

COMPLAINT OF DISCRIMINATION

U.S. Department of Justice

Complainant

Taylor Carty

Complainant's Representatives

Claudia Center
Jillian MacLeod
Disability Rights Education and Defense Fund
Ed Roberts Campus
3075 Adeline Street, Suite 210
Berkeley, CA 94703
415-531-2874 (cell)
ccenter@dredf.org

Respondent

Wayne State University School of Medicine
540 E Canfield Street
Detroit, MI 48201

Attention:

Michael Poterala
General Counsel and Vice President
m.poterala@wayne.edu

Jamie Krueger
Assistant Dean of Enrollment Management
Jamie.krueger@wayne.edu

Discrimination Alleged

Disability-based discrimination and failure to accommodate, in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Statement of Facts by Complainant

Taylor Carty (Taylor) is an academically gifted 29-year-old and aspiring doctor who was diagnosed with cerebral palsy spastic quadriplegia as an infant. Due to her disability, she has slow psychomotor speeds, weakness and limited fine motor functioning in her left hand, and slow information processing. She relies on her right hand to write, type, carry things, and do other daily activities. She walks with leg braces and a single point cane and uses a power wheelchair for traveling longer distances.

Taylor grew up in Santa Barbara County, California. She took classes at Santa Barbara City College while she was in high school and received her undergraduate degree in Molecular and Cell Biology with an emphasis on Neurobiology from University of California, Berkeley. She earned a 3.72 GPA at UC Berkeley and scored in the 90th percentile on the Medical College Admissions Test (MCAT).

Taylor's goal is to become a doctor in the field of pediatric physical medicine and rehabilitation and to serve patients with neurological disorders. There are very few doctors with disabilities and even fewer, if any, who have the type of physical disability that Taylor has. In part because of the extreme lack of disability representation in the medical profession, doctors are more likely to be biased against patients with disabilities.¹

After college, Taylor volunteered at Cottage Rehabilitation Hospital for six years where she helped support people with brain and spinal cord injury, stroke and stroke-related disorders, musculoskeletal dysfunction, and other neurological and complex orthopedic conditions. The doctors she worked for encouraged her to pursue medical school and reassured her that the exams and procedures common in their work—physical medicine and rehabilitation as well as neurology—rarely required the use of the motor competencies listed in many schools' technical standards. Moreover, these doctors did not work in isolation, but in a hospital alongside other doctors and medical professionals. Medical practice inherently involves reliance on teams.

Taylor applied to the Wayne State School of Medicine (Wayne State) in Detroit Michigan on May 21, 2021. In her application, she wrote about her perspective as a person with cerebral palsy: "Growing up, I never had a physician who looked like me. People with disabilities are usually the patients, not the physicians. When my patients look at me, I hope they will see themselves, and all the possibilities available to them." Wayne State accepted her application on June 1, 2022. On June 2, 2022, Taylor requested a one-year deferment of attendance. She needed a deferment because she was experiencing an insurance barrier in obtaining a power wheelchair. Wayne State approved of the deferment. Taylor was scheduled to begin medical school at Wayne State in July of 2023.

Wayne State requires that matriculating medical students provide written confirmation, signed by a health care provider, that they can meet certain technical, non-academic standards including certain motor skills before they are permitted to begin medical school. In other words, before Taylor could attend Wayne State, she was required to submit medical documentation that she could meet the following motor function standard:

¹ Lisa I. Iezzoni, *Physicians' Perceptions Of People With Disability And Their Health Care*, 40:2 Health Affairs (Feb. 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8722582/>; Gina Kolata, *These Doctors Admit They Don't Want Patients With Disabilities*, NEW YORK TIMES (Oct. 19, 2022), <https://www.nytimes.com/2022/10/19/health/doctors-patients-disabilities.html>.

