

## Appellate-Court Ruling May Provide 'Test Case' for New Disability Law

By SARA LIPKA

Federal disability law has changed enough in the past year that a federal court in Kentucky must reconsider its decision that a medical student does not qualify for special accommodations to take a licensing test, the U.S. Court of Appeals for the Sixth Circuit ruled on Wednesday.

The student, Kirk D. Jenkins, is in his third year at the University of Louisville School of Medicine, and he struggles to read. As a child, Mr. Jenkins was diagnosed with a reading disorder, and he has been granted various educational accommodations over the years, including extra time to take admissions tests for college and medical school, according to court documents. He sought a similar arrangement for the United States Medical Licensing Examination, but the National Board of Medical Examiners denied his request.

Mr. Jenkins sued the medical board, and in February 2008, a federal court in Kentucky ruled in the board's favor. The court applied a strict standard of eligibility under the Americans With Disabilities Act, following the precedent of the Supreme Court's decision in 2002 that a Toyota employee's carpal-tunnel syndrome did not qualify as a disability because it did not substantially limit a major life activity.

This past September, however, President Bush signed into law the Americans With Disabilities Amendments Act, which explicitly rejects the Toyota standard (The Chronicle, June 19, 2008). Higher-education officials have been awaiting test cases for the new law.

The law's stated intent is to reject the reasoning that has "narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect."

The threshold for deciding whether an individual qualifies for protection under the law remains the same: whether he or she has a disability that substantially limits a major life activity. But the amended law broadens what it says had become "an inappropriately high level of limitation necessary to obtain coverage," and it adds several items to a list of major life activities, including reading, concentrating, and thinking.

A three-judge panel of the appellate court, which has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee, decided on Wednesday that the federal district court for western Kentucky had to review Mr. Jenkins's case because it had relied on "now repudiated" standards in ruling for the medical board.

"The change in the law has ... undermined the district court's holding," the decision says, "and the resolution of this case will require the district court to make a fresh application of the law to the facts in light of the amendments to the ADA."

The appellate court did not say that Mr. Jenkins qualified for accommodations to take the licensing test, but it pointed out that he "reads written language in a slow and labored fashion when compared to the general public." It also referred to the addition of reading to the law's list of major life activities.

"The categorical threshold scope of the ADA's coverage has been broadened," the decision says. "This breadth heightens the importance of the district courts' responsibility to fashion appropriate accommodations."

The opinion also considers the question of whether the amended law, which became effective on January 1, applies retroactively. Because Mr. Jenkins's case involves a future potential accommodation and not past discrimination, the amended law applies to him, the decision says. Also, Mr. Jenkins is suing for protection under the law, it says, and not for monetary damages.

Mr. Jenkins's case may help test the new disability law, said L. Scott Lissner, who coordinates disability-law compliance for the Ohio State University system. The amended law broadens the definition of a disability, but the new standard remains somewhat vague, he said. "There's not as clear a benchmark as Toyota set."

Although Mr. Jenkins's disorder does not preclude him from reading, if it limits the "manner, condition, or duration" of his reading compared with the general population, it qualifies as a disability under the law, Mr. Lissner said.

Wednesday's decision in Mr. Jenkins's case carries the designation "not recommended for full-text publication," which may mean that other courts will not give it the same weight as a published opinion. However, rules now require federal appellate courts to allow lawyers to cite unpublished rulings in arguing their cases.