesis. Problem solving, the critical skill demanded of physicians, requires all of these intellectual abilities. In addition, the candidate should be able to comprehend three-dimensional relations and to understand the spatial relationships of structures.

Behavioral and Social Attributes: Candidates must possess the emotional health required for full use of their intellectual abilities, the exercise of good judgment, the prompt completion of all responsibilities attendant to the diagnosis and care of patients, and the development of mature, sensitive and effective relationships with patients. Candidates must be able to tolerate physically taxing workloads and to function effectively when stressed. They must be able to adapt to changing environments, to display flexibility, and to learn to function in the face of uncertainties inherent in the clinical problems of many patients.

will delay clinical course progress. Failure to meet certain standards may prevent a student from being able to complete the academic program.

MD Student Registration Policy

All currently enrolled MD students are required to be officially registered by the first day of classes or clinical clerkships. If a student has not registered for his/her respective MD year curriculum due to an outstanding balance, the student will not be authorized to attend classes, clinical clerkships or receive credit. In addition, the student's MSM ID card, Canvas and Examsoft access will be provisionally suspended. Students who have not been registered will be considered to have unexcused absences for those sessions requiring attendance.

Approval to attend classes or clinical clerkships is contingent on outstanding balance being paid or if a payment agreement is established with the MSM Controller's Office.

Prior to the start of each semester, it is the responsibility of the student to make certain an outstanding balance is paid in full. If circumstances result in a delay in registration beyond the student's control, the student is required to meet with the Dean for Student Affairs. However, this does not excuse the student from adhering to the registration policy guidelines.

Students who delay sitting for Step 1 beyond June 30, or who fail to pass this exam are ineligible for financial aid until they pass the exam and commence the third year curriculum.

Educational Objectives of the Medical Curriculum

The undergraduate medical program requires that candidates for the MD degree acquire certain knowledge, skills, and attitudes that are essential for functioning in a broad variety of clinical situations. To render a wide spectrum of primary care, a graduate must develop:

1. A mastery of the concepts necessary for the prevention, diagnosis, treatment, and management of common medical problems, specifically display knowledge of:
   a. Normal development, structure and physiological function of the body, organ systems, tissues and cells, and their interrelationships and the molecular, biochemical, cellular, and physiological mechanisms that are important in maintaining the body's homeostasis.
   b. Biochemical, immunologic, pharmacologic, and microbiologic principles related to issues of disease, laboratory tests, and therapeutics and the various etiologies (genetic, developmental, metabolic, toxic, iatrogenic, microbiologic, autoimmune, neoplastic, degenerative, and traumatic) of diseases (pathogenesis), the associated altered structure and function (pathology and pathophysiology) and characteristic pathologic and laboratory manifestations
   c. Common epidemiologic and risk factors for diseases, population health and the role and impact of psychological, behavioral, social, economic, and cultural factors on health and disease.
   d. Ethical, legal, gender, psychological, social, interpersonal, and economic issues that impact health and medical care.

2. Basic skills, including the ability to:
   a. Perform and record a complete and accurate history, sensitive to patient needs and the nature of the situation
   b. Perform and record an accurate and complete physical examination and mental status examination sensitive to patient needs and the nature of the situation.
   c. Analyze a patient's clinical presentation, connect biomedical and health knowledge with application; that is, develop a suitable diagnostic and therapeutic plan, appropriately using information resources, laboratory and imaging testing.

d. Communicate (in writing and orally) effectively and respectfully with peers, faculty, colleagues, and other members of the healthcare team, understanding the role of consultations and referrals.
e. Communicate and interact with patients in an effective, respectful, and compassionate manner, including counseling them on risks, prevention, lifestyle and therapy issues.
f. Obtain, analyze, and use the medical literature and other information resources to address medical questions and to sustain professional growth and apply techniques of population health, including methods of analysis of the health and health problems of defined populations and development of interventions to improve the health of populations.

Throughout training, a candidate must demonstrate medical professionalism including ethical behavior, moral reasoning, honesty, integrity, dependability, and commitment to service.

Curriculum for the Doctor of Medicine Program

FIRST YEAR MEDICAL CURRICULUM

Fall and Spring Semesters	**Semester Credit Hours**	
Molecules, Structures, Mechanisms Curriculum		
Basic Principles	(Unit 1)	10.0
Organ Systems 1	(Unit 2)	10.0
Organ Systems 2	(Unit 3)	10.0
Organ Systems 3	(Unit 4)	10.0
Community Health		4.0
Fundamentals of Medicine		7.0
		51.0

SECOND YEAR CURRICULUM

Course	**Semester Credit Hours**
Pathophysiology	7.0
Microbiology and Immunology	7.0
Pathology	12.0
Pharmacology	7.0
Nutrition	1.0
Fundamentals of Medicine II	8.0
	42.0

THIRD YEAR CURRICULUM

Course	**Semester Credit Hours**	
Internal Medicine	(12 weeks)	15.0
Pediatrics	(8 weeks)	10.0
Obstetrics/Gynecology	(8 weeks)	10.0
Psychiatry	(6 weeks)	8.0
Surgery	(8 weeks)	10.0
Family Medicine/Rural Health	(6 weeks)	8.0
Fundamentals of Medicine III		2.0
		63.0

FOURTH YEAR CURRICULUM

Course	**Semester Credit Hours**	
Senior Selective	(4 weeks)	5.0
Elective Rotations	(Six electives of 4 weeks duration	30.0
		35.0

Total Credits for MD Program: 191.0

***Senior selective. The senior selective requirement may be fulfilled by completing any of the following courses at MSM (grading for this required course is LETTER grade):*
An MSM intensive inpatient experience with overnight and weekend call duty. This would include:

- *Sub internship/acting internship/ward rotation*
- *Intensive care rotations*
- *Ambulatory Adult Medicine*
- *Rural Health senior elective*
- *Emergency Medicine*

Morehouse School of Medicine - University of Washington Medical Scientist Training Program (MSTP)

This unique Medical Scientist Training Program (MSTP) was developed through collaborative efforts of the University of Washington (UW) and Morehouse School of Medicine (MSM). Both institutions bring unique strengths to a program that will provide exceptional biomedical research training at one of this nation's premier research institutions for students enrolled at an HBCU medical school renowned for training students from groups underrepresented in medicine to address the health-care needs of medically underserved populations. **The program's goal is to develop leaders in academic medicine and biomedical research uniquely equipped to create and advance health equity, locally, nationally, and globally.**

Continued support is contingent on sustained academic and research excellence and timely progression through the program. The funding is intended to attract the most talented students and to reduce their debt burden as they complete this extensive training. This will allow students to focus their future careers on providing leadership and new discoveries. Both at MSM and UW, students in this program will be provided targeted career guidance and support to help them navigate the combined curricula and move effectively toward their degrees and career goals.

In this program, selected students will earn both M.D. and Ph.D. degrees as they learn the art and science of medicine and develop expertise in identifying and solving the most challenging problems in biomedical research. M.D. training will take place at MSM in Atlanta, Georgia and Ph.D. training will be completed at UW in Seattle, Washington. Students will complete their first two years of preclinical, medical training at MSM, then spend 3-5 years completing their Ph.D. (research) training at UW. After earning their PhD at UW, students will return to MSM to complete their final two years of clinical training. Graduates will then enter residency training in the field of their choice. A variety of qualifications will be reviewed in selecting successful applicants. These include:

- Career interest in biomedical research and academic medicine
- Academic Excellence
- Evidence of research interest (e.g., participation in research programs as an undergraduate or having a MS degree requiring a thesis in an area of biomedical research)

Interested students should contact Dr. Martha Elks (melks@msm.edu, 404-752-1881) or Dr. Douglas Paulsen (dpaulsen@msm.edu, 404-752-1559) for more information on the program and about the application process.

Scholastic Non-Cognitive Evaluation

Certain personal characteristics, as set forth on the Scholastic Non-Cognitive Evaluation Form, are important to individuals preparing for a career in medicine. Therefore, scholastic non-cognitive

evaluations are designed to point out the outstanding, adequate, or the inadequate personal characteristics of students. While the majority of students accepted to medical school will possess these characteristics, it is important to have a method to recognize either outstanding students or the unusual student who does not possess the character traits necessary to practice medicine. For this reason, scholastic non-cognitive evaluations may be given. Evaluations may be made by faculty members of each course and will be submitted to the Associate Dean of Student Affairs.

Components of Non-Cognitive Evaluation

Professionalism

Responsibility - Interpersonal interchanges are carried out in a reliable and trustworthy manner. The student can be counted on to keep his agreements.

Ethics - The student manifests the highest standards of ethics and behavior.

Maturity - The student functions as an adult avoiding childish self-centeredness and adolescent over-reactivity to stressful situations. A significantly mature student is not excessively loud or boisterous and refrains from rude, obscene or inappropriate behavior in the classroom and laboratory. Books, equipment and other educational aids are used with respect.

Personal Appearance - The student's personal hygiene and dress reflect the high standards expected of a physician in-training.

Communication and Interpersonal Skills

Communication - The student demonstrates an ability to communicate effectively with peers, teachers, patients, and others.

Demeanor - The student has a positive, open attitude towards peers, teachers, patients and others during the course of his medical studies. The student demonstrates humility through open mindedness and respect for the ideas, opinions, and feelings of others.

Authority - A student shows appropriate respect for those placed in authority over him/her both with the School and in our society.

Life-Long Learning

Attentiveness - The student regularly attends class where attendance is needed. All extended absences are for relevant and serious reasons and approved, where applicable, by the appropriate authority. The student is alert during the presentation and demonstrates attentiveness by taking notes and asking appropriate questions.

Inquisitiveness - The student acquires an interest in his/her courses and curricular subjects, demonstrating individual pursuit of further knowledge.

Teamwork

Cooperation - The student demonstrates his/her ability to work effectively in large and small groups, and with other members of the health team, giving and accepting freely in the interchange of information.

Future Potential - The student shows an ability to make rational and logical decisions regarding options, reflecting his/her ability to make intelligent decisions in his/her personal life and in clinical problems.

Moral Turpitude (adherence to laws and standards) - The student respects the rights and privacy of other individuals and does not violate the laws or the accepted customs and mores of our society. The student is not in violation of the Controlled Substance Act of the United States and is not guilty of an alcohol related offense.

Use of non-cognitive evaluation

A. When a student receives his/her first scholastic non-cognitive performance evaluation with one or more inadequate categories indicated, the Dean of Student Affairs or other designated official will meet with the student to discuss the report.
B. If the student receives subsequent inadequate evaluations the Dean of Student Affairs will undertake the following action:
    i. Notify the student in writing that he or she has received an excessive number of inadequate evaluations.
    ii. Require the student to arrange an interview within one week with the Dean of Student Affairs.
    iii. Forward to SAPP the results of this interview, including the student's explanation for his/her behavior.

The SAPP committee may then choose any or several of the following:

1. To take no further action;
2. To counsel the student in writing only;
3. To interview and counsel the student and to place him/her on suspension or leave of absence;
4. To interview and counsel the student and to place him/her on scholastic non-cognitive probation;
5. To interview the student and require that the student repeat a course in which problems arose or take other remedial steps;
6. To interview the student and require that student to repeat the entire academic year;
7. To interview the student and recommend his/her dismissal from the school; or
8. To interview the student and take other steps deemed appropriate by the SAPP Committee.

- A student who does not sit for the USMLE Step 2 prior to December 31, cannot receive credit for a fourth year rotation until these exams are completed.
- Students with a delayed clinical rotation cycle will have an individualized exam schedule.
- The last sitting date for the USMLE, Step 2 CK is March 31 of each year which allows for a release of scores in time for final decisions on eligibility for receipt of the M.D. in May of that year.
- All students must complete all requirements for receipt of the M.D. degree within one month of commencement in order to receive a May diploma. However, a student must have a passing score on the Step 2 CK and CS examination reported to be allowed to participate in May Commencement Ceremonies.

The SAPP committee reserves the right to modify policies regarding the USMLE as circumstances change with the NBME Administration of the program.

Student Promotion

The Student Academic Progress and Promotions (SAPP) committee assesses student qualifications for promotion, graduation or any other course of action affecting the status of the student. In order to remain in good standing, students must demonstrate satisfactory progress in the curriculum, the personal character and conduct, the moral and ethical integrity, and the self-control and compassion appropriate to their professional role.

To fully discharge its responsibility of determining medical student promotion, graduation and dismissal, the Committee shall consider all information relative to each student's academic performance in the total curriculum, including conduct as a professional. Therefore, both cognitive and non-cognitive requirements will be considered in evaluating each student in determining promotion, non-promotion, probation or dismissal. All such information and discussion of such information concerning any and all individual students shall be strictly confidential.

The following are policies utilized by the Promotions Committee (MD program):

a. The Maximum number of years allowed for matriculation shall be six years, excluding any leave of absence.
b. The 1st and 2nd Year curriculum will consist of no more than 36 months excluding any leave of absence and the 3rd and 4th year curriculum will consist of no more than 36 months excluding any leave of absence.
c. Students must pass Step 1 within 12 months of completing the 2nd Year Curriculum (a passing score must be posted by June 30 of the next academic year after completion of year 2). Students are allowed no more than 3 attempts to take and pass Step 1. Students are allowed maximum of 3 attempts to take and pass Step 2 CK (Clinical Knowledge) and CS (Clinical Skills). Students must pass Step 2 CK and CS within four months of completing the 4th Year Curriculum.
d. Before promotion to the next year a student must have achieved a grade of C or better in all required courses. Students cannot initiate second or third year courses without completing/passing all courses of the prior year. Only one 4th Year elective (and only non-clinical) may be taken for credit prior to completion of all third year courses. No clinical electives can be taken for credit at MSM or elsewhere prior to completion of the third year curriculum.

e. A student must complete all third year clerkships prior to beginning fourth year clerkships. A student may complete ONE (non-clinical) elective prior to fourth year.
f. All missed exams or incomplete coursework must be made up as soon as possible at the end of the year, but at least by June 15th, for 1st and 2nd year MD students, and by three weeks after the last 3rd year clerkship has been completed. If not completed, deficiencies will convert to "zero" and a final grade of D or F. Incomplete coursework must be completed prior to orientation for the next academic year, in order to be eligible for promotion.
g. A student receiving a final grade of D or F in a particular course will be placed on academic probation for a period of time specified by the SAPP Committee. Probation indicates marginal academic performance and can lead to dismissal unless grades improve. Academic progress also includes a student's conduct of professionalism in response to these warning.
h. For promotion to the third year, a student must have achieved a passing score on the USMLE, Step 1 examination. For graduation (receipt of the M.D. degree) a student must have achieved a passing score on the USMLE, Step 2- CK and CS examinations. (Passing scores subject to change)
i. A student cannot remediate 2 grades of D or one grade of F. Students with more than one final grade of D or a single grade of F will be required to repeat the course(s) to be eligible for promotion.
j. Students failing the USMLE, Step 1 or Step 2 examination must gain approval of the SAPP Committee prior to rescheduling. Written request is required; SAPP will respond in writing.
k. Course remediation plans as outlined in the course syllabus should be followed in consultation with the Course Director. Course remediation plans require the authorization and approval of the SAPP Committee. All course remediation must be completed before orientation of the next academic year (for those entering 2nd year) or USMLE exam (after 2nd or 3rd year). It is the student's responsibility to work with the Course Directors to complete all remediation requirements.
l. If on the decelerated track, any student with a warning letter or midterm deficiency in any course will automatically be placed on academic probation.
m. When action is taken following a review of a student's academic progress, students are informed verbally by the Associate Dean of Student Affairs of the Committee's recommendation as soon as practical after the committee meeting and written notification is subsequently sent by the Chair of SAPP.
n. A student must pass the MSM standardized patient exam (OSCE), when it is administered at the end of the third year. Graduating students must also pass the USMLE Step 2 Clinical Skills exam.

The Student Academic Progress & Promotion Committee (SAPP)

a. Responsibilities & Duties

The Student Academic Progress and Promotion Committee (MD) (SAPP) is a standing committee of the Academic Policy Council (APC). The committee is charged to monitor the academic performance of each student throughout the curriculum. This includes monitoring of unprofessional conduct, and instances of academic dishonesty and cheating. The SAPP committee shall evaluate and make recommendation for each student in accordance with the guidelines established and approved by the faculty and included in this Student Handbook.

The SAPP Committee also has the special responsibility of reviewing the entire academic records of senior medical students in order to ascertain each student has met all requirements and technical standards (cognitive and non-cognitive) for the degree of Doctor of Medicine. Following this review, the SAPP Committee shall make appropriate recommendations to the Academic Policy Council, which is responsible for certifying that each student has met all requirements for the degree of Doctor of Medicine. This certification serves as the validation presented by the Dean, the President, and Chairman of the Board of Trustees during the Commencement ceremony.

b. Review Process

The Committee convenes at periodic intervals to monitor the personal and professional development of all students and make appropriate decisions and recommendations. The committee considers interim and final grades, mini-boards, qualitative and non-cognitive evaluations, professionalism, USMLE scores, as well as additional evidence submitted by the student or others that might have a bearing on the student's progress.

All decisions are communicated in writing to the student, the student's advisor, and/or others deemed appropriate by the chair of the SAPP committee. Upon review of unsatisfactory information, the SAPP Committee can take one or more of the following actions, or take other actions in its discretion.

Sanctions

a. Academic Warning

Formal warning shall take the form of written notice from the SAPP Committee Chairperson and may be issued when there is a perceived trend toward increasing cognitive and/or non-cognitive difficulty. The notice shall set out the problem (s) in reasonable detail and shall indicate possible consequences.

b. Academic Probation

Academic Probation is a condition other than in good standing, which shall be established for a specified period of time with specified contingencies that must be met before the student is removed from the probationary status. Academic Probation implies that if these contingencies are not met, a recommendation for dismissal from the School of Medicine will follow. A student may be placed on Academic Probation for deficiencies in Academic Performance, Professional Behavior and/or Academic Honesty. Any student placed on probation will meet with the Associate Dean of Student Affairs to discuss the terms of the probationary period. The terms of the probationary period include ineligibility to hold any elected office, limitation of the student's participation in institutionally recognized, organized and/or sponsored extra-curricular activities, participation in intra or extramural summer programs or/and to be a representative of MSM at meetings and conferences. This condition is also automatically applied to students receiving a final grade of D or F in any course.