It is required that a candidate possesses the motor skills necessary to directly perform palpation, percussion, auscultation, and other diagnostic procedures. The candidate must be able to execute motor movements reasonably required to provide general and emergency medical care such as airway management, placement of intravenous catheters, cardiopulmonary resuscitation, application of pressure to control bleeding, suturing of wounds, and the performance of simple obstetrical maneuvers. Such actions require coordination of both gross and fine muscular movements, equilibrium, and functional use of the senses of touch and vision.²

In July 2022, Taylor reached out to Wayne State's Student Disability Services (SDS) to request an accommodation to allow her to comply with portions of the motor function portion of the technical standards. Taylor exchanged emails with Kristen Swan, a disability specialist with SDS. Taylor stated that she would need accommodations to perform CPR, placement of intravenous catheters, suturing of wounds, and certain aspects of physical exams. Taylor also shared that she was practicing the motor competencies while volunteering at Cottage Hospital. Taylor told Swan that she would consult with experts on appropriate accommodations. During this time, Ms. Swan also told Taylor that she would research accommodations implemented for students with similar disabilities at other medical schools and would reach out to Wayne State leadership and professors for guidance on the situation.

Starting in August/September 2022, Swan reached out to the Dean of Student Affairs and the Clinical Director at Wayne State about the matter. On November 30, 2022, she informed Taylor that "they are meeting to discuss the technical requirements and standards that need to be met toward their curriculum." Following that update, Wayne State leadership did not communicate any further and did not offer any guidance to help Taylor determine potential adaptations that would help her comply with the standards.

On December 15, 2022, Taylor emailed Swan and stated the accommodations that she would need to meet the motor function portion of the technical standards: (1) to direct a person through CPR rather than perform it directly, including getting certified through the Advisor: Basic Life Support Program;³ (2) assistance placing a laryngoscope in the correct position; (3) assistance with sutures that would require the use of two hands; and (4) assistance with following sterile technique.

Taylor developed these accommodations with the help of Jon McGough, a disability specialist who has worked in disability services for students at numerous universities, including the University of California, San Francisco, and as a disability consultant at the

² See Exhibit A (emphasis added).

³ The Advisor: Basic Life Support program is a certification program developed by the American Heart Association (AHA) to enable individuals with disabilities to direct others in the performance of CPR. The program was developed by the AHA "because we saw the need for those with disabilities to have the opportunity to participate in saving lives." *New program developed for persons with disabilities to advise others on CPR*, AM. HEART ASS'N (Jul. 27, 2020) <https://newsroom.heart.org/news/new-program-developed-for-persons-with-disabilities-to-advise-others-on-cpr>.

Kaiser Permanente Bernard J. Tyson School of Medicine. She also consulted with an expert in disability accommodations in medical settings. According to McGough's guidance and Taylor's research, these accommodations are reasonable and other students with disabilities have received similar accommodations at other medical schools.

On December 16, 2022, Swan told Taylor by telephone that Wayne State would not grant her the requested accommodations. On January 13, 2023, Swan emailed Taylor and told her that she must provide documentation of compliance with the technical standards by May 1, 2023. A failure to provide documentation would lead to a withdrawal of Wayne State's acceptance, Swan stated.

On January 20, 2023, Taylor spoke with Dr. Abhinav Krishnan, the former Associate Director of Admissions-Enrollment Management Services at Wayne State. He asked her to send him her documentation so that he could review the situation. Dr. Krishnan remarked that he would get back to her in a couple of days. Taylor sent the documentation, but never received a response.

On May 9, 2023, Taylor submitted a Health Certification Form filled out by her doctor Philip R. Delio, M.D., to Wayne State Health Records. In the form, Dr. Delio confirmed that Taylor "Meets the technical standards required to be a medical student at the WSU School of Medicine ... with reasonable accommodations" provided at other medical schools. He wrote:

I have reviewed the technical standards for Wayne State University School of Medicine and most notably applicable to Ms. Carty are the motor requirements suggesting that a candidate possess motor skills necessary to directly perform palpation, percussion, auscultation, and other diagnostic procedures. I do believe she can complete these motor tasks using her functional right arm and right hand. The Wayne State technical standards report the candidate must be able to execute motor movements reasonably required to provide general and emergency medical care such as airway management, placement of intravenous catheters, cardiopulmonary resuscitation, application of pressure to control bleeding, suturing of wounds, and the performance of simple obstetrical maneuvers. ... I believe that Ms. Carty can perform these activities, although she may need to designate an assistant to help her with some more complex procedures such as placing an endotracheal tube or placement of intravenous or intra-arterial catheters. I do believe that accommodations could be made including directing an associate or another staff member to assist her in these circumstances. I am aware that at other medical centers students with disabilities similar to Ms. Carty have been accommodated in regards to their medical education.

