Rapid Research Report

How does the Americans with Disabilities Act apply to students with disabilities in clinical and internship placements?

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EXECUTIVE SUMMARY AND DEFINITIONS

This report will explore when Title I of the Americans with Disabilities Act (ADA) protects students with disabilities in clinical and internship placements.[1] This report will focus on cases that are relevant to the six states that the Rocky Mountain ADA Center serves, namely: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota.[2] According to relevant federal case law in the Rocky Mountain region, students participating in internships and other experiential placements are not entitled to Title I ADA protection unless they receive traditional employment remuneration, like pay and benefits, and are thus considered employees. There is decisive case law on this issue in the Tenth Circuit Court of Appeals, meaning that Colorado, Utah, and Wyoming have a clear rule on the issue. However, there is no governing case from the Eighth or Ninth Circuit Courts of Appeals, so the issue is less clear in North Dakota, South Dakota, and Montana. For the purposes of this report, the term "intern" will be used to refer to students that participate in experiential placements, including but not limited to internships, externships, clinical rotations, and other experiential learning. The term "internship" will be used to refer to all of the aforementioned experiential learning.

I. INTRODUCTION

Experiential work has long formed part of undergraduate and graduate education in the United States. Students often pursue internships in their field of interest during the semester or the summer. Medical students participate in rotations through different fields of practice to determine their specialty. Law students frequently intern in various practice settings to gain exposure to different areas of law. Although experiential work is widespread in education, determining whether students with disabilities are protected within these placements can be challenging to ascertain.[3] For example, a law student with diagnosed dyslexia may have an ADA modification within her university to receive more time to complete an exam; however, this modification may not automatically apply as a reasonable accommodation to her work drafting a document as an intern at a private law firm. Similarly, a medical student with diagnosed Attention-Deficit/Hyperactivity Disorder may receive an ADA modification at his school to work in an isolated area to reduce distraction; however, this modification may not automatically extend to the student's clinical rotation and administrative work at a hospital.

As many readers may know, the ADA recognizes disability rights as civil rights in several different contexts. Title I of the ADA requires private and public employers to provide reasonable accommodations to people with disabilities in the context of employment. However, students who participate in internships often find themselves in limbo, unsure of whether they are entitled to reasonable accommodations in an internship.[4] If student interns with disabilities are considered employees, Title I of the ADA provides broad protection and the right to request reasonable accommodations.[5] If students with disabilities are not considered employees, they may not receive ADA protection and may instead only receive protection as a visitor, patient, or other non-employee member of the organization, depending on how the ADA categorizes the entity where the student is interning.[6]

This report will discuss Title I of the ADA and relevant case law on this issue. First, the report will provide an overview of the ADA and Title I. Second, the report will discuss relevant cases in three federal circuits: the Eighth Circuit (which includes North and South Dakota), the Ninth Circuit (which includes Montana), and the Tenth Circuit (which includes Colorado, Wyoming, Utah).[7] The U.S. Court of Appeals for the Tenth Circuit has directly addressed this issue, so there is clear controlling law in Colorado, Utah, and Wyoming.[8] However, the U.S. Courts of Appeals in the Eighth and Ninth Circuits have not directly addressed this issue. As a result, there is no concrete rule of law on the issue that federal district courts in South Dakota, North Dakota, and Montana must follow. Therefore, federal courts within these states may turn to other federal court decisions for analysis or rely on employment cases in other contexts.

This report is not an exhaustive analysis of every case that has addressed this issue. Instead, it aims to provide a brief update on the current state of the law as it is relevant to the Rocky Mountain region. Interns in certain contexts may also be entitled to disability protection under Sections 501 and 504 of the Rehabilitation Act of 1973 and Titles II and III of the ADA; however, this report will only discuss protection under Title I of the ADA.[9]