Dismissal and Suspension

A student's registration at MSM will be terminated by the Student Academic Progress and Promotion Committee (SAPP) or by administrative action if any student's performance or behavior is not consistent with his or her ability to become a competent, adequately informed and responsible physician. All of the following situations below will be reviewed by SAPP (unless there is a serious violation of the rules of conduct, in which case the Dean of the School may terminate the registration of a student by administrative action):

i. If a student's academic performance indicates an inability to master the material and all the procedures as outlined in the academic guidelines have been observed (e.g., failure to meet probationary requirements; failure to meet leave of absence conditions; academic and/or skill potential for a career in medicine is inadequate).
ii. A student who does not successfully complete required remedial work or who is repeating first or second year course work will be considered for dismissal if she or he does not achieve a grade of "C." Students will not be granted unlimited opportunities for remediation of academically deficient work.
iii. If a student on the decelerated track has a final grade of "D" or "F".
iv. If the student does not pass USMLE, Step 1 within twelve months of completion of the second year curriculum; or, the student fails to pass the USMLE, Step 2 CS and CK within four months following completion of the fourth curricular year.
v. If a student is determined to be ineligible to sit for the USMLE, Step 1 or Step 2 because of unsatisfactory performance in coursework which has yet to be remediated, and that student opts to sit for the Step 1 examination against MSM policy, then this student would be in jeopardy of disciplinary action which includes automatic dismissal from the school.
vi. If a student manifests a lack of responsible honesty, attitude or conduct in regards to his or her academic or clinical duties, including professional, ethical, or other non-cognitive skills. In case of serious violation, the Dean of the School may terminate the registration of a student by administrative action.
vii. If a student fails to complete degree requirements within the allowed 6 years of matriculation (excluding any permitted leaves of absence).
viii. Any student receiving 2 or more final grade deficiencies will be considered for dismissal by the SAPP Committee. Students on academic probation who continue to make unsatisfactory progress and receive one or more additional final grades of D or F will be considered for dismissal. Students receiving two or more final grade deficiencies (D or F) will automatically be scheduled for a dismissal hearing. However, upon the committee's review of each student's academic record, any one or more of the following may also be considered or recommended:
    a. Require the student to make up the deficiency by repeating the course(s).
    b. Require the student to remediate the deficiency by re-examination and/or additional work in consultation with the Department and faculty involved.
    c. Require the student to participate in a comprehensive integrative assessment program.
    d. Recommend the student take a leave of absence.
    e. Decide that the student be dismissed.
    f. Impose any action recommended by the SAPP Committee.

In case of serious violation of rules of conduct, the Dean of the School may terminate the registration of a student by administrative action. There is no appeal for this action.

Upon finding that the student should be considered by SAPP for dismissal, students will be scheduled for a dismissal hearing. Students who are to be considered for dismissal by SAPP have the right to appear in person before the SAPP committee.

Students are not allowed to contact SAPP committee members prior to their hearings.

The Chair of the SAPP committee will provide written information on the reasons for the dismissal hearing. This information includes the SAPP meeting date and location. The student is invited to appear in person to present their case, evidence, and context for the academic deficiencies. All documentary evidence pertinent to their case against dismissal must be provided to the Chair of the SAPP committee by the start of the dismissal hearing. Students may request an alternative (to be allowed to repeat instead of being dismissed.) Students should be available subsequently for questions from the Committee prior to the Committee's closed session deliberations.

The Dean of Student Affairs is available to answer questions the student may have, and to explain the process and advise on approaches.

The dismissal hearing is the student's only opportunity to present supportive information pertinent to the grounds for their dismissal. Up to three individuals of their choice, none of who may be legal counsel, can provide supportive information. They may submit a written statement OR appear in person, as determined by the student. If appearing in person, each witness will be allowed ten (10) minutes maximum to present relevant information. This time is exclusive of subsequent questioning by the Committee. Legal counsel may not attend a SAPP dismissal hearing.

The decision of the SAPP Committee will be communicated in writing to the student, the student's faculty advisor, the Registrar, and the Dean of the School within five (5) working days of the hearing by the chair of the SAPP.

Student Appeals Procedure

a. Students may only appeal a decision to dismiss made by the SAPP Committee.
b. Other decisions of lesser gravity (e.g., a program of remediation for a course deficiency) made by the SAPP Committee are not subject to appeal.
c. In order to appeal the SAPP decision for dismissal, the student must notify the President and Dean of the School in writing, of his/her intent to do so. This notification must be received within 10 working days of receipt of the letter from the SAPP Committee Chairperson regarding the SAPP decision.
d. The student must present the basis for the appeal to the President/Dean in his/her notification of the request for an appeal. The only new evidence/grounds for reversal that the student may present to the Dean will be:
    1. Failure of the SAPP Committee to follow proper procedures or;
    2. Prejudice toward the student by faculty or administrative members of the SAPP committee.
e. Each appeal by the student will be heard by the President/Dean within 10 working days of receipt of the student's written notification of intent to appeal.
f. The President/Dean will determine the merits of the case based on a review of the information presented to the SAPP Committee and the student's appeal notice. Neither witnesses nor legal counsel will be allowed at the meeting.

The written decision of the President/Dean will be conveyed to the student, the Dean for Student Affairs, and the chair of the SAPP Committee within 5 working days of meeting.

Leaves of Absence Students are expected to complete the course of study for the MD degree within four years. Students may request a leave of absence (LOA) for medical, military or other compelling reasons if they find it necessary to interrupt study temporarily. Time spent on LOA is excluded from the 'six-year rule' from matriculation to graduation. Please see the section on LEAVES OF ABSENCE in this Student Handbook.

Withdrawal A Student may withdraw or be requested to withdraw for academic, medical or personal reasons. Official voluntary withdrawal requires that the student submit a letter to the Dean of Student Affairs stating the reasons. Additionally, the student must clear all financial obligations to the school before the withdrawal becomes official and the school will release the student's transcript. See section on Financial Policies regarding refund and time of withdrawal. Withdrawal means that the student will no longer remain enrolled as a student and their name will be officially and permanently removed from the roster.

Transfer to Other Medical Schools
The school usually does not actively support the transfer of its students to other medical schools. A Dean's letter or other official letter of recommendation on behalf of the student who wishes to transfer may not be sent. Individual circumstances, however, will be heard and considered by the Dean for Student Affairs.

A student who believes that he or she has a cogent personal reason for the support of transfer should submit a written petition to the Dean for Student Affairs indicating reasons why the policy of the school should be exempted. Any student considering transfer is required to have an interview with the Dean for Student Affairs. Transcripts or certification of academic credit will not be released until such a meeting has taken place.

Clinical-Third and Fourth Year

MSM Work Hour Rules for Clinical Clerkships and Electives
Maximum Hours of Work per Week: Duty hours must be limited to 80 hours per week, averaged over a four week period, inclusive of all in-house call activities. Students may be required to come in every day, but should be afforded the equivalent of one full day or two half-days off in seven days (or more time off)

Maximum Duty Period Length: Duty periods for medical students may be scheduled to a maximum of 24 hours of continuous duty in the hospital. Programs must encourage students to use alertness management strategies in the context of patient care responsibilities. Strategic napping, especially after 16 hours of continuous duty and between the hours of 10:00 p m. and 8:00 a.m., is strongly suggested. It is essential for patient safety and resident education that effective transitions in care occur. Students may be allowed to remain on-site with their resident team in order to accomplish these tasks; however, this period of time must be no longer than an additional four hours. Students are not to have required clinical duties or didactics after 24 hour call. Students must not be assigned additional clinical responsibilities after 24 hours of continuous in-house duty. Students must have documented sufficient average patient contact to justify the experience.

Minimum Time Off between Scheduled Duty Periods: Medical students should have 10 hours free of duty, and must have eight hours between scheduled duty periods.



MOREHOUSE
SCHOOL OF MEDICINE

2019-2020 STUDENT HANDBOOK

Pregnant and Parenting Students

Morehouse School of Medicine is committed to creating an accessible and inclusive environment for pregnant and parenting students.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs or activities including academic, educational, extracurricular, and other programs or activities of the school. This prohibition includes discrimination against pregnant and parenting students.

Students may request adjustments based on general pregnancy needs or accommodations based on a pregnancy-related complication. Accommodation requests should be directed to the School's Title IX Coordinator. The Title IX Coordinator will discuss the pregnant or parenting individual's needs and will ask for documentation that supports the requested accommodations.

At times, pregnant and parenting students may need to miss class, make-up assignments, exams or experiences. You are expected to provide notification to the Title IX Coordinator and/or the Office of Disability Services based on your situation. This includes notifications when you need to take a complete medical leave of absence. Your MSM Student Handbook further guides you on the notification and approval process when this occurs.

Requests from students should be directed to:
Title IX Coordinator
Main Campus/Harris Building
Room 130
(404) 752-1871

Approval for student make-up assignments and exams should be directed to:
Dean of Students
Main Campus/Hugh-Gloster
Room B-136
(404) 752-1651

Resources:
Know Your Rights: Pregnant or Parenting? Title IX Protects You from Discrimination at School
https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix html

Pregnant and Parenting Students (National Women's Law Center
https://nwlc.org/resources/pregnant-and-parenting-students-rights-faqs-college-and-graduate-students/

Supporting the Academic Success of Pregnant and Parenting Students
https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf

Disability Services

Morehouse School of Medicine's Office of Disability Services (ODS) serves as the primary resource for students with documented disabilities, disability concerns, and making requests for reasonable academic adjustments and accommodations. The ODS works in collaboration with faculty, staff and departments throughout MSM to develop successful strategies for maximizing students' academic achievement and participation in extracurricular activities and programs. Services and reasonable accommodations are designed to meet the individual needs of each student in accordance with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the ADAAA. These regulations require that any qualified person receive academic

adjustments that are necessary and effective, and which do not compromise the academic standards of the School, to ensure equal access to educational opportunities, services, programs and activities at the School. MSM will not provide an academic adjustment or accommodation that is not reasonable or that would result in an undue hardship to the School or otherwise fundamentally alter the program. Any applicant, student, resident, or employee who believes he or she has been denied any service or benefit or otherwise discriminated against or harassed due to a disability may contact the Title IX Coordinator or the Deputy Title IX Coordinator.

Students having questions about or seeking to make requests for reasonable accommodations and academic adjustments based on a disability should contact:

Marla Thompson
Manager for the Office of Disability Services
Morehouse School of Medicine
720 Westview Drive, SW
Harris Building H-132
Atlanta, GA 30310
Direct Phone: (404) 752-1871
Fax: (404) 752-1639
Email: ODS@msm.edu

The Office of Disability Services (ODS) is located on the Westview Campus, Harris Building, room H-132. The ODS is open Monday -Friday between 8:30 am and 5:00 pm. Further information on the ODS can be found on the Web at:
http://www.msm.edu/Administration/HumanResources/disabilityservices/index.php

Students requesting academic adjustments or accommodations based on a covered disability must register with the ODS prior to course registration (or as soon as practicable) and follow all ODS procedures for requesting academic adjustments and accommodations. Students should be aware that they are responsible for making requests for reasonable academic adjustments and for submitting all necessary documentation in support of those requests.

The Office of Disability Services has been designated to review disability documentation and to determine eligibility for appropriate accommodations. Faculty members must not provide any disability-related academic adjustments to any student until s/he has received notification by letter to do so from the ODS.

Disabilities of a temporary nature may not be eligible for academic adjustments with the ODS, but ODS will assist the School staff and faculty in efforts to minimize academic disruptions. Students making requests for excused absences and emergency notification should first contact the Office of Student Affairs and, if the report relates to a disability-related issue, the Office of Student Affairs will communicate with ODS regarding the same. For more information, contact the Dean for Student Affairs at (404) 752-1651.

Office of International Program Services

The Office of International Program Services (OIPS) provides assistance to students, faculty and staff from foreign countries that study and/or work at MSM. This office serves as the official liaison for U.S. Departments of State, Homeland Security, and Labor. A Manager who functions as the Principal Designated School Official at MSM for F-1 students and is the Responsible Official for MSM's

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 10:

586a – 650a

JAMES GREGORY HOWELL, JR.
1080 River Valley Dr.
Dacula, GA 30019-3161
(678) 429-6485

15. If in the mediator's judgment the council should be brought into a case, the accused does not have the right to prevent the council from meeting. A function of the council is to decide whether the matter should be brought to the attention of the dean.
16. It is in the best interest of the accused to meet with the Council to attempt to prevent a report to the dean. If the accused refuses to attend the Council meeting, the council will still meet to decide if a report should be sent to the dean.
17. If a student who believes he/she has been mistreated approaches a Council member, the council member will refer the student to the Mediator.

Nondiscrimination and Anti-Harassment Policies
General Information

Morehouse School of Medicine is committed to providing academic and employment environments that are free from unlawful discrimination, including harassment, on the basis of protected characteristics, including race, color, national or ethnic origin, sex, age, disability, religion, veteran status, sexual orientation, genetic information, gender identity, or any other characteristic protected by applicable law in the administration of the School's programs and activities. The School encourages any individual who feels he or she has been discriminated against or harassed on any legally protected characteristic to promptly report the incident to the Title IX Coordinator or the Deputy Title IX Coordinator, who may be contacted as follows:

Marla Thompson, MPA

Title IX Coordinator

Morehouse School of Medicine

Harris Building

Direct Dial: (404) 752-1871

Fax: (404) 752-1639

Email: mthompson@msm.edu

Valerie Walton
Deputy Title IX Coordinator
Morehouse School of Medicine
Harris Building
Direct Dial: (404) 752-1606
Fax: (404) 752-1639
Email: vjwalton@msm.edu

MSM's general policy against discrimination, harassment and retaliation applies to conduct by and perpetrated against all faculty, staff, administration, supervisors, employees, residents, students, applicants, volunteers, patients and visitors to campus, including guests, patrons, independent contractors or clients of MSM ("Person(s)") that is prohibited by Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (including ADAAA amendments), and the Age Discrimination Act of 1975.

MSM also does not discriminate on the basis of sex in its employment decisions and education programs and activities (such as all academic and extracurricular activities and programs) as required under Title IX of the Education Amendments of 1972 and in its implementing regulations, and in part under Title VII, as well as any other applicable federal and state laws or local ordinances. Accordingly, MSM has also adopted a Sex/Gender Nondiscrimination and Sexual Harassment Policy, which covers all employment and admissions decisions affecting any member of the MSM community as they relate to

any conduct prohibited under Title IX, such as sex or gender discrimination, retaliation and all types of sexual misconduct, including, but not limited to sexual harassment and sexual violence.

Under MSM's general policy against discrimination, harassment and retaliation, if a complainant is able and feels safe, he or she should clearly explain to the alleged offender that the behavior is objectionable and request that it cease. Additionally, if the complainant is not able or does not feel safe confronting the alleged offender, or the behavior does not stop, or if the complainant believes some adverse employment or educational consequences may result from the discussion, he or she should contact the Title IX Coordinator or the Deputy Title IX Coordinator to make a complaint.

Under MSM's Sex/Gender Nondiscrimination and Sexual Harassment Policy, any Person, or any individual or group acting on behalf of a Person, who knows or receives a report of an incident specifically involving sex discrimination, sexual harassment or sexual violence, or seeks to raise general concerns with individual or institutional sex-based discrimination, sexual harassment or sexual violence, may report the incident to or file a formal complaint with the Title IX Coordinator or the Deputy Title IX Coordinator. Details about the procedures a victim of sex discrimination, sexual harassment or sexual violence should follow immediately following the occurrence of such conduct, as well as for reporting incidents and/or filing, investigating and resolving complaints of sex discrimination, sexual harassment, sexual violence, and other Title IX-related grievances are outlined in Human Resources Policy H.R. 1.00 (revised 10-1-2014), which can be accessed on the Morehouse School of Medicine website at:
https://msmconnect.msm.edu/group/mycampus/41

And click into "Employee Relations and Title IX"

All members of the MSM community are subject to MSM's Sex/Gender Nondiscrimination and Sexual Harassment Policy, including the investigatory and disciplinary procedures described therein.

Under both policies, reports or complaints of harassment of any form should be made to or initiated with the Title IX Coordinator or the Deputy Title IX Coordinator as soon as possible after the most recent incident. Anyone who knowingly makes a false accusation of discrimination, harassment, or retaliation will be subject to appropriate sanctions. However, failure to prove a claim of discrimination, harassment, or retaliation does not, in and of itself, constitute proof of a knowing false accusation. No Person should assume that an official of MSM knows about a particular situation. Any Person or non-MSM visitor, guest, patron, independent contractor, or client who fails to address or report any form of discrimination, harassment and/or retaliation allegedly perpetrated by or against MSM administrators, faculty, staff, supervisors, volunteers, students or employees of which they know or should have known may be subjected to sanctions.

Complaint Procedures
Complaints filed with the Title IX Coordinator must be in writing and, specifically in cases involving incidents of sex discrimination, sexual harassment or sexual violence, provide the following information: (i) name of and contact information for the complaining Person(s) ("Complainant(s)"); (ii) nature, location and date of alleged violation; (iii) names of and contact information for the Person(s) accused of the alleged violation (where known) ("Respondent(s)"); (iv) requested relief or corrective action (specification of desired relief shall be the option of the Complainant); and (v) any other background or supplemental information that the Complainant believes to be relevant (e.g., names of other persons affected by the violation, etc.).

Investigation and Disposition of Complaints

All reports and complaints of discrimination and harassment will be promptly investigated, and appropriate corrective action will be taken as expeditiously as possible. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to an impartial investigator. MSM will make reasonable efforts to protect the rights of both the Complainant and the Respondent. MSM will respect the privacy of the Complainant(s), Respondent(s), and any witnesses in a manner consistent with the School's legal obligations to investigate, take appropriate corrective action, and comply with any discovery or disclosure obligations required by law. Any and all requests for confidentiality will be evaluated on a case-by-case basis and in the context of the school's responsibility to provide a safe and nondiscriminatory environment for the MSM community.

MSM reserves the right to investigate and resolve a complaint or report of discrimination and/or harassment regardless of whether the complainant ultimately desires the School to pursue the complaint. In such cases, the parties shall be informed of the status of the investigation at reasonable times until the School's final disposition of the investigation.