In submitting the form, Taylor attached the medical school technical standards of the University of Michigan, UC San Diego, UC Davis, and Kaiser Permanente Bernard J.

Tyson School of Medicine.⁴ The standards from these schools allow students to “direct” certain treatments.⁵ She sent the same form and attachments to Student Disability Services on May 11, 2023.

On May 24, 2023, Assistant Dean of Enrollment Jamie Krueger called Taylor to reiterate that Wayne State would not grant the requested accommodations. On June 12, 2023, Krueger sent Taylor an email stating, “if you are not able to meet the technical standards with or without a reasonable accommodation prior to the start of classes on July 5, 2023, your case will be forwarded to our Admission Committee with a recommendation to rescind your offer of admission.”

On June 12, 2023, Krueger emailed Taylor to state again that the school did not view her requested accommodations as reasonable. Krueger also told Taylor that if she could not confirm her compliance with the standards by filling out a Technical Standards Form by July 5, 2023, her acceptance would be withdrawn.

On July 7, 2023, mere weeks before she was scheduled to start medical school, the Admissions Department emailed Taylor to withdraw her acceptance to Wayne State. The email read:

The Admissions Committee of Wayne State School of Medicine met on July 5, 2023 and reviewed pertinent information related to your ability to start your first year of medical school and to complete the essential requirements of the medical school program. We regret to inform you that following their review, the Committee voted to rescind your offer of admission due to the fact that 1) you have indicated that you cannot meet WSUSOM's technical standards with or without reasonable accommodations, which is required of all medical students,

⁴ See Exhibit B.

⁵ *University of Michigan Medical School Technical Standards* (July 2023)

<https://medschool.umich.edu/sites/default/files/2023-10/Tech-Standards-23-24.pdf> (“Students must possess the capacity to perform a physical examination and diagnostic examination and to **provide or direct** general care and the provision of emergency treatment to patients”) (emphasis added); see also *University of California San Diego School of Medicine Technical Standards*, UC SAN DIEGO SCHOOL OF MEDICINE, <https://medschool.ucsd.edu/admissions/Pages/Technical-Standards-for-Admission.aspx> (last accessed Mar. 26, 2024) (“Students must possess the capacity to appropriately gain information and to **provide or direct** physical and diagnostic examinations, general care and the provision of emergency treatment to patients”) (emphasis added); see also *M.D. Program Policies, Technical Standards Policy*, UC DAVIS HEALTH (2023) <https://health.ucdavis.edu/mdprogram-policies/admissions/technical-standards.html> (last accessed Mar. 26, 2024) (“Students should ... possess the capacity to perform a physical examination and perform diagnostic maneuvers. Students should be able to execute **some** motor movements required to provide general care to patients and **provide or direct** the provision of emergency treatment of patients.”) (emphasis added); see also KAISER PERMANENTE BERNARD J. TYSON SCHOOL OF MEDICINE, *2023-2024 Academic Year Catalog* 52 (2023) <https://medschool.kp.org/content/dam/kp/som/homepage/student-life/KPSOM%20Catalog.pdf> (“Candidates must be able to perform physical examinations and diagnostic and therapeutic maneuvers necessary and required in the curriculum and of a future physician. Candidates must be able to respond to emergency situations in a timely manner and **provide or direct** general and emergency care.”) (emphasis added).

and 2) you have not provided an updated, signed copy of the technical standards by the requested deadline of July 4, 2023.

We truly wish you the best in your career aspirations.

Legal Analysis

Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act require public universities such as Wayne State University School of Medicine to make their programs accessible to people with disabilities, including by providing reasonable modifications.

Under Title II of the ADA, “a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130 (b)(7)(i); *see also* 42 U.S.C. § 12182(b)(2)(A)(ii). Section 504 similarly requires postsecondary academic institutions that receive federal funds to “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.” 45 C.F.R. § 84.44(a); *see also* 29 U.S.C. § 794.