II. THE AMERICANS WITH DISABILITIES ACT

Passed in 1990, the ADA broadly prohibits discrimination based on disability in employment, public services, transportation, public accommodations, and telecommunication services.[10] The ADA defines disability as "a physical or mental impairment that substantially limits one or more major life activities…; a record of such an impairment; or being regarded as having such an impairment."[11] In the context of employment, the ADA provides protection for people with disabilities in the job seeking process and throughout their employment in both the public and private spheres, if the individuals are employees.[12] The ADA defines "employee" broadly, stating that an employee is "an individual employed by an employer," but it does not specify whether interns are considered employees.[13] Protection for people with disabilities in employment typically falls under Title I of the ADA.[14] Titles II and III of the ADA can also be relevant in certain circumstances; however, this report will focus primarily on Title I because most federal cases in the Rocky Mountain region that discuss the ADA and modifications or accommodations for interns focus on Title I. [15]

a. *Title I*

Title I of the ADA protects against disability discrimination in the context of employment.[16] Specifically, Title I prohibits employers from discriminating against employees and job seekers with disabilities in the following contexts: private employers, state and local governments, employment agencies, and labor unions.[17] Title I prohibits discrimination across the spectrum of employment activities, including hiring, firing, job assignment, pay, promotions and training, among other areas.[18] Specifically, employers in these contexts that have fifteen or more employees must provide reasonable accommodations to qualified applicants and employees with disabilities.[19] Employers may refuse a reasonable accommodation if it constitutes an undue hardship.[20] Importantly, an employee with disabilities must be "otherwise qualified" to perform the job, meaning that the individual must be able to perform the essential functions of the job with or without a reasonable accommodation.[21] For example, under Title I, a lawyer with dyslexia could request that her private law firm of eighteen employees grant her a reasonable accommodation for more time to complete written assignments. The lawyer is otherwise

qualified for the job regardless of whether she gets a reasonable accommodation for more time because of her degree, experience, and other qualifications.

III. RELEVANT FEDERAL CASE LAW

Under the ADA, protection for students with disabilities in clinical and internship placements typically depends upon whether the student is considered an employee.[22] If a student is an employee, the student is entitled to Title I ADA protection; but if the student is considered a non-traditional worker or volunteer, ADA protection under Title I likely does not apply. The issue of whether a student is an employee primarily depends on whether the employer provides "substantial remuneration," like pay and typical employee benefits. If the entity where the student is placed pays the student through regular paychecks and provides other employee benefits as the entity does for other employees, Title I of the ADA likely protects the student.[23] However, if the placement does not pay the student and does not treat the student as a traditional employee, protection under the ADA as an employee is unlikely. Therefore, Title I of the ADA typically does not protect unpaid interns, volunteer workers, or students participating in internships or clinical rotations for academic credit or unpaid career experience only.

Protection within the Rocky Mountain region broadly follows these principles, but each state differs slightly based on how courts have interpreted the phrase "substantial remuneration." Academic credit, practical experience, and scholarly research generally do not qualify as significant remuneration.[24] For example, if a student receives academic credit and career guidance, the court likely will not consider that to be sufficient remuneration, and Title I of the ADA will most likely not apply.[25] Contrarily, if the internship employer pays the student and offers the student benefits as they do for other employees, Title I most likely protects that student. As discussed above, there is clear case law on this issue in the Tenth Circuit meaning that Colorado, Utah, and Wyoming have a clear rule. There is no binding law on this issue in the Eighth and Ninth Circuits, so there is less clarity in North Dakota, South Dakota, and Montana.

a. *Colorado, Utah, and Wyoming (10th Circuit)*

In Colorado, Wyoming, and Utah, to receive Title I ADA protection in an internship or clinical context, a student must receive pay or traditional employment benefits in their

placement.[26] In *Sacchi v. IHC Health Services,* the controlling case in the Tenth Circuit, an unpaid graduate student intern, Ms. Sacchi, whose father had disabilities alleged that the employer she interned with discriminated against her in violation of the ADA and other federal anti-discrimination laws.[27] In her complaint, Ms. Sacchi stated that her father "suffered from medical complications from heart failure, which substantially limit him in the major life activities of caring for himself, performing manual tasks, walking, breathing, standing, lifting, and working."[28] During her placement and with the permission of a supervisor, Ms. Sacchi used the placement's fax machine to send relevant documents to her father's assisted living facility.[29] Subsequently, Ms. Sacchi's supervisor expressed concern about the student's use of time and work resources to support her father's care.[30] One month later, Ms. Sacchi's supervisor suspended her internship and stated that she needed to evaluate whether Ms. Sacchi was a good fit for the program.[31] Within one month, Ms. Sacchi's supervisor terminated her internship because she believed it was not the right time for Ms. Sacchi to complete the internship due to her family circumstances.[32]