The amount of time needed to conduct an investigation will depend in part on the nature of the allegation(s) and the evidence to be investigated (e.g., the number and/or availability of witnesses involved). Within 60 days of receipt of the complaint, the Title IX Coordinator or Deputy Title IX Coordinator will provide an interim notice of the outcome of the investigation or will advise the parties of the additional estimated amount of time needed for the investigation. Within 10 business days following the completion of an investigation, the Title IX Coordinator or Deputy Title IX Coordinator will simultaneously provide written notification to the Complainant and Respondent of the results of the investigation. If the investigation reveals that, by application of the preponderance of evidence standard, harassment, discrimination (or other inappropriate or unprofessional conduct even if not unlawful), or retaliation has occurred, disciplinary action may be taken by MSM. Written notice to the appropriate parties relating to discipline, resolutions, and/or final dispositions is deemed to be official correspondence from the School. Disciplinary sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator. MSM will take the appropriate corrective action based on results of the investigation and will follow up as appropriate to ensure that the remedial action is effective. Complainants are encouraged to report any reoccurrences of conduct that were found to violate MSM's nondiscrimination and anti-harassment policies or any other related concerns.

Prohibition Against Retaliation

Anyone who, in good faith, reports what s/he believes to be discrimination or harassment, who participates or cooperates in any investigation, or who otherwise opposes unlawful conduct believed to be in violation of this policy will not be subjected to retaliation. Anyone who believes he or she has been the victim of retaliation for reporting discrimination or harassment, participating or cooperating in an investigation or otherwise opposing unlawful conduct believed to be in violation of this policy should immediately contact the Title IX Coordinator or the Deputy Title IX Coordinator, who have authority to investigate all such claims. Any individual found to have retaliated against another individual who engaged in conduct consistent with the protections afforded under this Policy will be in violation of this policy and will be subject to disciplinary action.

Admissions Policy & Selection

Morehouse School of Medicine encourages applications from, and gives full consideration to, all applicants for admission and financial aid without regard to gender, race, handicap, color, creed, or national or ethnic origin. The school is committed to recruiting, enrolling and educating substantial numbers of persons from racial minorities and from educationally and socioeconomically deprived groups. The Committee selects those applicants who are more likely, in its opinion, to become the best students, and physicians, biomedical or public health scientists, who will fulfill the mission of the school.

Admission to each degree program is decided by separate Admissions Committees for students entering the Morehouse School of Medicine. Each program maintains its own admissions criteria and process. However, all applications are processed through the **Office of Admissions and Student Affairs**.

**MSM reserves the right to terminate or modify program requirements, content, and the sequence of program offering from semester to semester or year to year for educational reasons which it deems sufficient to warrant such actions. Further, MSM reserves the right to terminate programs for financial or other reasons, which it determines warrants such action. The content, schedule, requirements and means of presentation of course may be changed at any time by the School of Medicine for educational reasons which it determines are sufficient to warrant such action. Programs, services or other activities of the School may be terminated at any time due to reasons beyond the control of the School including, but not limited to, acts of God, natural disasters, destruction of premises, labor disturbances, governmental orders, financial insolvency, or other reasons or circumstances beyond the control of the School of Medicine.*

Doctor of Medicine (MD) Program

Admission Standards

New Students

The selection of students by the Admissions committee is made after considering many factors: intelligence, preparedness, motivation, and aptitude. The Medical College Admission Test (MCAT) and a bachelor's degree, or equivalent, from a U.S. school accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA) or the U.S. Department of Education, or from an appropriately accredited non-U.S. institution.

Applicants who have completed coursework at, or hold a bachelor's or advanced degree from an institution of higher learning outside the United States must have their transcript(s) certified for equivalency to U.S. degrees or coursework by a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES). Applicants who have completed coursework at, or hold degrees from, a postsecondary institution in Australia, Canada (except Quebec), New Zealand, or the United Kingdom will normally not need to have their academic transcripts evaluated and certified for equivalency.

Applicants are encouraged to have a broad educational background, yet no specific major is deemed superior to another.

Coursework must include one year of:
Biology with Laboratory
General Chemistry with Laboratory
Organic Chemistry with Laboratory
College Level Mathematics
College Physics with Laboratory
English (including composition)

*An accepted student is responsible for completing all prerequisite course work prior to matriculation.

* Only citizens of the United States of America and legal permanent residents are accepted into the M.D. program of study.

Transfer Students

Transfer admissions are rare. However, applications are accepted from students in LCME accredited U.S. and Canadian schools of medicine, who are currently enrolled in good academic standing in such a school, have the full approval for the transfer from the dean of their current school, and have a cogent reason for requesting transfer. Admission is contingent upon space availability therefore, academically qualified applicants can still be denied admission due to lack of space. **The School of Medicine does not accept applications for advanced standing from students attending non-Canadian foreign medical schools, osteopathic or veterinary schools. MSM does not accept applications for transfer beyond the second year. Therefore, admission to the third and fourth year medical classes is not possible.**

Technical Standards for Medical School Admissions and Graduation

Medical education requires that the accumulation of scientific knowledge be accompanied by the simultaneous acquisition of skills and professional attitudes and behavior. Medical school faculties have a responsibility to society to matriculate and graduate the best possible physicians, and thus admission to medical school has been offered to those who present the highest qualifications for the study and practice of medicine. Technical standards have been established as prerequisites for admission and graduation from MSM. All courses in the curriculum are required in order to develop essential skills required to become a competent physician.

Graduates of medical school must have the knowledge and skills to function in a broad variety of clinical situations and to render a wide spectrum of patient care.

MSM acknowledges Section 504 of the 1973 Vocational Rehabilitation Act and PL 101-336, the Americans with Disabilities Act (ADA), but ascertains that certain minimum technical standards must be present in the prospective candidates.

A candidate for the M.D. degree must have aptitude, abilities, and skills in five areas: observation; communication; motor; conceptual, integrative and quantitative; and behavior and social. Technological compensation can be made for some handicaps in these areas, but a candidate should be able to perform in a reasonably independent manner.

Observation: Observation necessitates the functional use of the sense of vision and other sensory modalities. The candidate must be able to observe demonstrations and participate in experiments in the basic sciences. The candidate must also be able to observe a patient accurately at a distance and close at hand.

Communication: Communication includes not only speech, but includes reading and writing. A candidate must be able to communicate effectively and sensitively with patients and all members of the health care team.

Motor Coordination or Function: Candidates should have sufficient motor functions to elicit information from patients by palpation, auscultation, percussion, and other diagnostic maneuvers. A candidate should be able to do basic laboratory tests, carry out diagnostic procedures, and read EKGs and X-rays. A candidate should be able to execute motor movements reasonably required to provide general care and emergency treatment to patients. Such actions require coordination of both gross and fine muscular movements, equilibrium and functional use of the senses of touch and vision.

Intellectual-Conceptual, Integrative, and Quantitative Abilities: These abilities include measurement, calculation, reasoning, analysis, and synthesis. Problem solving, the critical skill demanded of physicians, requires all of these intellectual abilities. In addition, the candidate should be able to comprehend three-dimensional relations and to understand the spatial relationships of structures.

Behavioral and Social Attributes: Candidates must possess the emotional health required for full use of their intellectual abilities, the exercise of good judgment, the prompt completion of all responsibilities attendant to the diagnosis and care of patients, and the development of mature, sensitive and effective relationships with patients. Candidates must be able to tolerate physically taxing workloads and to function effectively when stressed. They must be able to adapt to changing environments, to display flexibility, and to learn to function in the face of uncertainties inherent in the clinical problems of many patients.

MD Student Registration Policy

All currently enrolled MD students are required to be officially registered by the first day of classes or clinical clerkships. If a student has not registered for his/her respective MD year curriculum due to an outstanding balance, the student will not be authorized to attend classes, clinical clerkships or receive credit. In addition, the student's MSM ID card, Canvas and Examsoft access will be provisionally suspended. Students who have not been registered will be considered to have unexcused absences for those sessions requiring attendance.

Approval to attend classes or clinical clerkships is contingent on outstanding balance being paid or if a payment agreement is established with the MSM Controller's Office.

Prior to the start of each semester, it is the responsibility of the student to make certain an outstanding balance is paid in full. If circumstances result in a delay in registration beyond the student's control, the student is required to meet with the Dean for Student Affairs. However, this does not excuse the student from adhering to the registration policy guidelines.

Students who delay sitting for Step 1 beyond June 30, or who fail to pass this exam are ineligible for financial aid until they pass the exam and commence the third year curriculum.

Educational Objectives of the Medical Curriculum

The undergraduate medical program requires that candidates for the MD degree acquire certain knowledge, skills, and attitudes that are essential for functioning in a broad variety of clinical situations. To render a wide spectrum of primary care, a graduate must develop:

1. A mastery of the concepts necessary for the prevention, diagnosis, treatment, and management of common medical problems, specifically display knowledge of:
   a. Normal development, structure and physiological function of the body, organ systems, tissues and cells, and their interrelationships and the molecular, biochemical, cellular, and physiological mechanisms that are important in maintaining the body's homeostasis.
   b. Biochemical, immunologic, pharmacologic, and microbiologic principles related to issues of disease, laboratory tests, and therapeutics and the various etiologies (genetic, developmental, metabolic, toxic, iatrogenic, microbiologic, autoimmune, neoplastic, degenerative, and traumatic) of diseases (pathogenesis), the associated altered structure and function (pathology and pathophysiology) and characteristic pathologic and laboratory manifestations
   c. Common epidemiologic and risk factors for diseases, population health and the role and impact of psychological, behavioral, social, economic, and cultural factors on health and disease.
   d. Ethical, legal, gender, psychological, social, interpersonal, and economic issues that impact health and medical care.

2. Basic skills, including the ability to:
   a. Perform and record a complete and accurate history, sensitive to patient needs and the nature of the situation
   b. Perform and record an accurate and complete physical examination and mental status examination sensitive to patient needs and the nature of the situation.
   c. Analyze a patient's clinical presentation, connect biomedical and health knowledge with application; that is, develop a suitable diagnostic and therapeutic plan, appropriately using information resources, laboratory and imaging testing.
   d. Communicate (in writing and orally) effectively and respectfully with peers, faculty, colleagues, and other members of the healthcare team, understanding the role of consultations and referrals.
   e. Communicate and interact with patients in an effective, respectful, and compassionate manner, including counseling them on risks, prevention, lifestyle and therapy issues.

f. Obtain, analyze, and use the medical literature and other information resources to address medical questions and to sustain professional growth and apply techniques of population health, including methods of analysis of the health and health problems of defined populations and development of interventions to improve the health of populations.

Throughout training, a candidate must demonstrate medical professionalism including ethical behavior, moral reasoning, honesty, integrity, dependability, and commitment to service.

Curriculum for the Doctor of Medicine Program

FIRST YEAR MEDICAL CURRICULUM

Fall and Spring Semesters	**Semester Credit Hours**	
Molecules, Structures, Mechanisms Curriculum		
Basic Principles	(Unit 1)	10.0
Organ Systems 1	(Unit 2)	10.0
Organ Systems 2	(Unit 3)	10.0
Organ Systems 3	(Unit 4)	10.0
Community Health		4.0
Fundamentals of Medicine		7.0
		51.0

SECOND YEAR CURRICULUM

Course	**Semester Credit Hours**
Pathophysiology	7.0
Microbiology and Immunology	7.0
Pathology	12.0
Pharmacology	7.0
Nutrition	1.0
Fundamentals of Medicine II	8.0
	42.0

THIRD YEAR CURRICULUM

Course	**Semester Credit Hours**	
Internal Medicine	(12 weeks)	15.0
Pediatrics	(8 weeks)	10.0
Obstetrics/Gynecology	(8 weeks)	10.0
Psychiatry	(6 weeks)	8.0
Surgery	(8 weeks)	10.0
Family Medicine/Rural Health	(6 weeks)	8.0
Fundamentals of Medicine III		2.0
		63.0

FOURTH YEAR CURRICULUM

Course	**Semester Credit Hours**	
Senior Selective	(4 weeks)	5.0
Elective Rotations	(Six electives of 4 weeks duration	30.0
		35.0

Total Credits for MD Program: 191.0

***Senior selective. The senior selective requirement may be fulfilled by completing any of the following courses at MSM (grading for this required course is LETTER grade):*
An MSM intensive inpatient experience with overnight and weekend call duty. This would include:

- *Sub internship/acting internship/ward rotation*
- *Intensive care rotations*

- *Ambulatory Adult Medicine*
- *Rural Health senior elective*
- *Emergency Medicine*

Morehouse School of Medicine - University of Washington Medical Scientist Training Program (MSTP)

This unique Medical Scientist Training Program (MSTP) was developed through collaborative efforts of the University of Washington (UW) and Morehouse School of Medicine (MSM). Both institutions bring unique strengths to a program that will provide exceptional biomedical research training at one of this nation's premier research institutions for students enrolled at an HBCU medical school renowned for training students from groups underrepresented in medicine to address the health-care needs of medically underserved populations. **The program's goal is to develop leaders in academic medicine and biomedical research uniquely equipped to create and advance health equity, locally, nationally, and globally.**

Continued support is contingent on sustained academic and research excellence and timely progression through the program. The funding is intended to attract the most talented students and to reduce their debt burden as they complete this extensive training. This will allow students to focus their future careers on providing leadership and new discoveries. Both at MSM and UW, students in this program will be provided targeted career guidance and support to help them navigate the combined curricula and move effectively toward their degrees and career goals.

In this program, selected students will earn both M.D. and Ph.D. degrees as they learn the art and science of medicine and develop expertise in identifying and solving the most challenging problems in biomedical research. M.D. training will take place at MSM in Atlanta, Georgia and Ph.D. training will be completed at UW in Seattle, Washington. Students will complete their first two years of preclinical, medical training at MSM, then spend 3-5 years completing their Ph.D. (research) training at UW. After earning their PhD at UW, students will return to MSM to complete their final two years of clinical training. Graduates will then enter residency training in the field of their choice. A variety of qualifications will be reviewed in selecting successful applicants. These include:

• Career interest in biomedical research and academic medicine
• Academic Excellence
• Evidence of research interest (e.g., participation in research programs as an undergraduate or having a MS degree requiring a thesis in an area of biomedical research)

Interested students should contact Dr. Martha Elks (melks@msm.edu, 404-752-1881) or Dr. Douglas Paulsen (dpaulsen@msm.edu, 404-752-1559) for more information on the program and about the application process.

Scholastic Non-Cognitive Evaluation

Certain personal characteristics, as set forth on the Scholastic Non-Cognitive Evaluation Form, are important to individuals preparing for a career in medicine. Therefore, scholastic non-cognitive evaluations are designed to point out the outstanding, adequate, or the inadequate personal characteristics of students. While the majority of students accepted to medical school will possess these characteristics, it is important to have a method to recognize either outstanding students or the unusual student who does not possess the character traits necessary to practice medicine. For this reason, scholastic non-cognitive evaluations may be given. Evaluations may be made by faculty members of each course and will be submitted to the Associate Dean of Student Affairs.

A scholastic non-cognitive evaluation of the following: Outstanding, Adequate or Inadequate may also be submitted by course directors/faculty members if deemed appropriate.

Components of Non-Cognitive Evaluation

Professionalism

Responsibility - Interpersonal interchanges are carried out in a reliable and trustworthy manner. The student can be counted on to keep his agreements.

Ethics - The student manifests the highest standards of ethics and behavior.

Maturity - The student functions as an adult avoiding childish self-centeredness and adolescent over-reactivity to stressful situations. A significantly mature student is not excessively loud or boisterous and refrains from rude, obscene or inappropriate behavior in the classroom and laboratory. Books, equipment and other educational aids are used with respect.

Personal Appearance - The student's personal hygiene and dress reflect the high standards expected of a physician in-training.

Communication and Interpersonal Skills

Communication - The student demonstrates an ability to communicate effectively with peers, teachers, patients, and others.

Demeanor - The student has a positive, open attitude towards peers, teachers, patients and others during the course of his medical studies. The student demonstrates humility through open mindedness and respect for the ideas, opinions, and feelings of others.

Authority - A student shows appropriate respect for those placed in authority over him/her both with the School and in our society.

Life-Long Learning

Attentiveness - The student regularly attends class where attendance is needed. All extended absences are for relevant and serious reasons and approved, where applicable, by the appropriate authority. The student is alert during the presentation and demonstrates attentiveness by taking notes and asking appropriate questions.

Inquisitiveness - The student acquires an interest in his/her courses and curricular subjects, demonstrating individual pursuit of further knowledge.

Teamwork

Cooperation - The student demonstrates his/her ability to work effectively in large and small groups, and with other members of the health team, giving and accepting freely in the interchange of information.

Future Potential - The student shows an ability to make rational and logical decisions regarding options, reflecting his/her ability to make intelligent decisions in his/her personal life and in clinical problems.

Moral Turpitude (adherence to laws and standards) - The student respects the rights and privacy of other individuals and does not violate the laws or the accepted customs and mores of our society. The student is not in violation of the Controlled Substance Act of the United States and is not guilty of an alcohol related offense.

Use of non-cognitive evaluation

A. When a student receives his/her first scholastic non-cognitive performance evaluation with one or more inadequate categories indicated, the Dean of Student Affairs or other designated official will meet with the student to discuss the report.

B. If the student receives subsequent inadequate evaluations the Dean of Student Affairs will undertake the following action:
   i. Notify the student in writing that he or she has received an excessive number of inadequate evaluations.
   ii. Require the student to arrange an interview within one week with the Dean of Student Affairs.
   iii. Forward to SAPP the results of this interview, including the student's explanation for his/her behavior.

The SAPP committee may then choose any or several of the following:

1. To take no further action;
2. To counsel the student in writing only;
3. To interview and counsel the student and to place him/her on suspension or leave of absence;
4. To interview and counsel the student and to place him/her on scholastic non-cognitive probation;
5. To interview the student and require that the student repeat a course in which problems arose or take other remedial steps;
6. To interview the student and require that student to repeat the entire academic year;
7. To interview the student and recommend his/her dismissal from the school; or
8. To interview the student and take other steps deemed appropriate by the SAPP Committee.