Whether a modification is reasonable is an individualized, fact-based assessment based on the needs of the person with a disability and whether the requested modification would enable the person to comply with a program’s standards. *See Wong v. Regents of Univ. of California*, 192 F.3d 807, 818 (9th Cir. 1999), *as amended* (Nov. 19, 1999). Here, Taylor crafted her requested accommodations with multiple experts on disability accommodations in higher education. The accommodations were individualized and designed considering her abilities and areas where she needed support to help her comply with the technical standards, based on months of practicing her skills at Cottage Hospital where she was a volunteer. And here, the modifications were designed with the knowledge that other medical students at other medical schools had received similar modifications before.

Further, academic institutions may not merely look to “accepted academic norms” when deciding whether a modification is reasonable because reasonable alternatives may “involve new approaches or devices quite beyond ‘accepted academic norms.’” *Wynne v. Tufts Univ. Sch. of Med.*, 932 F.2d 19, 26 (1st Cir. 1991) (quoting *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225, 106 S.Ct. 507, 513, 88 L.Ed.2d 523, 532 (1985)). The requested modifications are reasonable.

In *Palmer College of Chiropractic v. Davenport Civil Rights Commission*, the Supreme Court of Iowa considered whether the alteration of a chiropractic school’s non-academic technical standards was a reasonable accommodation, or whether it would constitute a fundamental alteration. *See Palmer Coll. of Chiropractic v. Davenport C.R. Comm’n*,

850 N.W.2d 326, 328 (Iowa 2014). The Court held that a blind student's request for a modification to the school's technical standard requiring "sufficient use of vision" for "the review of radiographs" to allow him to use a reader was a reasonable modification and did not fundamentally alter the program. See *id.* at 345. The decision reasoned that not all chiropractors practice with radiographic equipment and many outsource the interpretation of radiographic images. See *id.*

In this matter, Taylor proposed modifications that would allow her to learn the required technical skills by being an active participant in the process of performing them. Several other leading medical schools have technical standards that allow a medical student to "direct" some procedures as opposed to requiring them to perform all treatments themselves. And the doctors Taylor spoke to at Cottage Hospital who work in the field she is interested in practicing in assured Taylor that they rarely perform tasks that require the use of the motor competencies that are listed in Wayne State's technical standards. They also cited the development of recent technologies like the Lund University cardiopulmonary Assist System (LUCAS) device, which provides automatic, sustained chest compressions.

It is also important to note that the medical students at Wayne State match to a wide range of specialties. For example, 41% of Wayne State's 2024 entering class matched into specialties that rarely, if ever, require a physician to perform CPR and suturing—40 students matched into Internal Medicine, 15 matched into Pediatrics, 14 matched into Psychiatry, 14 matched into Diagnostic Radiology, 7 matched into Neurology, 6 matched into Internal Medicine/Pediatrics, 5 matched into Physical Medicine and Rehabilitation, and 4 matched into Pathology.⁶ Should the need for CPR or suturing nevertheless arise, medical professionals work in teams. No one doctor is required to perform these particular motor tasks. Further, the mission of the Wayne State School of Medicine does not focus on training students for specialties that require extensive use of both hands. Instead, it emphasizes "a culture of inclusion, through high quality education, clinical excellence, pioneering research, local investment in our community and innovative technology, to prepare physician and biomedical scientific leaders to achieve health and wellness for our society."⁷

Today, more than 30 years after the passage of the ADA, students with disabilities like Taylor are largely absent from medical school student bodies and from the medical profession. A 2023 study of medical students with disabilities at 56 medical schools found that 5.9% of students at responding schools self-reported their disability to their medical school.⁸ The overall percentage of students with disabilities in medical school programs is significantly lower than the percentage of students with disabilities in

⁶ WAYNE STATE SCHOOL OF MEDICINE, *Match Day 2024 16-17* (2024) <https://www.med.wayne.edu/match-day/pdf/wsusom-match-day-2024-statistics.pdf>.

⁷ WAYNE STATE SCHOOL OF MEDICINE, *2023-2030 Strategic Plan 5* (Apr. 17, 2023) <https://www.med.wayne.edu/pdfs/strategic-plan-final-pvh.pdf>.

⁸ Karina Pereira-Lima et al., *Prevalence of Disability and Use of Accommodation Among U.S. Allopathic Medical School Students Before and During the COVID-19 Pandemic*, 6(6) JAMA NETW. OPEN (Jun. 14, 2023).

undergraduate (20.5%) and overall graduate programs (10.7%).⁹ This low percentage of medical students with disabilities mirrors the low percentage of doctors with disabilities. A 2019 study that surveyed over 6,000 American physicians reported that only 3.1% of physicians identified as having a disability.