After her suspension, Ms. Sacchi brought suit and alleged associational discrimination and retaliation under the ADA.[33] The association provision of the ADA provides protection for individuals who have a relationship or association with an individual with a disability.[34] The intern argued that she should be treated as an employee in her internship because she received access to a professional certification and a path to employment.[35] The court disagreed and concluded that these benefits were too attenuated and not substantial enough to consider the intern as an employee under federal anti-discrimination laws.[36] Therefore, the ADA did not protect her in this context.

In the Tenth Circuit, to determine if an unpaid intern can be considered an employee, the court asks whether the intern receives substantial remuneration in their placement.[37] Specifically, the court asks whether the student receives indirect benefits that are substantial or significant and not related to the advancement of the employer's mission.[38] In *Sacchi,* the court determined that the benefits did not satisfy this test because the hospital did not directly provide the benefits, the benefits did not resemble traditional employment benefits (like a pension or insurance) and the benefits would only accrue if independent events occurred (in this case, the student had to pass a

separate professional certification exam outside of her internship).[39] Importantly, the court specifically stated that all interns are not automatically protected under the ADA.[40]

In Colorado, there is federal case law supporting this perspective that may be persuasive in Utah and Wyoming. In *West-Helmle v. Denver District Attorney's Office*, a law student alleged that the Denver District Attorney's Office discriminated against him and violated the ADA during his internship.[41] The student had brain trauma that impacted his typing, reading comprehension, circulatory function, and other skills.[42] He alleged that one of his supervisors mocked his typing abilities and that his supervisors excluded him from specific apprenticeship privileges that they granted to other externs.[43] In this case, the student intern was not paid; instead, he received academic credit for his work at the office and had to use tuition funds to pay for those credits.[44] For argument's sake, the court considered potential professional references as an employment benefit of the internship; however, the court followed the Tenth Circuit Court of Appeals and concluded that the law student intern's benefits were too attenuated and he did not receive sufficient remuneration to be considered an employee. [45] Therefore, the student was not entitled to protection under Title 1 of the ADA.

b. *Montana (9th Circuit)*

There is no binding case law in Montana on this issue, because the Ninth Circuit Court of Appeals has not directly addressed the issue, nor have federal district courts in Montana. However, two other analyses from the region provide guidance and demonstrate that Title I ADA protection for interns in Montana also hinges upon whether the student is an employee. First, the Ninth Circuit has an established test to determine if a non-traditional worker is an employee.[46] Second, a recent U.S. District Court case within the Ninth Circuit concluded that a graduate student intern was an employee and therefore could argue that he was protected under Title I of the ADA.[47] Other federal district courts in Montana may turn to this decision for guidance on interpreting this ADA issue.

First, the Ninth Circuit Court of Appeals has adapted a U.S. Supreme Court's six-factor test, which is outlined below, to determine if a non-traditional worker is considered an employee.[48] In a 2003 case, the U.S. Supreme Court established a test to determine if a shareholder-director could be considered an employee of a medical clinic for the purposes of

protection under the ADA.[49] The Ninth Circuit adapted this test in a 2008 case, *Fichman v. Media Center*, to determine if members of a board of directors of a non-profit organization could be considered employees of the organization.[50] While neither case directly referenced interns under the ADA, the test is relevant to the issue of ADA protections for interns~~,~~ because other courts within the Ninth Circuit could use this test to determine if an intern could be considered an employee and thus protected under Title I of the ADA.