Policy Guidelines for the USMLE, STEP 2, Clinical Knowledge (CK) and Clinical Skills (CS)

- No student will be allowed to sit for the USMLE, Step 2 until all third year core clerkships are completed.
- A passing score on both the USMLE Step 2 CK and Step 2 CS examination is a requirement for graduation from MSM.
- Students are required to sit for the USMLE Step 2 CS by October 1 (unless the student is delayed), and the Step 2 CK prior to December 31 in the fall of their senior year. This will allow an opportunity for any needed re-sitting. In addition, many residency program directors will expect a Step 2 score to be recorded prior to a decision being made on the MATCH.
- A student who does not sit for the USMLE Step 2 prior to December 31, cannot receive credit for a fourth year rotation until these exams are completed.
- Students with a delayed clinical rotation cycle will have an individualized exam schedule.
- The last sitting date for the USMLE, Step 2 CK is March 31 of each year which allows for a release of scores in time for final decisions on eligibility for receipt of the M.D. in May of that year.
- All students must complete all requirements for receipt of the M.D. degree within one month of commencement in order to receive a May diploma. However, a student must have a passing score on the Step 2 CK and CS examination reported to be allowed to participate in May Commencement Ceremonies.

The SAPP committee reserves the right to modify policies regarding the USMLE as circumstances change with the NBME Administration of the program.

Student Promotion

The Student Academic Progress and Promotions (SAPP) committee assesses student qualifications for promotion, graduation or any other course of action affecting the status of the student. In order to remain in good standing, students must demonstrate satisfactory progress in the curriculum, the personal character and conduct, the moral and ethical integrity, and the self-control and compassion appropriate to their professional role.

To fully discharge its responsibility of determining medical student promotion, graduation and dismissal, the Committee shall consider all information relative to each student's academic performance in the total curriculum, including conduct as a professional. Therefore, both cognitive and non-cognitive requirements will be considered in evaluating each student in determining promotion, non-promotion, probation or dismissal. All such information and discussion of such information concerning any and all individual students shall be strictly confidential.

The following are policies utilized by the Promotions Committee (MD program):

a. The Maximum number of years allowed for matriculation shall be six years, excluding any leave of absence.
b. The 1st and 2nd Year curriculum will consist of no more than 36 months excluding any leave of absence and the 3rd and 4th year curriculum will consist of no more than 36 months excluding any leave of absence.
c. Students must pass Step 1 within 12 months of completing the 2nd Year Curriculum (a passing score must be posted by June 30 of the next academic year after completion of year 2). Students who remediate a course at the end of second year have one calendar year from the successful competition date to post a passing score. Students are allowed no more than 3 attempts to take

and pass Step 1. Students are allowed maximum of 3 attempts to take and pass Step 2 CK (Clinical Knowledge) and CS (Clinical Skills). Students must pass Step 2 CK and CS within four months of completing the 4th Year Curriculum.

d. Before promotion to the next year a student must have achieved a grade of C or better in all required courses. Students cannot initiate second or third year courses without completing/passing all courses of the prior year. Only one 4th Year elective (and only non-clinical) may be taken for credit prior to completion of all third year courses. No clinical electives can be taken for credit at MSM or elsewhere prior to completion of the third year curriculum.
e. A student must complete all third year clerkships prior to beginning fourth year courses. One longitudinal elective, such as research, can be started prior to the 4th year. All electives are credited in the fourth year.
f. All missed exams or incomplete coursework must be made up as soon as possible at the end of the year, but at least by June 15th, for 1st and 2nd year MD students, and by three weeks after the last 3rd year clerkship has been completed. If not completed, deficiencies will convert to "zero" and a final grade of D or F. Incomplete coursework must be completed prior to orientation for the next academic year, in order to be eligible for promotion.
g. A student receiving a final grade of D or F in a particular course will be placed on academic probation for a period of time specified by the SAPP Committee. Probation indicates marginal academic performance and can lead to dismissal unless grades improve. Academic progress also includes a student's conduct of professionalism in response to these warning.
h. For promotion to the third year, a student must have achieved a passing score on the USMLE, Step 1 examination. For graduation (receipt of the M.D. degree) a student must have achieved a passing score on the USMLE, Step 2- CK and CS examinations. (Passing scores subject to change)
i. A student cannot remediate 2 grades of D or one grade of F. Students with more than one final grade of D or a single grade of F will be required to repeat the course(s) to be eligible for promotion.
j. Students failing the USMLE, Step 1 or Step 2 examination must gain approval of the SAPP Committee prior to rescheduling. Written request is required; SAPP will respond in writing.
k. Course remediation plans as outlined in the course syllabus should be followed in consultation with the Course Director. Course remediation plans require the authorization and approval of the SAPP Committee. All course remediation must be completed before orientation of the next academic year (for those entering 2nd year) or USMLE exam (after 2nd or 3rd year). It is the student's responsibility to work with the Course Directors to complete all remediation requirements.
l. If on the decelerated track, any student with a warning letter or midterm deficiency in any course will automatically be placed on academic probation.
m. When action is taken following a review of a student's academic progress, students are informed verbally by the Associate Dean of Student Affairs of the Committee's recommendation as soon as practical after the committee meeting and written notification is subsequently sent by the Chair of SAPP.
n. A student must pass the MSM standardized patient exam (OSCE), when it is administered at the end of the third year. Graduating students must also pass the USMLE Step 2 Clinical Skills exam.

The Student Academic Progress & Promotion Committee (SAPP)

a. Responsibilities & Duties

The Student Academic Progress and Promotion Committee (MD) (SAPP) is a standing committee of the Academic Policy Council (APC). The committee is charged to monitor the academic performance of each student throughout the curriculum. This includes monitoring of unprofessional conduct, and instances of academic dishonesty and cheating. The SAPP committee shall evaluate and make recommendation for each student in accordance with the guidelines established and approved by the faculty and included in this Student Handbook.

The SAPP Committee also has the special responsibility of reviewing the entire academic records of senior medical students in order to ascertain each student has met all requirements and technical standards (cognitive and non-cognitive) for the degree of Doctor of Medicine. Following this review, the SAPP Committee shall make appropriate recommendations to the Academic Policy Council, which is responsible for certifying that each student has met all requirements for the degree of Doctor of Medicine. This certification serves as the validation presented by the Dean, the President, and Chairman of the Board of Trustees during the Commencement ceremony.

b. Review Process

The Committee convenes at periodic intervals to monitor the personal and professional development of all students and make appropriate decisions and recommendations. The committee considers interim and final grades, mini-boards, qualitative and non-cognitive evaluations, professionalism, USMLE scores, as well as additional evidence submitted by the student or others that might have a bearing on the student's progress.

All decisions are communicated in writing to the student, the student's advisor, and/or others deemed appropriate by the chair of the SAPP committee. Upon review of unsatisfactory information, the SAPP Committee can take one or more of the following actions, or take other actions in its discretion.

Sanctions

a. Academic Warning

Formal warning shall take the form of written notice from the SAPP Committee Chairperson and may be issued when there is a perceived trend toward increasing cognitive and/or non-cognitive difficulty. The notice shall set out the problem (s) in reasonable detail and shall indicate possible consequences.

b. Academic Probation

Academic Probation is a condition other than in good standing, which shall be established for a specified period of time with specified contingencies that must be met before the student is removed from the probationary status. Academic Probation implies that if these contingencies are not met, a recommendation for dismissal from the School of Medicine will follow. A student may be placed on Academic Probation for deficiencies in Academic Performance, Professional Behavior and/or Academic Honesty. Any student placed on probation will meet with the Associate Dean of Student Affairs to discuss the terms of the probationary period. The terms of the probationary period include ineligibility to hold any elected office, limitation of the student's participation in institutionally recognized, organized and/or sponsored extra-curricular activities, participation in intra or extramural summer programs or/and to be a representative of MSM at meetings and conferences. This condition is also automatically applied to students receiving a final grade of D or F in any course.

Dismissal and Suspension

A student's registration at MSM will be terminated by the Student Academic Progress and Promotion Committee (SAPP) or by administrative action if any student's performance or behavior is not consistent with his or her ability to become a competent, adequately informed and responsible physician. All of the following situations below will be reviewed by SAPP (unless there is a serious violation of the rules of conduct, in which case the Dean of the School may terminate the registration of a student by administrative action):

i. If a student's academic performance indicates an inability to master the material and all the procedures as outlined in the academic guidelines have been observed (e.g., failure to meet probationary requirements; failure to meet leave of absence conditions; academic and/or skill potential for a career in medicine is inadequate).

ii. A student who does not successfully complete required remedial work or who is repeating first or second year course work will be considered for dismissal if she or he does not achieve a grade of "C." Students will not be granted unlimited opportunities for remediation of academically deficient work.

iii. If a student on the decelerated track has a final grade of "D" or "F".

iv. If the student does not pass USMLE, Step 1 within twelve months of completion of the second year curriculum; or, the student fails to pass the USMLE, Step 2 CS and CK within four months following completion of the fourth curricular year.

v. If a student is determined to be ineligible to sit for the USMLE, Step 1 or Step 2 because of unsatisfactory performance in coursework which has yet to be remediated, and that student opts to sit for the Step 1 examination against MSM policy, then this student would be in jeopardy of disciplinary action which includes automatic dismissal from the school.

vi. If a student manifests a lack of responsible honesty, attitude or conduct in regards to his or her academic or clinical duties, including professional, ethical, or other non-cognitive skills. In case of serious violation, the Dean of the School may terminate the registration of a student by administrative action.

vii. If a student fails to complete degree requirements within the allowed 6 years of matriculation (excluding any permitted leaves of absence).

viii. Any student receiving 2 or more final grade deficiencies will be considered for dismissal by the SAPP Committee. Students on academic probation who continue to make unsatisfactory progress and receive one or more additional final grades of D or F will be considered for dismissal. Students receiving two or more final grade deficiencies (D or F) will automatically be scheduled for a dismissal hearing. However, upon the committee's review of each student's academic record, any one or more of the following may also be considered or recommended:

   a. Require the student to make up the deficiency by repeating the course(s).
   b. Require the student to remediate the deficiency by re-examination and/or additional work in consultation with the Department and faculty involved.
   c. Require the student to participate in a comprehensive integrative assessment program.
   d. Recommend the student take a leave of absence.
   e. Decide that the student be dismissed.
   f. Impose any action recommended by the SAPP Committee.

In case of serious violation of rules of conduct, the Dean of the School may terminate the registration of a student by administrative action. There is no appeal for this action.

Upon finding that the student should be considered by SAPP for dismissal, students will be scheduled for a dismissal hearing. Students who are to be considered for dismissal by SAPP have the right to appear in person before the SAPP committee.

Students are not allowed to contact SAPP committee members prior to their hearings.

The Chair of the SAPP committee will provide written information on the reasons for the dismissal hearing. This information includes the SAPP meeting date and location. The student is invited to appear in person to present their case, evidence, and context for the academic deficiencies. All documentary evidence pertinent to their case against dismissal must be provided to the Chair of the SAPP committee by the start of the dismissal hearing. Students may request an alternative (to be allowed to repeat instead of being dismissed.) Students should be available subsequently for questions from the Committee prior to the Committee's closed session deliberations.

The Dean of Student Affairs is available to answer questions the student may have, and to explain the process and advise on approaches.

The dismissal hearing is the student's only opportunity to present supportive information pertinent to the grounds for their dismissal. Up to three individuals of their choice, none of who may be legal counsel, can provide supportive information. They may submit a written statement OR appear in person, as determined by the student. If appearing in person, each witness will be allowed ten (10) minutes maximum to present relevant information. This time is exclusive of subsequent questioning by the Committee. Legal counsel may not attend a SAPP dismissal hearing.

The decision of the SAPP Committee will be communicated in writing to the student, the student's faculty advisor, the Registrar, and the Dean of the School within five (5) working days of the hearing by the chair of the SAPP.

Student Appeals Procedure

a. Students may only appeal a decision to dismiss (or to be prevented from graduation) made by the SAPP Committee. Appeals of grades and progression is as described above.
b. Other decisions of lesser gravity (e.g., a program of remediation for a course deficiency) made by the SAPP Committee are not subject to appeal except as described above.
c. In order to appeal the SAPP decision for dismissal, the student must notify the President and Dean of the School in writing, of his/her intent to do so. This notification must be received within 10 working days of receipt of the letter from the SAPP Committee Chairperson regarding the SAPP decision.
d. The student must present the basis for the appeal to the President/Dean in his/her notification of the request for an appeal. The only new evidence/grounds for reversal that the student may present to the Dean will be:
    1. Failure of the SAPP Committee to follow proper procedures or;
    2. Prejudice toward the student by faculty or administrative members of the SAPP committee.
e. Each appeal by the student will be heard by the President/Dean within 10 working days of receipt of the student's written notification of intent to appeal.
f. The President/Dean will determine the merits of the case based on a review of the information presented to the SAPP Committee and the student's appeal notice. Neither witnesses nor legal counsel will be allowed at the meeting.

The written decision of the President/Dean will be conveyed to the student, the Dean for Student Affairs, and the chair of the SAPP Committee within 5 working days of meeting.

Appeal of Grades
Learning objectives, grading policies, and remediation policies for each course are detailed in the course syllabi.

Interim or segment grades are to be addressed directly with the course or clerkship director

3. Regrade of a written exam or contesting of exam answers must be requested in writing to the course director within 2 weeks of posting of exam results.
4. Appeal of clinical or skills evaluation must be made in writing to the course director within 2 weeks of the posting of final grades. In any instance for which mistreatment, harassment or discrimination is cited as an element in contested grading, the policies regarding these issues shall be followed.

Final grade appeal

5. Appeal of the final grade shall be in writing to the course director or clerkship director as relevant, within 2 weeks of posting final grade, with the reasons and related evidence for the appeal. In any instance for which mistreatment, harassment or discrimination is cited as an element in contested grading, the policies regarding these issues shall be followed. The course director shall review the information and respond in writing to the student and the Dean of Students and the dean of UME within 2 weeks of receipt of the student's written appeal.
6. If the student does not agree with the outcome of his/her initial appeal to the course/clerkship director, the student may appeal again this time to integrated curriculum director for year 1, or the departmental chair of the course for years 2-4. The respondent shall review the information and respond in writing to the student and the dean of Students and the Dean of UME within 2 weeks of receipt of the student's written appeal.
7. After the second appeal decision, there is no further appeal of a final grade that does not affect progression.
8. Final appeal of a final grade that affects progression is to SAPP. The grounds for such appeal are either failure to adhere to the course or institutional policies as posted or issues related to mistreatment, harassment or discrimination as outlined in MSM policies. Decision of SAPP is final.

Leaves of Absence Students are expected to complete the course of study for the MD degree within four years. Students may request a leave of absence (LOA) for medical, military or other compelling reasons if they find it necessary to interrupt study temporarily. Time spent on LOA is excluded from the 'six-year rule' from matriculation to graduation. Please see the section on LEAVES OF ABSENCE in this Student Handbook.

Withdrawal A Student may withdraw or be requested to withdraw for academic, medical or personal reasons. Official voluntary withdrawal requires that the student submit a letter to the Dean of Student Affairs stating the reasons. Additionally, the student must clear all financial obligations to the school before the withdrawal becomes official and the school will release the student's transcript. See section on Financial Policies regarding refund and time of withdrawal. Withdrawal means that the student will no longer remain enrolled as a student and their name will be officially and permanently removed from the roster.

Transfer to Other Medical Schools

The school usually does not actively support the transfer of its students to other medical schools. A Dean's letter or other official letter of recommendation on behalf of the student who wishes to transfer may not be sent. Individual circumstances, however, will be heard and considered by the Dean for Student Affairs.

A student who believes that he or she has a cogent personal reason for the support of transfer should submit a written petition to the Dean for Student Affairs indicating reasons why the policy of the school should be exempted. Any student considering transfer is required to have an interview with the Dean for Student Affairs. Transcripts or certification of academic credit will not be released until such a meeting has taken place.

Clinical-Third and Fourth Year

MSM Work Hour Rules for Clinical Clerkships and Electives

Maximum Hours of Work per Week: Duty hours must be limited to 80 hours per week, averaged over a four week period, inclusive of all in-house call activities. Students may be required to come in every day, but should be afforded the equivalent of one full day or two half-days off in seven days (or more time off)

Maximum Duty Period Length: Duty periods for medical students may be scheduled to a maximum of 24 hours of continuous duty in the hospital. Programs must encourage students to use alertness management strategies in the context of patient care responsibilities. Strategic napping, especially after 16 hours of continuous duty and between the hours of 10:00 p.m. and 8:00 a m., is strongly suggested. It is essential for patient safety and resident education that effective transitions in care occur. Students may be allowed to remain on-site with their resident team in order to accomplish these tasks; however, this period of time must be no longer than an additional four hours. Students are not to have required clinical duties or didactics after 24 hour call. Students must not be assigned additional clinical responsibilities after 24 hours of continuous in-house duty. Students must have documented sufficient average patient contact to justify the experience.

Minimum Time Off between Scheduled Duty Periods: Medical students should have 10 hours free of duty, and must have eight hours between scheduled duty periods.

Maximum In-House On-Call Frequency: Medical students must be scheduled for in-house call no more frequently than every-third-night (when averaged over a four-week period).

MSM Year 3 and Year 4 Contact Information

Students are contacted by a local phone and/or MSM e-mail. Students are advised to acquire a phone number with an area code of 404, 770, or 678. Students must keep MSM e-mail mailbox open and are responsible for all communication on this service.

Year 3 and Year 4 Attendance Policies

Attendance is required throughout the clerkships and other clinical experiences involving patient care. Course/clerkship directors set specific policies, but the general policies are as follows:

a. All requirements, assignments, and specified number of patient contacts/ workups and/or nights on call must be fulfilled to complete a rotation. If a night on call is missed due to illness or excused absence, it will need to be made up in some way (arrange through preceptor and

Howell, James

From: Bell, Alecia
Sent: Wednesday, May 27, 2020 12:52 PM
To: Howell, James
Subject: RE: Checking In

Thank you for your response. I can only imagine your frustration and acknowledge that it's not easy to know what is happening when you do not hear back within an expected time period.

Now that our Return to Campus plan is moving forward and no longer in initial planning stages, I have more time to review and investigate complaints. Once the investigation is complete, I will provide you with a memo of findings and present recommendations.

Thank you again for your response and I look forward to reviewing any additional information you have.

Kind Regards,

Alecia M. Bell, JD, MPH, CHPC
Office of Compliance and Corporate Integrity
T: 404-756-8919 | F: 404-756-8974 | E: ambell@msm.edu

From: Howell, James <JHowell@msm.edu>
Sent: Wednesday, May 27, 2020 12:42 PM
To: Bell, Alecia <ambell@msm.edu>
Subject: RE: Checking In

Ms. Bell:

It's nice to hear from you. I hope you had a good holiday as well.