According to a 2018 report on the accessibility of medical education by the Association of American Medical Colleges (AAMC), medical school technical standards may be a barrier to access for students with hearing, mobility and visual disabilities.¹⁰ Therefore, AAMC noted, technical standards “should avoid language that suggests that any particular type of disability is incompatible with participation in an MD program and should recognize the role accommodations have in ensuring access for people with disabilities.” Without a recognition of the importance of accommodations in ensuring access to medical school for disabled people, people with disabilities will continue to be largely excluded from medical school and the medical profession. Disabled people must be afforded equal opportunity to participate in the medical field for the inclusive future envisioned by Congress during the passage of Section 504 and the ADA to become reality.

In this matter, after the excitement and elation of being accepted into medical school, Taylor was forced to endure the disappointment, sadness, and frustration of having her acceptance stripped from her after months of trying to come up with accommodations and solutions that would satisfy Wayne State.

Relief Requested

Complainant requests that Wayne State School of Medicine review their non-academic technical standards with a disability accommodations specialist and adopt, publish, circulate, and implement technical standards that comply with Title II of the ADA and Section 504. The technical standards should permit reasonable accommodations like allowing students with mobility disabilities to receive assistance from or direct a skilled intermediary to perform certain tasks to comply with the technical standards. The technical standards should also avoid language that suggests that any particular type of disability is incompatible with participation in an MD program. For example, Wayne State SOM’s current “Motor” technical standards¹¹ could be altered to be more inclusive of students with disabilities as follows:

⁹ NAT’L CTR. FOR EDU. STAT., *Digest of Education Statistics, Table 311.10: Number and percentage distribution of students enrolled in postsecondary institutions, by level, disability status, and selected student characteristics: Academic year 2019-20* (2022)

https://nces.ed.gov/programs/digest/d22/tables/dt22_311.10.asp.

¹⁰ Lisa M. Meeks & Neera R. Jain, *Accessibility, Inclusion, and Action in Medical Education: Lived Experiences of Learners and Physicians with Disabilities*, ASS’N OF AM. MED. COLL., 30-31 (2018)

<https://sds.ucsf.edu/sites/g/files/tkssra2986/f/aamc-ucsf-disability-special-report-accessible.pdf>.

¹¹ Wayne State School of Medicine has updated their technical standards slightly since Taylor sought accommodations, but the standards still are not inclusive of students with disabilities. The proposed language changes to the technical standards are based on the most current version of the standards. See WAYNE STATE SCHOOL OF MEDICINE, *Technical Non-Academic Standards 2*

<https://www.med.wayne.edu/admissions/pdfs/technical-non-academic-standards.pdf>.

- “Candidates must possess the capacity to **perform or direct** a comprehensive physical exam and diagnostic maneuvers on a patient, including **performing or directing** palpation and auscultation in a manner that respects the patient's right to privacy.”
- “Candidates must be able to respond to clinical situations in a timely manner and **provide or direct** general and emergency treatment to patients in a range of situations and conditions. Examples include airway management, placement of intravenous catheters, cardiopulmonary resuscitation, application of pressure to control bleeding, suturing of wounds, and the performance of simple obstetrical maneuvers. These activities require some coordination of both gross and fine muscular movements, equilibrium, and functional use of the senses of touch and vision **or some functional equivalent.**”
- “Candidates must be able to adhere to universal precautions and meet safety standards appropriate for settings (i.e., inpatient, outpatient) **with or without assistance**. This includes but is not limited to wearing hospital-approved operating room attire, following regulations related to sterilization procedures, and receipt of specific immunizations and/or evidence of immunity from specific diseases.”

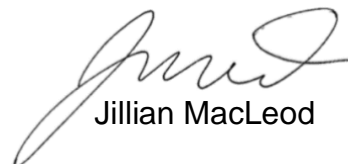
Such modifications to the technical standards will ensure that disabled students have equal access to participation in Wayne State’s medical school program.

May 9, 2024

Respectfully submitted,

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND


Claudia Center


Jillian MacLeod