The court's analysis in *Fichman* lends support to the idea that an unpaid intern in Montana is likely not considered an employee and not protected under Title I of the ADA. In *Fichman*, the court concluded that members of the Board of Directors of a non-profit could not be considered employees under the ADA.[51] Furthermore, the Ninth Circuit Court of Appeals stated that the court can consider the following six factors in determining whether a non-traditional worker is an employee for the purposes of ADA protection: "whether the organization can hire or fire the individual or set the rules and regulations of the individual's work; whether and, if so, to what extent the organization supervises the individual's work; whether the individual reports to someone higher in the organization; whether and, if so, to what extent the individual is able to influence the organization; whether the parties intended that the individual be an employee, as expressed in written agreements or contracts; and whether the individual shares in the profits, losses, and liabilities of the organization."[52] These factors are not exhaustive and courts in the Ninth Circuit consider them as a whole.[53]

In *Fichman*, members of the board of directors could not be considered employees because the organization's employer did not hire or fire the members, compensate the members, or regulate or supervise the members' work.[54] Furthermore, the board members were not involved in the day-to-day responsibilities of the organization, did not report to a specific supervisor, could influence the organization as advisors, and considered themselves volunteers.[55] Again, it is important to note that *Fichman* did not specifically address interns or students in clinical placements. Nevertheless, the case provides important standards that student interns could use as benchmarks to determine if they will be protected as an employee under Title I of the ADA and potentially argue that they are protected if they meet some of the standards.

The second area of important law in the Ninth Circuit is an ongoing 2023 case out of the U.S. District Court for the District of Arizona. This case provides important analysis for this issue in Montana, because Arizona is another Ninth Circuit state that Montana may turn to for guidance.[56] In *Brown v. Riverside Elementary School District*, a graduate student interned as a volunteer school psychologist at a local elementary school.[57] The student wore a lip ring to support sensory needs associated with his disability.[58] Accordingly, he requested an accommodation to wear the lip ring, even though it contradicted a school policy that prohibited lip rings.[59] The student's future supervisor denied the student's accommodation and suggested the student chew gum instead.[60] The student shared that chewing gum was painful and he requested the lip ring accommodation again.[61] The supervisor then appeared to verbally assent to the accommodation; however, within two months, the school dismissed the student intern because he violated the rule by wearing a lip ring.[62] The student brought a suit against the school, alleging discrimination under the ADA.[63]

In this case, the school hosted the student as a volunteer, required the student to participate in certain on-boarding activities, and supervised the student's conduct.[64] Meanwhile, the student signed a confidentiality agreement and a responsibilities document that referenced employment; he was subject to all school policies and regulations and the employee handbook; and he exercised influence on the services the school offered.[65] However, the school did not intend for the student to be an employee, the school did not pay the student, and the student received no health benefits.[66] Nevertheless, the court concluded that the school district treated the student as an employee, meaning that he could receive ADA protection.[67] As of January 2024, the court has only ruled against summary judgment, meaning that the case may continue through the litigation process.[68] Therefore, this case has not concluded and will be important to watch for Ninth Circuit states.[69]

c. *North Dakota and South Dakota (8th Circuit)*

There is little case law directly addressing this issue in the Eighth Circuit. The Eighth Circuit Court of Appeals has concluded that student interns are not considered employees if they merely do research during an internship that is valuable for their academic work.[70] However, the court made this decision in, *Jacob-Mua v. Veneman*, a discrimination case that did not address

the ADA.[71] Nevertheless, the Eighth Circuit Court of Appeals has concluded that remuneration is an "essential condition" of an employee/employer relationship.[72] The case law on the necessity for payment to create an employee/employer relationship does not address the context of a student internship nor does it address the ADA. However, it is likely that courts within the Eighth Circuit would conclude that an unpaid intern is not entitled to protection under Title I of the ADA because the Eighth Circuit has concluded that remuneration is an essential condition of an employee/employer relationship.

IV. CONCLUSION

In general, case law in the Rocky Mountain region suggests that student interns are not entitled to Title I ADA protections in internship or experiential placement unless the student receives payment or other typical employee benefits. Cases in the Eighth, Ninth, and Tenth Circuits discuss and primarily confirm that an employer must pay an individual for the individual to be considered an employee. However, there is room for a student to argue for protection under the ADA in an internship if the student receives other benefits that employees receive that do not include pay. Nevertheless, academic credit, career guidance, and other incidental benefits are likely not enough to show that a student is an employee. As the context of employment continues to change based on the gig economy or work as an independent contractor, it is possible that this area of the law may evolve.