What's the full process of this investigation? After you conclude your meetings, are you going to provide me your full final report, or is there an opportunity for me to respond and provide any additional evidence?

Full disclosure: I ask because after not hearing from you for over a month, I honestly thought you weren't going to respond, so I have been in the process of drafting pleadings and legal briefs. The legal briefs contain law (statutes and caselaw) and evidence (evidence that I may not have already provided in my compliance complaint and subsequent responses).

I don't know what your position is on this matter after speaking to your general counsel, but would it be in my best interest to provide the additional evidence of discrimination of, and notice I provided to, both Dr. Knight and Mrs. Thompson about the failings of the note-taking accommodation? Or do you have enough already?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022

Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

From: Bell, Alecia <ambell@msm.edu>
Sent: Tuesday, May 26, 2020 2:51 PM
To: Howell, James <JHowell@msm.edu>
Subject: RE: Checking In

Hello Greg,

I hope you were able to safely enjoy your Memorial Day weekend!

I wanted to provide you another update regarding your complaint. I have moved forward with my investigation and am setting up meetings to address your concerns and desired outcome. I will provide details as I move along, but wanted you to know that I've spoken with ODS and the Office of General Counsel to get any information available regarding notetaking at MSM, ADA requirements, and what has been provided to students in the past and currently.

Now that the campus is open, I hope things are able to move forward more efficiently.

Also, I received your added document and thank you for sending.

Kind Regards,

Alecia M. Bell, JD, MPH, CHPC
Office of Compliance and Corporate Integrity
T: 404-756-8919 | **F:** 404-756-8974 | **E:** ambell@msm.edu

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From: Howell, James <JHowell@msm.edu>
Sent: Tuesday, April 28, 2020 1:48 PM
To: Bell, Alecia <ambell@msm.edu>
Subject: RE: Checking In

Ms. Alecia Bell:

(I apologize if I sound like a broken record anywhere below. For what it's worth, it feels important when talking with you that I explain myself and my actions to you).

I look forward to receiving your updates. I DO appreciate your help.

Could we setup a weekly email update, say every Friday, where you send me what, if any, progress has been made as I anxiously await the school's decision so that I can plan my next move accordingly please (particularly with regards to immediate future living conditions)?

As for the virtual environment, I can't say I've had much experience with it. I have been still getting notes, but I can't personally vouch if they have been timely, as compared to the 24-48-hour goal, though I assume they are.

Reason:

I've really had to disengage from medical school. Starting in late January/early February 2020, for about a cumulation of two or more months, I began researching what my rights were and conducting my own analysis by looking through over two years of emails. During this time, I also tried meeting with ODS and Dr. Anachebe over the period of about a month to see if we could all come to an agreement, but nothing came from the meetings. During these times it was difficult, if not impossible, to focus on my studies, for all of my time and focus was towards this issue with the notetaking accommodations. ODS was aware of this and I spoke about my feelings of depression to both ODS and Dr. Anachebe. I have been severely behind and missed exams in March, because I had no time, nor energy and focus, to study for any of the classes. Since the missed March exams, any attempt to vaguely continue in my studies have been stifled because I didn't know whom I can speak to about any of this or whom I can trust. I also didn't know if I could, or should, reveal any of this to any advisors outside of ODS because of the interactions I had with Dr. Anachebe, in any attempt to ask for guidance in what to do. Suffice to say, I have also missed the most recent exams and will miss the miniboards. My mental health has been quite affected by this. I spoke with Dr. Redding yesterday, as one of the heads of OSLER she wanted to check on me, and that was helpful because for the first time since early 2020, I felt sort of connected again with medical school. I hope you understand.

Let me know if you need anything.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

From: Bell, Alecia <ambell@msm.edu>
Sent: Tuesday, April 28, 2020 10:02 AM
To: Howell, James <JHowell@msm.edu>
Subject: RE: Checking In

Thank you for your message. I have not had the opportunity to conduct additional investigation due to demands of the campus, as things continue to change. I will update you over the next couple of weeks as a I aim to gather more information.

However, how have things been going in this virtual environment for you? Are you continuing to get notes from your note-takers timely?

Kind Regards,

Alecia M. Bell, JD, MPH, CHPC
Office of Compliance and Corporate Integrity
T: 404-756-8919

From: Howell, James <JHowell@msm.edu>
Sent: Tuesday, April 28, 2020 9:59 AM
To: Bell, Alecia <ambell@msm.edu>
Subject: Checking In

Ms. Alecia Bell,

I am emailing you to check if there are any new updates or if you need anything from me. I Hope all is well.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Prospective Class of 2022
Georgia State University – 2015 – Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – 2007 – BBA
jhowell@msm.edu
[redacted]

Howell, James

From: Howell, James
Sent: Sunday, September 20, 2020 12:09 AM
To: Elks, Martha
Cc: Anachebe, Ngozi; drew@mosley.law; Thompson, Marla; Herbert-Carter, Janice; Smith, Marjorie; Redding, Kimberly
Subject: RE: re-enter curriculum for pathology and pathophysiology

All:

My lawyer has already reached out to MSM's outside counsel to express the following and I decided it would be prudent to share the same with you all.

As you know, my dismissal from MSM was overturned by Dr. Montgomery-Rice. In that decision, she spoke about MSM's failure in providing me an academic accommodation during my first two years at MSM:

"The SAPP Committee was also aware that during your academic years 2017-2018 and 2018-2019 that you did not receive written notes from the note-taker within 24-48 hours of your courses/classes."

Despite Dr. Montgomery-Rice's statement that, "Dr. Anachebe and Dr. Elks will be contacting you, soon, to discuss option for your reentry into the MSM MD program," the only option I have received has not been one of which I can realistically avail myself. The way I am feeling right now is MSM is attempting to plunge me into a course that began a month ago and is attempting to only allow me to retake the courses from last year, thus putting me back in the exact same prejudicial position as I was last year. I have already indicated that the prior failures to accommodate me during my first two years have left me with deficient fundamentals to succeed to my full potential. I need to start over so that I am not dragged down by what has already happened.

I have pleaded as part of my sought relief in a federal lawsuit against MSM that I be able to start medical school over. It was my understanding that Dr. Montgomery-Rice understood and acknowledged my need to start over during the appeal hearing, for she mentioned that MSM failed to provide an academic accommodation to me during my first two years in her appeal decision. It seems counterintuitive that MSM would only allow me to repeat the same courses as last year (my third year at MSM) when MSM also acknowledges that it failed to provide an academic accommodation to me during my first two years at MSM.

My lawyer has asked MSM's opposing counsel if MSM will wait for the outcome of my federal lawsuit or at least guidance from the court before I resume my studies. I think the law is sufficiently established (see below), that advancement is not all there is to academic accommodation.

> Nova claims that no accommodations were necessary because Redding was ultimately able to complete the first two years of the program and advance to the third, clinical year. The Supreme court has explained that the Rehabilitation Act requires federal grantees to provide a qualified person with a disability "*meaningful* access to the benefit that the grantee offers." *Alexander*, 469 U.S. at 301, 105 S.Ct. 712 (emphasis added) [1985]. In *Alexander*, the Supreme Court cautioned that the "benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled." *Id.*
>
> Implicit in Nova's argument is that meaningful participation is mere advancement to the next academic year. Participation in an academic program cannot be defined so narrowly. Academic achievement is

measured by more than pass/fail. Nova's argument deems delayed advancement equal to advancement and the value of a 'C+' average equal to an 'A' average. Meaningful participation and access to an academic program includes the *opportunity* to advance to the next academic year on the regular schedule and to achieve one's academic potential on a level playing field with one's peers. When a qualified student's disability prevents such meaningful participation, a reasonable accommodation cannot be called unnecessary.

Redding v. Nova Se. Univ., Inc., 165 F. Supp. 3d 1274, 1279–302 (S.D. Fla. 2016)

In sum, if there are other options available please let me know. I am only aware of the one, which has me worried.

Thank you for your consideration of these issues.

Kind Regards,

James "Greg" Howell
jhowell@msm.edu
[redacted]

From: Elks, Martha <melks@msm.edu>
Sent: Wednesday, September 16, 2020 3:57 PM
To: Howell, James <JHowell@msm.edu>
Cc: Anachebe, Ngozi <nanachebe@msm.edu>
Subject: RE: re-enter curriculum for pathology and pathophysiology

Mr. Howell,
Informed by our institutional requirements, your record of course completion, and the deliberations of SAPP, I conferred with Dr. Marjorie Smith, Dr. Herbert-Carter, and Dr. Kim Redding to develop the plan. I have conferred with Dr. Anachebe in its review.

Martha L. Elks, MD, PhD
Senior Associate Dean, Educational Affairs
Professor of Medical Education
Professor of Medicine
Morehouse School of Medicine
720 Westview Drive SW
Atlanta GA 30310
404-752-1881

From: Howell, James <JHowell@msm.edu>
Sent: Wednesday, September 16, 2020 3:50 PM
To: Elks, Martha <melks@msm.edu>
Subject: RE: re-enter curriculum for pathology and pathophysiology

Dr. Elks,

May I inquire who came up with this plan?

Kind Regards,

James "Greg" Howell
jhowell@msm.edu
[redacted]

From: Elks, Martha <melks@msm.edu>
Sent: Wednesday, September 16, 2020 2:37 PM
To: Howell, James <JHowell@msm.edu>
Cc: Smith, Marjorie <masmith@msm.edu>; Herbert-Carter, Janice <jherbertcarter@msm.edu>; Anachebe, Ngozi <nanachebe@msm.edu>; Redding, Kimberly <kredding@msm.edu>; Carter, Alease <acarter@msm.edu>
Subject: re-enter curriculum for pathology and pathophysiology

Mr. Howell (Greg),

You are registered for the following courses

MEDI 600 Pathophysiology	**7.0**
MEDI 606 Pathology	**12.0**
	19.0 total

Pathology (MEDI 606) has already started. All classes are recorded and accessible online. You can join this course (already in progress) with an excused absence for the first examination. This examination will be made up at the end of the course in May 2021. Pathophysiology has not yet begun and will be completely available. Class sessions will also be recorded and accessible.

You will have the full access to MSM student support services including but not limited to tutors, support sessions from the Office of Student Learning and Educational Resources (OSLER) and all other support services.

At this point in time, students are not allowed on campus unless they have had recent Covid testing and have permission to be on campus for a stated time for a stated purpose. Scheduling of covid testing is through Marla Thompson (mthompson@msm.edu).

Please reach out to Dr. Elks (melks@msm.edu) or Dr. Anachebe (nanachebe@msm.edu) for questions or if you encounter issues or barriers. I can set up a zoom or phone meeting if that would be helpful.

Martha L. Elks, MD, PhD
Senior Associate Dean, Educational Affairs
Professor of Medical Education
Professor of Medicine
Morehouse School of Medicine
720 Westview Drive SW
Atlanta GA 30310
404-752-1881

Howell, James

From: Knight, Brandi
Sent: Tuesday, October 31, 2017 9:06 AM
To: Howell, James; Thompson, Marla
Subject: Re: One Drive access and permissions

Categories: Notes

HI all:

Greg - I understand the frustration. I'm sorry for the timing on anything on my part. there are a lot of pieces to this puzzle that I wasn't anticipating, so I'm doing the best that I can with the notetakers. This is a totally new process for us and there is nothing set to work seamlessly and quickly. I'm doing this all as it comes day by day. You are at the mercy of me because I am your direct connect. But I can only give you what I receive - notes come as the students finish them...they are super concerned that they are correct and complete for you. I tried to just calm their concern about that aspect, but it's their notes, so they want to make sure you are reading complete notes.

As far as IT, they have 1.5 people working over there, so I can only get help when they have time for me. Mostly, I've been working this out with the help of Ms. Blossomgame and the student notetakers. I did run into computer issues because of the version I was using of OneNote. Now that is fixed and I started pushing things into the drive for you. I did receive the email that you were able to access the notes. So we can start doing that.

You created a dummy account so we can try that too to preserve anonymity. But as you said, there are aspects of the accommodations that people will recognize - but I'm trying to stay as anonymous as possible.

In addition, I have secured a third note taker for you. This student is specific for gross laboratory which i have been able to monitor your progress. I believe that this student will be helpful and I already have their entire OneNote drive access so as they complete the notes, it's available to me.

You haven't been forgotten or looked over, so please don't feel that way. Mrs. Thompson and I have been working together to make sure we can provide you the services you need the best way this school can. With each student requiring something a little different to meet their needs, our offices are both adding to the services that we offer.

Thanks for the patience and I'll drop notes into the OneDrive today once I get to the office.

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
404.752.1085 – office

404.752.1064 – fax
bknight@msm.edu

From: Howell, James
Sent: Tuesday, October 31, 2017 4:29:59 AM
To: Thompson, Marla; Knight, Brandi
Subject: RE: One Drive access and permissions

All,

If I have misconstrued any of your communications so far, please forgive me.

I realize a lot of the speed bumps we faced getting this matter resolved may revolve around my wanting to keep my anonymity. This want is no longer existent anymore because people are already finding out due to gross anatomy lab, my showing up after quizzes to hear answers, etc. so it doesn't matter anymore so I can stop pretending.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Howell, James
Sent: Tuesday, October 31, 2017 4:03 AM
To: Thompson, Marla <mthompson@msm.edu>; Knight, Brandi <BKnight@msm.edu>
Subject: RE: One Drive access and permissions

Dr. Knight and Ms. Thompson,

My previous email about a miscommunication was about the email I sent below. I had asked some questions to you both and didn't hear back anything back. This is why I said there was miscommunication because Ms. Thompson asked what the progress was and I still hadn't heard back from you two with regards to this email so it just seemed like there wasn't any flow to our conversation and I didn't feel like going through the emails at that time.

I had asked:

Dr. Knight,

Did you receive this email?
Were you able to access the drive and add files to it?
Can you let me know if it was easier than using the Office 365 OneDrive?

Dr. Knight and Ms. Thompson,

I had asked:

"I have a question for you both though. I believe we currently have 2 notetakers. Is there an issue with them possibly seeing the other's notes when they add notes to the drive?"

Going forward:
I'm currently indifferent to what drive they use. My biggest concern so far is having the notes in a timely fashion as well as having the pdf versions replaced by onenote files, because the pdf versions are missing slides and it just makes reading them very frustrating.

It may just be time for me to meet the notetakers so that we can trial run exporting to onenote and seeing if the notetakers can access my drive. I think this is the best way to get this done as expedient as possible so I don't have to think about it anymore; so it doesn't need to float around the back of my mind anymore.

Basically having all the go-betweens, whether it's Dr. Knight, and/or Ms. Thompson, and/or IT is slowing everything down with regards to this process. This is because while I'm sure you're both busy, I don't see why this is taking as long as it is, or at least it hasn't been explained to me why it is taking as long as it is. I know Dr. Knight had some computer problems awhile back. But I'm basically at the mercy of everyone. If I sit down with the notetakers and have a trial run with them, I'm sure I can get this squared away.

I'm really sorry if this is coming off rude or blunt, but I'm really going through some ups and downs with regards to my performance, my focus, and so forth. I'm still looking for what works for me, and in the meantime it's tough having to shake off things that don't work and the consequences they bring. This coupled with so many other things I experience leave me very frustrated which in turn affects everything else. Today was a better day which is why I didn't want to focus on this when I had a good flow going with my studies.

Please let me know if you have any more questions or if you need anything from me.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Howell, James
Sent: Friday, October 27, 2017 3:10 PM
To: Thompson, Marla <mthompson@msm.edu>; Knight, Brandi <BKnight@msm.edu>
Subject: RE: One Drive access and permissions

Dr. Knight and Mrs. Thompson,

We can try what you suggested or go with what we have now. I'm pretty sure everyone already suspects I get accommodations anyways at this time. I'm indifferent at this time and am ready to just put the final nail in this note-taking coffin. Kudos to me for making a spooky Halloween reference.

In any event, I can create a ghost email account and create a drive for that email for going forward.

I have created the email MorehouseStudentODS@gmail.com
Here is the link to add files to the drive:
https://drive.google.com/drive/folders/0BySS5A0ZYd1tCbVZ5b3dIdzI0X0E?usp=sharing

Dr. Knight, see if you can add files to the link above please. I think the OneDrive (Office 365) drive might be better so let me know your experience with it.

I have a question for you both though. I believe we currently have 2 notetakers. Is there an issue with them possibly seeing the other's notes when they add notes to the drive?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Thompson, Marla
Sent: Friday, October 27, 2017 2:35 PM
To: Howell, James <JHowell@msm.edu>; Knight, Brandi <BKnight@msm.edu>
Subject: RE: One Drive access and permissions

Thank you for emailing your feedback. Here's what we will do next week. I have two additional suggestions that may be more favorable. I will need time to speak with my partners in Information Technology to confirm capabilities. The two suggestions that I will check on include:

1. Creation of a ghost email account and address that does not allow for identification; note takers would be instructed to email the notes to that address; you would be given rights to that email account
2. Creation of a sharepoint site where the notes could also be uploaded by the note takers and accessed by you

I have completed a general discussion with them. However, the two people I need to review this with were not available today. Please let me know if these are options you would be interested in pursuing. Thanks.

From: Howell, James
Sent: Friday, October 27, 2017 10:06 AM
To: Knight, Brandi
Cc: Thompson, Marla
Subject: RE: One Drive access and permissions

Dr. Knight,

I'm okay with them knowing my identity but I don't see why they would need to know if only just because they are uploading something to an online drive.

Would the notetaker need to know my identity if I setup a OneDrive or Google drive with a fake name? Maybe something like "Morehouse ODS Student." Maybe this drive could be something ODS uses.

Thoughts?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Knight, Brandi
Sent: Thursday, October 26, 2017 2:33 PM
To: Howell, James <JHowell@msm.edu>
Cc: Thompson, Marla <mthompson@msm.edu>
Subject: One Drive access and permissions
Importance: High

Hi Greg,

I hope this email finds your well.

In order to set up your drive (actually the one that you provided me access to), we need to have permission from you that you are comfortable with the student notetakers knowing your identity. This way, they can upload files directly into your OneDrive and you can have them immediately. This will allow for a further extension of our resources available to you.

Please let myself and Ms. Thompson know how your thoughts about permitting the student notetakers to know your identity via the OneDrive.

Thank you,

Brandi Brandon Knight, PhD
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive
Atlanta, GA 30310
404.752.1085 - office
404.752.1064 - fax
bknight@msm.edu

Howell, James

From: Howell, James
Sent: Monday, January 7, 2019 3:14 PM
To: Knight, Brandi
Subject: RE: New Year - New notes

Dr. Knight,

I had a good break. Yourself? Did your house ever get fixed?

Awesome. I'm glad to see these.

What's your prediction for future notes? Do you think I can still expect notes on a regular schedule?

Did you ever look into the paid notes person? Was this still a feasible plan or did you come up with something else?

Tell me your thoughts please.

Let me know if you would like to meet in person to discuss this.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Knight, Brandi <BKnight@msm.edu>
Sent: Monday, January 7, 2019 1:36 PM
To: Howell, James <JHowell@msm.edu>
Subject: New Year - New notes

Hi Greg,

I hope you had a great time off.

Please find attached your notes and your OneNote will be updated as well!

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
404.752.1085 – office
404.752.1064 – fax
bknight@msm.edu

Howell, James

From: Knight, Brandi
Sent: Tuesday, January 22, 2019 9:01 AM
To: Howell, James
Subject: Re: Notes for you
Attachments: Antidepressants.docx; Sedatives.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Greg,

Here are some pharm lectures that I just received today.

The options of having the curriculum managers and staff participate is the quickest improvement that we can make. There are other students that receive notes and they all come to me. It's very tough for me to keep up with the timing of receiving and sending the notes. Students receiving the notes want them - and they should have them - in a 24h or less turn around. Sometimes that is just not feasible for me to accomplish.

Hiring individuals takes a long time with job posting and HR and training. So that is on the table for upcoming years, but not as a immediate solution.

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
404.752.1085 – office
404.752.1064 – fax
bknight@msm.edu

From: Howell, James
Sent: Tuesday, January 22, 2019 5:08:56 AM
To: Knight, Brandi
Subject: RE: Notes for you

Dr. Knight,

What has brought upon these changes as opposed to other options? I'm not currently opposed to this, I'm just curious. There's been a lot of unfortunate disconnect between everyone and I, and I'd like to know where everyone is at.

Hope you had a pleasant weekend and holiday.

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015
Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Knight, Brandi <BKnight@msm.edu>
Sent: Monday, January 21, 2019 2:57 AM
To: Howell, James <JHowell@msm.edu>
Subject: Re: Notes for you

HI Greg,

I don't have a specific timeline for you, but we are currently working on the transition. I'm still loading notes as of today, so I assume the transition will occur through the next exam block.

Your OneNote is up to date!

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
404.752.1085 – office
404.752.1064 – fax
bknight@msm.edu

From: Howell, James
Sent: Friday, January 18, 2019 6:21:02 PM
To: Knight, Brandi
Subject: RE: Notes for you

Thank you, Dr. Knight.

I look forward to any beneficial changes.

When do we foresee these changes happening?

Kind Regards,

James "Greg" Howell
Morehouse School of Medicine – Class of 2021
NR-AEMT
Georgia State University – Class of 2015

Postbaccalaureate Premedical Program
Emory University, Goizueta Business School – Class of 2007
BBA – Finance, Consulting & Venture Management, Chinese Language & Literature
jhowell@msm.edu
[redacted]

From: Knight, Brandi <BKnight@msm.edu>
Sent: Thursday, January 17, 2019 11:55 AM
To: Howell, James <JHowell@msm.edu>
Subject: Notes for you

Hi Greg,

Here are the Micro and Pharm notes for this block.

As far as the hired notetaker, no one has been hired. The focus has been made to streamlining the process away from me and to the curriculum managers. You'll likely see other people sending you notes now as opposed to my emails. We would like to get your feedback on this as it changes.

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310
404.752.1085 – office
404.752.1064 – fax
bknight@msm.edu

Howell, James

From: Knight, Brandi
Sent: Thursday, January 17, 2019 11:55 AM
To: Howell, James
Subject: Notes for you
Attachments: GI Bacteria.docx; GI Parasites.docx; Antineoplastics-1.docx; Ch-1 GI.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Greg,

Here are the Micro and Pharm notes for this block.

As far as the hired notetaker, no one has been hired. The focus has been made to streamlining the process away from me and to the curriculum managers. You'll likely see other people sending you notes now as opposed to my emails. We would like to get your feedback on this as it changes.

Brandi Brandon Knight, Ph.D.
Director, Office of Student Learning and Educational Resources (OSLER)
Assistant Professor
Department of Medical Education
Department of Microbiology, Biochemistry, and Immunology
Morehouse School of Medicine
720 Westview Drive, S.W.
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bknight@msm.edu

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR.
Plaintiff,
v.

CIVIL ACTION FILE NO.:
1:20-CV-03389-MHC

THE MOREHOUSE SCHOOL OF MEDICINE, INC.
Defendant.

DEFENDANT MOREHOUSE SCHOOL OF MEDICINE, INC'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL BRIEF

Pursuant to this Court's September 14, 2021 Order (Doc. No. 47, the "September Order"), Defendant Morehouse School of Medicine ("MSM") files this response to Plaintiff's Supplemental Brief on the issue of mootness as follows:

INTRODUCTION

In the September Order, this Court asked Plaintiff to demonstrate why the failure to accommodate claims brought under Section 504 of the Rehabilitation Act ("Section 504") and Title III of the Americans with Disability Act ("Title III") are not moot given that the requested relief sought by Plaintiff is unavailable. Plaintiff's Supplemental Brief fails to demonstrate that the claims are not moot. Instead, Plaintiff relies on his request that this Court reconsider its ruling that Plaintiff did

what form of relief was appropriate when referencing this language and instead used this language to explain when an accommodation might be necessary for a student with a disability. Still, requesting to restart school with a "clean" record is not the same as requesting to advance to the next academic year on the regular schedule.

In *Redding*, one of the failure to accommodate claims was based on the institution's alleged failure to reasonably modify its make-up exam policy during the plaintiff's tenure at the institution. *Redding*, 165 F. Supp. 3d at 1295. The *Redding* Court denied the plaintiff's failure to accommodate claim based on the make-up exam policy because she had no viable claim to readmission. *Id.* The court wrote, "even if Redding were to prevail on her remaining ADA claim, she would not be able to enjoy the prospective relief that it affords." *Id.* at 1295. Here, Plaintiff would not be able to enjoy the prospective relief the ADA and Section 504 affords because the failure to accommodate issues were corrected over a year before he was dismissed, and like in *Redding*, Plaintiff no longer has a viable claim to readmission.

In the Amended Complaint, Plaintiff alleged he rejected the reentry plans presented to him; he admittedly has not reenrolled in the MD program at MSM since his dismissal was reversed in September 2020. *See generally* Am. Compl. Notably, the policy in the MSM Student Handbook provides, in pertinent part:

> ***FAILURE TO ENROLL FOR TWO (2) CONSECUTIVE SEMESTERS WITHOUT AN APPROVED LEAVE OF ABSENCE WILL RESULT IN AN AUTOMATIC TERMINATION OF ENROLLMENT. M.D. STUDENTS CANNOT LATER RE-ENROLL. NON-M.D. STUDENTS WHO ARE AUTOMATICALLY TERMINATED MUST REAPPLY THROUGH THE REGULAR ADMISSIONS PROCESS.***

(Doc. No. 1-4, 2017-2018 Student Handbook, at Leaves of Absence, General Policies and Conditions for All Leaves, p.73; Doc. No. 1-5, 2018-2019 Student Handbook, at p.78; Doc. No. 1-6, 2019-2020 Handbook, at 79.)[4] Plaintiff does not allege he enrolled during the Fall 2020 semester, the Spring 2021 semester, or the Fall 2021 semester. Plaintiff also does not allege he sought or was granted a leave of absence.[5] In short, Plaintiff is not a current student at MSM and can no longer reenroll in the M.D. program at MSM. This Court even noted Dr. Montgomery Rice reversed the dismissal, and that Plaintiff had not indicated he will return absent restarting the MD program with his academic record deleted. (Doc. No. 47 at 48-51, 57-64.) Accordingly, Plaintiff's request to restart the MD program at MSM and delete his grades is unavailable relief. The failure to accommodate claim is moot.

[4] Notably, after Plaintiff's dismissal was reversed, Dr. Elks communicated with Plaintiff regarding proposed academic reentry plans. Plaintiff rejected the plans claiming he must be able to restart school with his entire academic record deleted. In correspondence dated in January 2021, Dr. Elks notified Plaintiff of MSM's Policy concerning failure to enroll for two semesters, without an approved leave of absence. Plaintiff was asked to confirm his intentions for continuing the MD program. Plaintiff did not seek leave or enroll in any courses.

[5] Notably, Plaintiff has failed and continues to fail to mitigate his damages.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., Plaintiff,	}	Civil Action No.
vs.	}	1:20-cv-03389-MHC
THE MOREHOUSE SCHOOL OF MEDICINE, INC., Defendant.	}	

REPLY IN SUPPORT OF PLAINTIFF'S SUPPLEMENTAL BRIEF

Plaintiff's failure-to-accommodate claims [Counts I and III] are not moot.[1]

ARGUMENT

To clarify Defendant Morehouse School of Medicine's ("MSM") intentional misstatements, Plaintiff was not instructed he could enroll in courses. (Doc. 55 at p.3, MSM's Response.) MSM enrolled Plaintiff in the classes that MSM needed him to take in order for MSM to limit its liability. This is evident by MSM charging him tuition for the classes in MSM's prejudicial and inequitable reentry plan[2] that Plaintiff is challenging (and is more evidence that Plaintiff himself

[1] All documents cited herein refer to their CM/ECF page numbers, not to the document's internal number system.
[2] MSM uses the word "plans" but as explained in Plaintiff's response to MSM's motion to dismiss, "the record only has one academic reentry plan proposed by MSM. (Doc. 24 ¶¶ 315-320.)" (Doc. 37-1 at p.25, Response to MSM's MTD.)

27; Doc. 37-1 at p.13-14; (("*See Redding*, 165 F. Supp. 3d at 1300 n.30", "academic consequences") Doc. 37-1 at p.14).)

MSM has introduced the new facts and contentions that Plaintiff is now permanently dismissed and can never reenroll in MSM's MD program due to MSM's application of its Leave of Absence policy. (Doc. 55 at p.8-9.) To argue against this, Plaintiff must introduce new evidence.

As explained in Plaintiff's Amended Complaint [Doc. 24], Plaintiff's dismissal was overturned on September 15, 2020, due to MSM's failure to provide for Plaintiff's note-taking accommodation and because the dismissal was without sufficient evidence. (Doc. 24 ¶ 313.) On September 20, 2020, Plaintiff notified MSM that its proposed reentry plan for him was inequitable and prejudicial (Doc. 24 ¶ 319) and notified MSM that he was waiting for the outcome of his disability discrimination lawsuit against MSM, or at least guidance from this Court, before he resumed his studies. (Doc. 24-7, Plaintiff's Email to MSM.) Plaintiff's counsel also notified MSM's counsel that Plaintiff wished to wait for the outcome or at least guidance from this Court before Plaintiff resumed his studies, though no correspondence was received back from MSM's counsel. (Exhibit D at p.1-2, Plaintiff's Counsel's Email with Opposing Counsel; Exhibit B ¶ 19, Declaration.) MSM has never made any mention, notice, or warning to Plaintiff or his counsel

about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against Plaintiff if he did not accept MSM's reentry plan. (Exhibit B ¶ 7, Declaration.) MSM has never made any mention, notice, or warning to Plaintiff or his counsel about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against Plaintiff if he chose to wait for this Court's guidance regarding his disability discrimination lawsuit against MSM. (Exhibit B ¶ 8, Declaration.) Plaintiff contends that MSM's actions are contemptuous of this Court.

MSM subsequently authorized Dr. Martha Elks, Senior Associate Dean of Educational Affairs, to speak with Plaintiff on September 22, 2020, concerning his future reentry. (*See* Doc. 24 ¶¶ 321-323.) During Plaintiff's conversations with Dr. Elks on September 22, 2020, Plaintiff was assured *he would not be dismissed again if he did not accept MSM's reentry plan.* (Exhibit B ¶ 9, Declaration.) Further, Plaintiff was assured via email on November 11, 2020, that *he would not be dismissed if he did not accept MSM's reentry plan.* (Exhibit A, Email Communications with Dr. Elks; Exhibit B ¶ 19, Declaration.) Neither Dr. Elks nor MSM made any mention, notice, or warning to Plaintiff or his counsel about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against Plaintiff if he did not accept MSM's reentry plan. (Exhibit B ¶

10, Declaration.) Neither Dr. Elks nor MSM made any mention, notice, or warning to Plaintiff or his counsel about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against Plaintiff if he chose to wait for this Court's guidance regarding his disability discrimination lawsuit against MSM. (Exhibit B ¶ 11, Declaration.) MSM instilled confidence in Plaintiff in that he would not be dismissed again and that there was nothing else he needed to do in waiting for this Court's decision on MSM's motion to dismiss regarding his disability discrimination lawsuit. (Exhibit B ¶ 12, Declaration.)

MSM's claim that Dr. Elks sent Plaintiff a "correspondence dated in January 2021" in which she notified Plaintiff of MSM's Leave of absence policy (Doc. 55 at p.9 n.4.) is an utter fabrication and patently untrue. (Exhibit B ¶ 13, Declaration.) Plaintiff has received no correspondence from Dr. Elks since December 24, 2020, when she said she would look into why Plaintiff's MSM email access was revoked after Plaintiff inquired to her via his personal email on December 23, 2020 (though she never responded back afterwards). (Exhibit B ¶ 14, Declaration.) If the 'January 2021 correspondence' was sent to Plaintiff's MSM school email, that MSM already revoked and never afterwards notified Plaintiff if it was unrevoked, or is a fabrication of events, then this amounts to knowingly and willfully using subterfuge, artifice, deceit, and malice in MSM's

continued efforts to harm Plaintiff financially, academically, with respect to his career, mentally, and emotionally.

This Court has already found that Plaintiff has sufficiently pled a claim for breach of fiduciary duty, which requires a confidential relationship. (Doc. 47 at p.78.) [15] [16] Further, MSM's Student Handbook states in its Leave of Absence policy,

> "MSM's goal is to assist each individual student in achieving their academic goals in a manner that is consistent with their individual values, medical needs, and quality of life, and accommodates, as feasible and reasonable, extenuating circumstances that arise during their education."

(Doc. 1-6 at p.77.) The extenuating circumstances Plaintiff currently faces are outside the scope of MSM's Leave of Absence policy because MSM also has a policy against discrimination which is the basis of Plaintiff's current action. (Doc. 1-6 at p.39-40 & 71-73.) Since filing this present action for including but not limited to disability discrimination, MSM has made no mention, notice, or warning

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[15] *"See Murray-Shanks v. Rabun Gap-Nacoochee Sch., Inc.*, 2:13-CV-00211-WCO, 2014 WL 12516253, at *3 ("A fiduciary relationship arises 'where one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith, such as the relationship between partners, principal and agent, etc.' O.C.G.A. § 23-2-58.")." (Doc. 37-1 at p.65 n.53, Response to MSM's MTD.)

[16] *See Goldston v. Bank of Am. Corp.*, 577 S.E.2d 864, 868 (Ga. App. 2003) ("In cases of [a] confidential relationship, silence when one should speak, or failure to disclose what ought to be disclosed, is as much a fraud in law as [is] an actual ... false representation" (footnote omitted).)

to Plaintiff about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied to him in his current situation. (Exhibit B ¶ 15, Declaration.) Additionally, one of the reasons for Plaintiff's original dismissal was academic failure due to MSM's failure to provide for his note-taking accommodation. MSM's Student Handbook states, "A leave of absence will **not** be granted for academic failure." (Doc. 1-6 at p.77.) Why would Plaintiff have even contemplated MSM's Leave of Absence policy would apply to his situation to begin with? Further, MSM is insisting Plaintiff must have requested a leave of absence while he pursues this present action for disability discrimination, and yet MSM removed his primary means, if not the sole means, of communicating with MSM by revoking his school email access in December of 2020. (Exhibit B ¶ 14, Declaration.) MSM has knowingly and willfully used subterfuge, artifice, deceit, and malice in its application of this policy against Plaintiff in MSM's efforts to harm him financially, academically, with respect to his career, mentally, and emotionally. MSM is attempting to harm Plaintiff for his waiting on this Court's guidance regarding his disability discrimination lawsuit.

MSM's new attempt to summarily, maliciously, arbitrarily, and permanently dismiss Plaintiff using its Leave of Absence policy comes just two (2) weeks after Plaintiff's protected communication of submitting to this court evidence via

Howell, James

From: Elks, Martha
Sent: ednesday, No ember 11, 2020 : 1 M
To: Howell, James
Subject: RE: J H etter 11.10.pdf

You would not be dismissed from the MD program. You would no longer be registered for any courses for this semester.

Martha L. Elks, MD, PhD
Senior Associate Dean, Educational Affairs
Professor of Medical Education
Professor of Medicine
Morehouse School of Medicine
720 Westview Drive SW
Atlanta GA 30310
404-752-1881

Howell, James <JHowell@msm.edu>
Wednesday, November 11, 2020 4:25 PM
Elks, Martha <melks@msm.edu>
RE: JGH Letter 11.10.pdf

Dr. Elks,

Thank you.

Can you also expand on what will happen if I do not accept this proposed plan by 12 p.m. November 20, 2020?

Will I be dismissed again?

Kind Regards,

James "Greg" Howell
jhowell@msm.edu
[redacted]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., Plaintiff,	}	Civil Action No.
vs.	}	1:20-cv-03389-MHC
THE MOREHOUSE SCHOOL OF MEDICINE, INC., Defendant.	}	

DECLARATION OF JAMES HOWELL PURSUANT TO 28 U.S.C. § 1746

I am Plaintiff James Howell. I am of legal age and competent to testify on the matters stated below.

1.

Plaintiff's 50-1 is screenshots between students at Defendant Morehouse School of Medicine (hereafter referred to as "MSM") discussing how the Office of Disability Services ("ODS") was discriminating against, neglecting, and vexing students with disabilities during the Fall 2020 semester.

2.

I was not one of the students in Doc. 50-1.

3.

I have experienced severe emotional distress due to the actions of MSM.

4.