WORKS CITED

[1] Throughout this report, "ADA" refers to both the original statute, passed in 1990, and the amendments, passed in 2008. The amendments are often referred to as the ADA Amendments Act (ADAAA), but the Amendments and original statute will be referred to as ADA throughout the report for continuity. *See* Americans with Disabilities Act, 42 U.S.C. §12101 (1990), As Amended.

[2] Rocky Mountain ADA Center, About Us, https://rockymountainada.org/about-us (accessed Dec. 29, 2023).

[3] *See* Marissa Ditkowsky, *Internship and Externship Rights and Accommodations Guide: How to Navigate Your Legal Internship or Externship,* The National Disabled Law Students Association (June 2021), https://ndlsa.org/wp-content/uploads/2021/10/INTERNSHIP-AND-EXTERNSHIP-RIGHTS-AND-ACCOMMODATIONS-GUIDE.pdf (accessed December 27, 2023).

[4] *Id.*

[5] An Overview of the Americans with Disabilities Act, The ADA National Network, https://adata.org/factsheet/ADA-overview (accessed Dec. 29, 2023).

[6] *See* Ditkowsky (2021).

[7] Court Role and Structure, United States Courts, https://www.uscourts.gov/about-federal-courts/court-role-and-structure (accessed Dec. 29, 2023).

[8] *See Sacchi v. IHC Health Servs.*, 918 F.3d 1155 (10th Cir. 2019).

[9] Importantly, if an internship is considered part of an educational institution's program and required as part of a student's degree, it is likely that the university is responsible for ensuring that students receive whatever accommodations they receive on campus. Paid interns in federal agencies may be protected under Section 501 of the Rehabilitation Act of 1973. Public institutions or any institution that offers federal student loans are subject to Section 504 of the Rehabilitation Act of 1973, so such institutions may be responsible for making sure that students who are receiving credit for an internship receive appropriate

accommodations under Section 504. Furthermore, any school that receives funding from the Department of Education is also subject to the Code of Federal Regulations, which further enforces Section 504. Student interns can ask for a reasonable modification under Title II of the ADA if the student is interning at a public entity. However, if the entity is not public (e.g. private hospital), the student cannot make a Title II claim, unless the student argues that the internship forms part of a program of a public university and is therefore eligible under Title II. The question of whether the internship forms part of a public university program currently depends on a sovereign immunity issue. There is a split among federal circuit courts with respect to this issue, so students in some circuits could successfully argue under Title II whereas in other circuits they could not. For a more in-depth discussion of these issues, *see* Ditkowsky (2021).

[10] An Overview of the Americans with Disabilities Act, The ADA National Network, https://adata.org/factsheet/ADA-overview (accessed Dec. 29, 2023).

[11] Americans with Disabilities Act, 42 U.S.C. §12101.

[12] Americans with Disabilities Act, 42 U.S.C. § 12112(a).

[13] Americans with Disabilities Act, 42 U.S.C. § 12111(4).

[14] An Overview of the Americans with Disabilities Act, The ADA National Network, https://adata.org/factsheet/ADA-overview (accessed Dec. 29, 2023).

[15] *See* Ditkowsky (2021); *see, e.g. Sacchi v. IHC Health Servs.*, 918 F.3d 1155 (10th Cir. 2019).

[16] Ditkowsky (2021) at 4.

[17] U.S. Equal Opportunity Commission (EEOC), *Fact Sheet: Disability Discrimination* (Jan. 15, 1997) https://www.eeoc.gov/laws/guidance/fact-sheet-disability-discrimination (accessed Dec. 29, 2023); An Overview of the Americans with Disabilities Act, The ADA National Network, https://adata.org/factsheet/ADA-overview (accessed Dec. 29, 2023).

[18] EEOC (1997).

[19]ADA National Network: Information, Guidance, and Training on the Americans with Disabilities Act, *Reasonable Accommodations in the Workplace* (2018), https://adata.org/factsheet/reasonable-accommodations-workplace (accessed December 27, 2023).

[20] U.S. Equal Employment Opportunity Commission (EEOC), *The ADA: Your Responsibilities as an Employer*, https://www.eeoc.gov/publications/ada-your-responsibilities-employer (accessed Dec. 29, 2023).