Due to MSM's dismissal proceedings against me, which began on or around May 29, 2020, I have been, and have since been, diligently receiving psychiatric treatment for my severe emotional distress.

5.

This treatment is beyond the treatment for my disability.

6.

On September 20, 2021, my diagnosis of depression from the actions of MSM, as outlined in the Amended Complaint [Doc. 24], was upgraded to severe refractory depression by my psychiatrist.

7.

I have never received any mention, notice, or warning from MSM or its counsel about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against me if I did not accept MSM's reentry plan.

8.

I have never received any mention, notice, or warning from MSM or its counsel about MSM's Leave of Absence policy or that MSM's Leave of Absence

policy would be applied against me if I chose to wait for this Court's guidance regarding my disability discrimination lawsuit against MSM.

9.

During my conversation with Dr. Martha Elks, Senior Associate Dean of Educational Affairs, on September 22, 2020, I was assured that I would not be dismissed again if I did not accept MSM's reentry plan.

10.

I have never received any mention, notice, or warning from Dr. Martha Elks, Senior Associate Dean of Educational Affairs, or MSM about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against me if I did not accept MSM's reentry plan.

11.

I have never received any mention, notice, or warning from Dr. Martha Elks, Senior Associate Dean of Educational Affairs, or MSM about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against me if I chose to wait for this Court's guidance regarding my disability discrimination lawsuit against MSM.

12.

MSM instilled confidence in me that I would not be dismissed again and there was nothing else I needed to do in waiting for this Court's decision on MSM's motion to dismiss regarding my disability discrimination lawsuit.

13.

I have never received any type of correspondence, let alone correspondence specifically about MSM's Leave of Absence policy, from Dr. Martha Elks, Senior Associate Dean of Educational Affairs, in January of 2021, and I believe any contention otherwise is a fabrication and false.

14.

The last correspondence I have received from Dr. Martha Elks, Senior Associate Dean of Educational Affairs, was an email (to my personal email) on December 24, 2020, telling me she would look into why access to my MSM school email was revoked; I never heard back from her.

15.

Since I have filed this present action, MSM has made no mention, notice, or warning to me about MSM's Leave of Absence policy or that MSM's Leave of Absence policy would be applied against me in my current situation.

16.

I serve as a paralegal for my counsel, Drew Mosley, with regards to this present action. The extent of my duties are such that I could not do them and simultaneously be in medical school. I could not afford to pay for the legal services I need without participating to reduce costs.

17.

All medical students must enter a residency program after graduating from medical school in order to practice medicine, and matching into residency is the most important part of medical school.

18.

I, James Howell, declare under penalty of perjury that the foregoing is true and correct.

19.

I, James Howell, declare under the penalty of perjury that the exhibits I have provided (Exhibit A, Email Communication with Dr. Elks; and Exhibit D, Plaintiff's Counsel's Email with Opposing Counsel) are true and authentic copies of communications I have directly participated in or received from others.

20.

I, James Howell, declare under the penalty of perjury that the exhibit (Exhibit C - MSM's Title IX PowerPoint) was first discovered by me on October 16, 2021.

21.

I, James Howell, declare under the penalty of perjury that the case, *Segev v. Lynn U., Inc.*, 19-CV-81252, 2021 WL 2269838, at *9 (S.D. Fla. Feb. 26, 2021), *report and recommendation adopted,* 19-81252-CIV, 2021 WL 1996437 (S.D. Fla. May 19, 2021), was first discovered by me on October 19, 2021.

22.

I, James Howell, declare under the penalty of perjury that the exhibit previously filed (Doc. 50-1, Screenshot) is a true and authentic copy of communications among MSM students (whose identities I have redacted for their protection and anonymity as students with disabilities) that I have directly received from others.

/s/ James Howell
James Howell

October 19, 2021
Date of Execution

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JAMES HOWELL, JR.,

Plaintiff-Appellant

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, the United States as amicus curiae certifies that, in addition to those identified in the brief filed by plaintiff-appellant, the following persons may have an interest in the outcome of this case:

1. Bell Hughes, Aileen, U.S. Department of Justice, Assistant United States Attorney, Northern District of Georgia;
2. Buchanan, Ryan K., U.S. Department of Justice, United States Attorney, Northern District of Georgia;
3. Clarke, Kristen, U.S. Department of Justice, Civil Rights Division, counsel for the United States;
4. Lamm, Katherine E., U.S. Department of Justice, Civil Rights Division, counsel for the United States;
5. Riley, Nicolas Y., U.S. Department of Justice, Civil Rights Division, counsel for the United States;
6. Robin-Vergeer, Bonnie I., U.S. Department of Justice, Civil Rights Division, counsel for the United States.

The United States certifies that no publicly traded company or corporation has an interest in the outcome of this appeal.

s/ Katherine E. Lamm
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Date: March 27, 2023

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-13778

JAMES HOWELL, JR.,

Plaintiff-Appellant

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN

INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which concerns the relief available under Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. 12182, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. Both statutes prohibit disability discrimination at most private universities, which typically receive federal financial assistance. The Department of Justice has significant responsibility for the implementation and enforcement of Title III and Section 504, see 42 U.S.C. 12186(b), 12188(b); 29 U.S.C. 794(a), 794a; 28 C.F.R.

Pt. 36, including coordinating the enforcement of Section 504 by all federal agencies, see 28 C.F.R. Pt. 41 & App. A (Exec. Order No. 12,250). The Department of Education has responsibility for the implementation and enforcement of Section 504 with respect to programs or activities to which it provides federal financial assistance, including universities. See 29 U.S.C. 794(a), 794a; 34 C.F.R. 104.4, 104.6, 104.43-44. The United States regularly files amicus briefs addressing the proper interpretation and application of Title III and Section 504. See, *e.g.*, U.S. Br. as Amicus Curiae, *Campbell* v. *Universal City Dev. Partners*, No. 22-10646 (11th Cir. June 9, 2022) (Title III); U.S. Br. as Amicus Curiae, *Silva* v. *Baptist Health S. Fla.*, 856 F.3d 824 (11th Cir. 2017) (No. 16-10094) (Title III and Section 504); U.S. Br. as Amicus Curiae, *Argenyi* v. *Creighton Univ.*, 703 F.3d 441 (8th Cir. 2013) (No. 11-3336) (Title III and Section 504).

The United States files this brief under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUE

Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12181 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. 794, require most private universities to provide reasonable accommodations to students with

disabilities.[1] The question the United States addresses here is whether a medical student who was unlawfully denied a note-taking accommodation under those statutes may obtain as relief an injunction permitting him to restart his medical education afresh.

STATEMENT OF THE CASE

1. Statutory And Regulatory Background

Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. 12182(a).[2] Among other things, Title III prohibits discriminatorily denying an individual with a disability "the opportunity * * * to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity," or providing an "opportunity to participate * * * that is not equal to that afforded to other individuals." 42 U.S.C. 12182(b)(1)(A)(i)-(ii).

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[1] Although Title III and the regulations implementing Section 504 in the higher education context use the term "reasonable modification," it is often used interchangeably in the case law with the term "reasonable accommodation." Here, we primarily use "reasonable accommodation," consistent with the briefing below.

[2] A "postgraduate private school" is a place of public accommodation. 42 U.S.C. 12181(7)(j).

The statute defines "discrimination" to include the "failure to make reasonable modifications in policies, practices, or procedures," when "necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter [their] nature." 42 U.S.C. 12182(b)(2)(A)(ii); see also 28 C.F.R. 36.302. A public accommodation also may violate Title III when it fails to provide "auxiliary aids and services" necessary to ensure that an individual with a disability is not "excluded, denied services, segregated, or otherwise treated differently" from others, unless providing such aids or services would constitute a fundamental alteration or result in an undue burden. 42 U.S.C. 12182(b)(2)(A)(iii); see also 28 C.F.R. 36.303.

Section 504 prohibits discrimination on the basis of disability "under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a). The Department of Education's implementing regulations provide, in relevant part, that qualified students with disabilities shall not be excluded from participation in, denied the benefits of, or otherwise discriminated against in the "aid, benefits, or services" of a postsecondary education program. 34 C.F.R. 104.43(a). Nor may such students be excluded "from any course, course of study, or other part of its education program or activity." 34 C.F.R. 104.43(c). A postsecondary educational program also must modify its "academic requirements" and provide "auxiliary

aids" and "other similar services" to ensure that students with disabilities do not experience denial of benefits, exclusion, or discrimination. 34 C.F.R. 104.44(a) and (d).

Both Title III and Section 504 permit private civil suits for injunctive relief. Title III incorporates the remedies available in a provision in Title II of the Civil Rights Act of 1964 (addressing public accommodations), which include "preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order." 42 U.S.C. 2000a-3(a); see 42 U.S.C. 12188(a)(1); 28 C.F.R. 36.501(a). Section 504 incorporates the remedies of Title VI of the Civil Rights Act, 42 U.S.C. 2000d *et seq.* (addressing prohibited discrimination by recipients of federal financial assistance), which have been interpreted to encompass "any appropriate relief," including an injunction. 29 U.S.C. 794a(a)(2); see *Barnes* v. *Gorman*, 536 U.S. 181, 185, 187 (2002); *Alexander* v. *Sandoval*, 532 U.S. 275, 279 (2001).

2. Relevant Factual Background[3]

Plaintiff James Howell, Jr., was accepted to Morehouse School of Medicine in 2017 for its prospective class of 2021. Doc. 24, at 16 (Am. Compl.).[4] Howell

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[3] We take the allegations in the complaint as true, as required at the Rule 12(b)(6) stage.

[4] "Doc. __" refers to the document number on the district court docket, *Howell* v. *The Morehouse School of Medicine, Inc.*, No. 1:20-cv-3389 (N.D. Ga.).

No. 24-_____

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

VOLUME 11:

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has been diagnosed with severe attention deficit/hyperactivity disorder and other anxiety disorders, which are "mental impairments that substantially limit[] and significantly restrict[] major life activities" such as "learning, concentrating, and thinking." Doc. 24, at 14. In light of this disability, Howell requested, among other things, a "note-taking accommodation" under which he would receive lecture notes for each class. Doc. 24, at 19-20. A few weeks before the start of Howell's first semester, Morehouse agreed to the accommodation, with an expectation of providing notes 24-to-48 hours after each class. Doc. 24, at 20, 26-27.

When classes began, however, the note-taking accommodation was not in place. Doc. 24, at 33-34. A few weeks into the semester, Howell complained to school officials that he still did not have a note-taker and was struggling to keep up in his courses—which featured a lecture-heavy, cumulative curriculum—and therefore feared failing his exams. Doc. 24, at 33-34. Eventually, Howell began receiving notes for some classes, but only nine or ten days after the lectures had occurred. Doc. 24, at 43. Similar problems persisted throughout the school year: Howell calculated that he ultimately received notes for only 61% of his classes, with an average turnaround time of 4.17 days. Doc. 24, at 45.

Howell passed his first year with a grade-point average of 2.49/4.00. Doc. 24, at 46. He initially failed one class for which he did not receive over 30% of the notes. Doc. 24, at 47. Although Howell later took a comprehensive exam that

enabled him to pass the course (albeit with the lowest-possible test score), his academic record still reflects the initial failing grade. Doc. 24, at 48. Howell avers that grades are important to acceptance to residency programs. Doc. 24, at 46.

Subsequently, Morehouse "suggested" that Howell take the second-year medical school curriculum over two years instead of one, an option known as "academic deceleration." Doc. 24, at 51. Although Howell understood that the prolongment of his medical education would be viewed unfavorably by residency programs (as a Morehouse dean warned), he opted to decelerate. Doc. 24, at 52-53. He did this because of his "mounting lack of faith" in the school's ability to deliver the note-taking accommodation, his "poor grades," and "emotional turmoil." Doc. 24, at 52.

Morehouse granted Howell the note-taking accommodation for his next year of medical school, but problems persisted. Doc. 24, at 53. Howell calculated that he received notes for 88% of his classes, but that they arrived on an average 14.61-day turnaround. Doc. 24, at 58. In one course, he received no notes for five of six classes prior to the final exam. Doc. 24, at 58. As a result, Howell again struggled and achieved a grade-point average of 2.68. Doc. 24, at 58.

In Howell's third year, he began to receive notes "more or less adequately." Doc. 24, at 61. But because he had not received timely or complete notes during the preceding two years, and because the school's curriculum was cumulative, he

remained at a disadvantage: as he puts it, he was "unable to properly learn and understand" the material in his third year (which focused on abnormal human physiology) because he never had an adequate opportunity to learn the material from his first two years (which focused on normal human physiology). Doc. 24, at 62. Howell thus failed his third-year classes. Doc. 24, at 74. He attributes his poor grades to Morehouse's failure to provide him the note-taking accommodation during his first two years and the additional time he had to spend trying to remedy that failure. Doc. 24, at 74.

Morehouse attempted to dismiss Howell after his third year based on his failing grades and his inability to complete the first- and second-year curricula within three years. Doc. 24, at 74-75, 98. The school's president, however, reversed the dismissal on Howell's appeal because he had not received the note-taking accommodation during his first two years and because the school provided him with a delayed dismissal hearing. Doc. 24, at 112. Following his reinstatement, school officials proposed that Howell resume his studies five weeks into the 2020-2021 school year and that he be allowed to retake the two courses he failed in his third year. Doc. 24, at 113-114. Howell rejected this proposal as "inequitable and prejudicial." Doc. 24, at 114. Instead, he sought to "restart his medical education" with full accommodations so that he would have "a solid foundational knowledge base" in order "to become the best physician he possibly

can" and to have his academic record "deleted" so that he would not be "forever prejudiced." Doc. 24, at 116-117. He has not reenrolled at Morehouse. Doc. 47, at 25.

3. District Court Proceedings

Howell sued Morehouse in the Northern District of Georgia. See Doc. 1. The operative complaint contains 15 counts and alleges that Morehouse failed to reasonably accommodate him or provide him auxiliary aids or services in violation of Title III and Section 504. Doc. 24, at 119-126, 149-156. The complaint alleges that Morehouse is a program or activity that receives federal financial assistance. Doc. 24, at 7. Howell seeks an injunction permitting him to restart medical school and erase his prior academic record. Doc. 24, at 328, 330.

The district court granted Morehouse's motion to dismiss. Doc. 47. The court held, in relevant part, that Howell had stated a valid failure-to-accommodate claim under both Title III and Section 504 because he met his burden of pleading that he had a disability, was otherwise qualified within the meaning of the statutes, and that Morehouse denied him the reasonable accommodation. Doc. 47, at 40-48.[5] Specifically, the court held that Howell sufficiently alleged that Morehouse's failure to provide Howell with the note-taking accommodation ultimately deprived

[5] "ADA and [Rehabilitation Act] claims are governed by the same substantive standard of liability." *Silva* v. *Baptist Health S. Fla., Inc.*, 856 F.3d 824, 830-831 (11th Cir. 2017).

him of an opportunity to advance on a regular schedule and succeed academically on the same footing as his peers. Doc. 47, at 45-47. But the court nevertheless concluded that it could not grant Howell any of the relief he sought to remedy that violation. Doc. 47, at 63. The court stated that "Howell's requested relief of restarting his entire medical education with a deletion of his prior academic record is improper under the ADA or [Section 504]." Doc. 47, at 61. The court based that conclusion on an unpublished district-court decision, *Wilf* v. *Board of Regents of the University System of Georgia*, which held that "[r]emoving grades from a college transcript, even if the plaintiff were to demonstrate an ADA or Sec. 504 violation, is simply not appropriate relief under the ADA or Sec. 504." No. 1:09-CV-1877, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010); see Doc. 47, at 62.

As relevant here, the district court further reasoned that it could not grant Howell any additional relief because Morehouse already had offered him the opportunity to retake the classes he failed in his third year, and Howell had not alleged that he would return to Morehouse if offered anything short of the opportunity to restart medical school with a clean slate. Doc. 47, at 62-63.[6] In a

[6] The district court also held that Howell had not sufficiently pleaded a claim for damages under Section 504, which requires "deliberate indifference" on the part of a person who is capable of making an official decision on the defendant's behalf. Doc. 47, at 58-61 (citing *Silberman* v. *Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019) and *Saltzman* v. *Board of Comm'rs of N. Broward Hosp. Dist.*, 239 F. App'x 484, 487-488 (11th Cir. 2007)).

separate order, the court denied Howell's subsequent motion for reconsideration and held the case is moot. Doc. 74, at 18-21, 30-34.

Howell timely appealed the district court's orders dismissing his complaint on the merits, denying his motion for reconsideration, and dismissing the complaint as moot. Doc. 87.

SUMMARY OF ARGUMENT

This Court should vacate the district court's decision granting Morehouse's motion to dismiss because it rests on an incorrect premise that restarting an educational program with a clean slate is not a form of relief available under Title III or Section 504. The court's holding that such a remedy is categorically unavailable under Title III and Section 504—even when a plaintiff has stated a valid failure-to-accommodate claim—has no basis in the text of either statute or in binding case law. It also contravenes basic principles that guide courts in providing equitable relief. Indeed, such an outcome might diminish educational institutions' incentives to fully and expediently implement needed accommodations.

While restarting school afresh might not be appropriate in many cases, it nevertheless remains an important remedial option in certain cases where the failure to provide timely accommodations renders other remedies inadequate. A court's analysis of the propriety of a particular form of relief should hew to

traditional equitable principles, including whether the remedy is appropriate to correct the violation and consistent with underlying statutory purposes. This Court therefore should vacate and remand for the district court to consider the sufficiency of Howell's pleadings under traditional equitable principles, rather than impose an incorrect categorical rule regarding unavailable forms of relief.

ARGUMENT

THE DISTRICT COURT ERRED BY CATEGORICALLY REJECTING THE AVAILABILITY OF RESTARTING SCHOOL AFRESH AS RELIEF INSTEAD OF APPLYING NORMAL EQUITABLE PRINCIPLES

A. Restarting School Afresh Is Not Forbidden Relief Under Title III Or Section 504

The district court erred in holding that restarting medical school with a clean slate is not proper relief under the ADA or Section 504. Doc. 47, at 61; Doc. 74, at 18-19. This conclusion contravenes foundational cases defining courts' authority to craft equitable remedies and has no basis in either statute or its implementing regulations. Indeed, other cases and the federal government's longstanding enforcement practice show that remedies for failing to provide needed accommodations may include expungement of academic records and opportunities to redo coursework. Such remedies may be appropriate to afford students with disabilities an equal chance to participate in schools' academic programs.

As the Supreme Court has explained, "we presume the availability of all appropriate remedies"—*i.e.*, those necessary to rectify a legal wrong—"unless

Congress has expressly indicated otherwise." *Franklin* v. *Gwinnett Cnty. Schs.*, 503 U.S. 60, 66 (1992); see also *Disabled in Action* v. *Board of Elections in City of N.Y.*, 752 F.3d 189, 198 (2d Cir. 2014) (same, regarding injunctive relief available under Title II and Section 504).[7] Both Title III and Section 504 make prospective injunctive relief available to individuals who experience disability discrimination. See 42 U.S.C. 12188(a)(1) (incorporating into Title III the remedies of 42 U.S.C. 2000a-3(a), which includes "preventive relief, *including an application for a permanent or temporary injunction*, restraining order, or other order") (emphasis added); 29 U.S.C. 794a(a)(2) (incorporating into Section 504 the remedies of Title VI, 42 U.S.C. 2000d *et seq.*, which the Supreme Court has interpreted to include injunctive relief). Neither statute (or its implementing regulations) contains express limitations on the types of prospective injunctive relief that may be sought.[8]

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[7] The scope of relief available to individuals is the same under Title II and Section 504. See 42 U.S.C. 12133 ("The remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title."); see also 42 U.S.C. 12201 (the ADA should not be construed to provide less protection than the Rehabilitation Act).

[8] Courts have understood "preventive relief" for purposes of Title III to be synonymous with prospective relief (such as an injunction), in contrast with retrospective relief (such as monetary damages), which is unavailable under Title III. See, *e.g.*, *A.L. by and through D.L.* v. *Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270, 1290 (11th Cir. 2018) ("Title III provides for only injunctive relief."); *Fischer* v. *SJB-P.D., Inc.*, 214 F.3d 1115, 1120 & n.6 (9th Cir. 2000)

The district court here held that Howell sufficiently pleaded that Morehouse violated Title III and Section 504 by denying him the note-taking accommodation, but then held that it was powerless to remedy that violation. In so doing, the court relied on a single, unpublished decision by another judge in the same district. Doc. 47, at 61; Doc. 74, at 18-19. That decision, *Wilf* v. *Board of Regents of the University System of Georgia*, held that "[r]emoving grades from a college transcript" is "simply not appropriate relief under the ADA or Sec. 504" in a failure-to-accommodate case. No. 1:09-CV-1877, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010). *Wilf* offered no authorities or reasoning in support of this conclusion, other than a reference to its own statement "in a prior order." *Ibid.* But the district court in Howell's case did not cite any such order; it is not even clear to which "prior order" *Wilf* referred. Indeed, the district court here never explained why it treated *Wilf*—a decision cited by Morehouse (Doc. 36, at 31-32) but apparently by no other court—as effectively binding. Nor does there appear to be any controlling authority for the proposition that grade expungement or the opportunity for a fresh start are *never* appropriate relief under Title III or Section 504, much less where, as here, a plaintiff pleads that his academic performance

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(explaining that under Title III, "a private individual can only obtain 'preventive relief,' which means injunctions and temporary restraining orders" and not damages) (citing *Newman* v. *Piggie Park Enters., Inc.*, 390 U.S. 400 (1968) (per curiam)).

suffered because the school failed to provide a reasonable accommodation. Doc. 47, at 44-48.

This Court and other courts of appeals have implicitly endorsed remedies under the ADA and Section 504, such as grade expungement, that are similar to those that Howell seeks here. For example, in *Rudnikas* v. *Nova Southeastern University*—which postdates the district court's decision in this case—this Court, over a mootness objection, allowed a law student to pursue an injunction ordering the expungement of a failing grade (which had caused his dismissal) and reversal of a suspension as remedies for retaliation under Title III and Section 504. No. 21-12801, 2022 WL 17952580, at *6 (11th Cir. Dec. 27, 2022) (per curiam). The Court reasoned that the student's dismissal from school did not render his appeal moot, because "if we granted him the requested relief, [he] would be reinstated." *Ibid.* This reasoning assumes that academic record expungement and modification are viable remedies under Title III and Section 504. See also, *e.g.*, *Constantine* v. *Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 496 (4th Cir. 2005) (allowing Section 504 claim to proceed that sought as relief expungement of a failing grade or "re-examination under reasonable circumstances").[9]

[9] Likewise, the district court erred here in concluding that Howell's failure-to-accommodate claim was "moot." The court held the claim was moot both because Howell allegedly sought impermissible relief and because after he filed suit, Morehouse reversed Howell's dismissal and offered him the opportunity to retake his third-year classes—a "portion" of his desired relief. Doc. 47, at 62-64,

The Fourth Circuit's decision in *Shepard* v. *Irving*, 77 F. App'x 615 (4th Cir. 2003), cert. dismissed, 542 U.S. 959 (2004), similarly suggests that Howell's proposed remedy is permissible. In *Shepard*, which arose under Title II and Section 504, the court rejected a state university's argument that a student's failing grade and plagiarism conviction did not constitute "a continuing injury" for purposes of seeking relief under Title II pursuant to *Ex parte Young*, holding instead that record expungement was a viable remedy. *Id.* at 620. The court further held that the student could seek, in the alternative, a new Honor Code hearing on the grade and conviction, conducted with previously-denied parental or legal representation—"circumstances in which her disability does not disadvantage her." *Ibid.*

The district court here rejected *Shepard* because it was "not binding precedent" and because "Howell has not alleged that he has accepted [Morehouse]'s plan for entry so, at this point, he would have no standing under

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83; Doc. 74, at 30-34. Mootness, however, arises "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell* v. *McCormack*, 395 U.S. 486, 496 (1969). The court's conclusion that it was powerless to issue the relief Howell sought, even if it were correct as a legal matter (which it was not), would not eliminate the existence of a live dispute. Nor would Morehouse's voluntary offer of *partial* relief. Cf. *Campbell-Ewald, Co.* v. *Gomez*, 577 U.S. 153, 161-162 (2016).

Shepard." Doc. 47, at 62.[10] The plaintiff in *Shepard*, however, already had graduated, see 77 F. App'x at 617; it is not evident why Howell's non-acceptance of Morehouse's offer to resume his studies (while seeking to return on more favorable terms) would render his request for relief more suspect as a matter of standing. Further, the district court ignored the common premises that underpin both Shepard's claim and Howell's—that blemishes on an academic record that were produced by disability discrimination may have an ongoing impact on the student's career, and that only a "do-over" may rectify an academic process that was conducted without reasonable accommodations. See also *Constantine*, 411 F.3d at 496.

Indeed, relief of the nature Howell proposes—including opportunities to re-take courses or to have poor grades expunged—is well established in the federal government's resolution of students' ADA and Section 504 complaints alleging denials of accommodations or other discrimination. While the scope of relief available through voluntary agreements may not precisely mirror the bounds of courts' equitable powers, federal agency practice nevertheless illustrates the types

[10] The district court cited, by way of contrast, *Alejandro* v. *Palm Beach State College*, 843 F. Supp. 2d 1263, 1273 (S.D. Fla. 2011). Doc. 47, at 62. But *Alejandro* is inapposite, as the question at issue there was whether a former student continued to have standing for a previously-granted injunction permitting her to bring a service dog to class, which the court held was resolved by an affidavit averring to the student's continued enrollment. 843 F. Supp. 2d at 1273.

of remedies needed to achieve statutory compliance. The Department of Education's Office for Civil Rights, for example, has resolved many such student complaints through agreements with schools to provide remedies that include grade expungement and opportunities to retake courses. See, *e.g.*, American Univ. of Health Sci., No. 09-20-2413 (U.S. Dep't of Educ., Off. for C.R. Oct. 19, 2020) (agreement requiring university either to expunge or change grade to incomplete for student who was denied testing accommodation and allow her to retake course with accommodations, at no cost, and receive new grade), https://perma.cc/DEJ3-GHZ9; Dallas (TX) Indep. Sch. Dist., Nos. 06171006 & 06171336 (U.S. Dep't of Educ., Off. for C.R. Aug. 23, 2017) (agreement requiring school to offer re-enrollment and expungement of low grade, along with either retaking course or redoing tests and graded coursework, to student who was denied accommodation and experienced retaliation), https://perma.cc/PM86-L3HG[11]; Legacy Traditional Sch. (AZ), No. 08-17-1078 (U.S. Dep't of Educ., Off. for C.R. May 15, 2017) (agreement requiring school to offer student re-enrollment and for parties to consider options including retaking or remediating course affected by teacher's failure to implement note-taking accommodation), https://perma.cc/DHQ7-TMGR; Onondaga-Courtland-Madison Bd. of Coop. Educ. Servs., No. 02-15-1141 (U.S.

[11] This agreement is undated, but its date appears on the Office for Civil Rights Recent Resolution Search website (https://ocrcas.ed.gov/ocr-search), where all of the cited agreements may be found.

Dep't of Educ., Off. for C.R. Sept. 17, 2015) (agreement requiring school to allow student either to retake courses during semester in which she allegedly experienced harassment, or receive a tuition refund), https://perma.cc/RKX6-SA3H; Francis Marion Univ., No. 11-14-2011 (U.S. Dep't of Educ., Off. for C.R. Jan. 8, 2014) (agreement requiring university to allow a student to retake all of his courses for one semester in which he was denied adequate auxiliary aids or services, at no cost, and expunge the student's academic records for that semester), https://perma.cc/3BJM-WW4X.

To be sure, the relief Howell seeks here—restarting medical school—is more extensive than what the students obtained in the cases discussed above. Nevertheless, the fact that his request is expansive does not render it categorically unavailable under Title III or Section 504. As explained in Section B, below, the traditional principles for granting equitable relief should guide the district court's eventual consideration of whether allowing Howell to restart school would be an appropriate way to rectify Morehouse's alleged unlawful failure to provide his note-taking accommodation.

B. Whether Morehouse May Be Ordered To Allow Howell To Restart School Afresh Should Be Analyzed Under Traditional Principles For Granting Equitable Relief

Whether Howell may obtain as relief the opportunity to restart school with a clean slate is not a question that can be answered categorically, but instead must be

analyzed within the relevant statutory framework and under the normal principles that guide courts in determining whether to afford equitable relief.

Because Congress did not expressly constrain courts' ability to fashion injunctive relief in Title III and Section 504, courts must assess whether the chosen relief is "appropriate" to correct the underlying violation. See *Franklin*, 503 U.S. at 66; see also *Disabled in Action*, 752 F.3d at 189. In making that assessment, the rule is "well settled" that, where Congress has provided a right to sue for the invasion of rights, courts may order "any available remedy to make good the wrong done." *Barnes* v. *Gorman*, 536 U.S. 181, 189 (2002) (quoting *Bell* v. *Hood*, 327 U.S. 678, 684 (1946)); see also *Franklin*, 503 U.S. at 66. The "nature and scope of the remedy are to be determined by the violation," *Milliken* v. *Bradley*, 433 U.S. 267, 281-282 (1977), with the ultimate goal of providing a plaintiff "complete relief under a statute," *Transcontinental Gas Pipe Line Co.* v. *6.04 Acres, More or Less*, 910 F.3d 1130, 1152 (11th Cir. 2018) (citation omitted), cert. denied, 139 S. Ct. 1634 (2019).

The propriety of a remedy also must be measured against the purpose of the statute that the defendant has been found to violate. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 417 (1971). Thus, while a district court has "discretion" in crafting a remedy to redress the violation, see *Franklin*, 503 U.S. at 73-74, a court

should exercise that discretion to craft a remedy that is tethered to the achievement of that statutory purpose, see *Albemarle*, 422 U.S. at 417.

Here, the district court concluded that Howell sufficiently alleged that Morehouse violated Title III and Section 504 by failing to provide Howell the promised note-taking accommodation. To determine whether, if he proved his case, Howell would be entitled to his proposed remedy—namely, an opportunity to restart medical school afresh—the district court must consider whether that remedy would be appropriate to redress the discriminatory effect of Morehouse's conduct and to further Title III and Section 504's purposes. Those statutory purposes include providing people with disabilities an equal opportunity to participate in educational programs, including at the postsecondary level. See, *e.g.*, 29 U.S.C. 701(a)(5) and (b)(5) (finding that individuals with disabilities "continually encounter various forms of discrimination" in the "critical area[]" of "education" and stating that the Rehabilitation Act's purposes include ensuring that students with disabilities "have opportunities for postsecondary success"); 42 U.S.C. 12101(a)(3) and (a)(6) (likewise finding that discrimination against individuals with disabilities persists in the "critical area[]" of "education" and noting that such individuals are "severely disadvantaged" with respect to education).

In assessing whether the remedy is "appropriate," *Franklin*, 503 U.S. at 66, the district court also may consider the nature and consequences of Morehouse's

failure to provide the required accommodation, and any alternatives proposed by Morehouse for redressing Howell's injury. Relevant factors in this analysis may include not only Howell's allegations about the cumulative effect of Morehouse's failure to provide him with the accommodation and its impact on his grades and employment prospects, but also Morehouse's alternative proposal to allow Howell to retake two of his third-year courses.

Accordingly, this Court should vacate and remand for further proceedings so that the district court may consider, in due course, the appropriateness of Howell's requested remedy—restarting medical school afresh—under the normal principles for granting equitable relief.

CONCLUSION

For these reasons, this Court should vacate the district court's dismissal of Howell's reasonable accommodation claims and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN:

(1) complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5007 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2019, in 14-point Times New Roman font.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: March 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT AND URGING VACATUR ON THE ISSUE ADDRESSED HEREIN with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. I further certify that four paper copies identical to the electronically filed brief will be mailed to the Clerk of the Court by Federal Express.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES GREGORY HOWELL, JR., **Plaintiff,** **v.** **THE MOREHOUSE SCHOOL OF MEDICINE, INC.,** **Defendant.**	**CIVIL ACTION FILE** **NO. 1:20-CV-3389-MHC**

ORDER

On August 14, 2020, and October 20, 2020, Plaintiff James Gregory Howell filed a Complaint and Amended Complaint raising both federal and state causes of action arising from alleged discrimination against him because of his disability during the time he was a student at Defendant Morehouse School of Medicine, Inc. ("MSM"). Based upon this Court's rulings on MSM's Motion to Dismiss Howell's Amended Complaint [Doc. 36] and Howell's Motion for Reconsideration [Doc. 49], all of Howell's federal claims have been dismissed. Sept. 14, 2021, Order [Doc. 47]; July 8, 2022, Order [Doc. 74]. There are only three claims remaining in this case, all brought under state law: Count XIII for unjust enrichment, Count XIV for breach of fiduciary duty, and Count XI for punitive

damages only as it relates to the claim for breach of fiduciary duty in Count XIV. July 8, 2022, Order at 36.

Howell has now filed a motion asking this Court to decline to exercise supplemental jurisdiction over his remaining state law claims pursuant to 28 U.S.C. § 1367(c) ("Pl.'s Mot.") [Doc. 80]. Howell asserts that the remaining claims depend on determinations of state law best left to the state courts, discovery was stayed in this case only a week after it began and the litigation has not yet begun in earnest, civil trials in this Court have been delayed because of the impact of COVID-19, and at least one of the remaining state law claims are novel. Id. at 2-8. MSM opposes the motion, arguing that the remaining state law claims are not novel, those claims do not predominate over the dismissed federal claims, the case has been pending in this Court for over two years making this Court familiar with the record, and judicial economy would be served by keeping the remaining state claims in this Court. Def.'s Resp. in Opp'n to Pl.'s Mot. [Doc. 83] at 4-13.

Howell's Amended Complaint alleges that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which gives district courts original jurisdiction over all civil actions "arising under the Constitution, laws, or treaties of the United States." Am. Compl. ¶ 4. Because the Court has dismissed Howell's federal claims, none of Howell's remaining claims provide a basis for this Court's

exercise of original jurisdiction. Accordingly, the Court must determine whether to exercise supplemental jurisdiction over Howell's remaining state law claims.

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a). However, a district court may decline to exercise supplemental jurisdiction over a state law claim if the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3); see also Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639 (2009) (citing 28 U.S.C. § 1367(a), (c)) ("With respect to supplemental jurisdiction in particular, a federal court has subject-matter jurisdiction over specified state-law claims, which it may (or may not) choose to exercise. A district court's decision whether to exercise that jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary.").

The Court may decline to exercise supplemental jurisdiction over non-diverse state law claims if: (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction; or (4) in exceptional circumstances,

there are other compelling reasons for declining jurisdiction. See 28 U.S.C. § 1367(c). In addition, in deciding whether to exercise supplemental jurisdiction over pendent state law claims under § 1367(c), a Court should also consider the interest of judicial economy, convenience, fairness to the litigants, and comity. Palmer v. Hosp. Auth. of Randolph Cnty., 22 F.3d 1559, 1569 (11th Cir. 1994).

> When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice.

Carnegie–Mellon Univ. v. Cohill, 484 U.S. 343, 350 & n.7 (1988). The Eleventh Circuit Court of Appeals has noted that "if the federal claims are dismissed prior to trial, Gibbs strongly encourages or even requires dismissal of state claims." L.A. Draper & Son v. Wheelabrator-Frye, Inc., 735 F.2d 414, 428 (11th Cir. 1984) (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)); see also Arnold v. Tuskegee Univ., 212 F. App'x 803, 811 (11th Cir. 2006) ("When the district court has dismissed all federal claims from a case, there is a strong argument for declining to exercise supplemental jurisdiction over the remaining state law claims.").

Because the outcome of this dispute now depends exclusively on issues of state law, the Court finds that judicial economy, fairness, and convenience favor

Accordingly, the Court **DECLINES** to exercise supplemental jurisdiction over the remaining state law claims. It is hereby **ORDERED** that Plaintiff James Gregory Howell's Motion Requesting for the Court to Decline to Exercise Supplemental Jurisdiction Over Plaintiff's Remaining State law Claims [Doc. 80] is **GRANTED**. Howell's remaining state law claims in his Amended Complaint in Counts XIII for unjust enrichment, Count XIV for breach of fiduciary duty, and Count XI for punitive damages only as it relates to the claim for breach of fiduciary duty in Count XIV are **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to close this file.

IT IS SO ORDERED this 11th day of October, 2022.

Mark H. Cohen

MARK H. COHEN
United States District Judge