[21] U.S. Equal Opportunity Commission (EEOC), *Your Employment Rights as an Individual with a Disability*, https://www.eeoc.gov/laws/guidance/your-employment-rights-individual-disability (accessed December 27, 2023).

[22] U.S. Equal Employment Opportunity Commission (EEOC), *EEOC Informal Discussion Letter* (Dec. 8, 2011), https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-231 (accessed Dec. 29, 2023).

[23] *Id.*

[24] *Id.*

[25] *Id.*; *see also Jacob-Mua v. Veneman*, 289 F.3d 517, 521 (8th Cir. 2002).

[26] *Sacchi*, 918 F.3d at 1156.

[27] *Id.* at 1156, 1157.

[28] Compl. ¶ 5.

[29] Compl. ¶ 25-27.

[30] Compl. ¶ 29.

[31] Compl. ¶ 37.

[32] Compl. ¶ 38.

[33] *Id. at 1156.*

[34] U.S. Equal Employment Opportunity Commission (EEOC), *Questions & Answers: Association Provision of the ADA* (Oct. 17, 2005) https://www.eeoc.gov/laws/guidance/questions-answers-association-provision-ada (accessed Dec. 29, 2023).

[35] *Id. at 1156.*

[36] *Id.* at 1157.

[37] The Tenth Circuit refers to this as the "threshold-remuneration test." *See McGuinness v. Univ. of N.M. Sch. of Med.*, 170 F.3d 974, 979 (10th Cir. 1998); *see* also *Johnston v. Espinoza-Gonzalez*, No. 16-cv-00308-CMA-KLM, 2016 U.S. Dist. LEXIS 171408, *1, *4 (D. Colo. Dec. 12, 2016). Several other federal circuit courts also use this test. *Sacchi*, 918 F.3d at 1158 (citing generally *Juino v. Livingston Par. Fire Dist. No. 5*, 717 F.3d 431 (5th Cir. 2013); *York v. Assoc. of the Bar of the City of N.Y.*, 286 F.3d 122 (2d Cir. 2002); *Llampallas v. Mini-Circuits, Lab, Inc.*, 163 F.3d 1236 (11th Cir. 1998); *Haavistola v. Community Fire Co.*, 6 F.3d 211 (4th Cir. 1993); *Graves v. Women's Prof'l Rodeo Ass'n*, 907 F.2d 71 (8th Cir. 1990)).

[38] *Sacchi*, 918 F.3d at 1158 (citing *Juino*, 717 F.3d at 436-37).

[39] *Id.* at 1159.

[40] *Id.*

[41] *W.-Helmle v. Denver Dist. Attys. Office*, Civil Action No. 19-cv-02304-RM-STV, 2021 U.S. Dist. LEXIS 152568 at *1, *11, *24 (D. Colo. May 3, 2021).

[42] *Id.* at *20.

[43] *Id.* at *4-6.

[44] *Id.* at 7; *W.-Helmle v. Denver Dist. Attys. Office*, Civil Action No. 19-cv-02304-RM-STV, 2020 U.S. Dist. LEXIS 165422 *1, *23 (D. Colo. May 29, 2020).

[45] *W.-Helmle*, Civil Action No. 19-cv-02304-RM-STV, 2020 U.S. Dist. LEXIS 165422 at *24.

[46] *Fichman v. Media Center*, 512 F.3d 1157, 1160 (9th Cir. 2008).

[47] *Brown v. Riverside Elem. Sch. Dist. No. 2*, No. CV-21-01569-PHX-DJH, 2023 U.S. Dist. LEXIS 139128 *1, *13 (D. Ariz. Aug. 9, 2023).

[48] *Fichman*, 512 F.3d at 1160.

[49] *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 449-450 (2003).

[50] *Fichman*, 512 F.3d at 1160.

[51] *Id.* at 1161.

[52] *Fichman*, 512 F.3d at 1160 (citing *Clackamas*, 538 U.S at 449-50; *see also Brown*, No. CV-21-01569-PHX-DJH, 2023 U.S. Dist. LEXIS 139128 at *6-7 (citing *Fichman*, 512 F.3d at 1160).

[53] *Fichman*, 512 F.3d at 1160.

[54] *Id.* at 1160-61.

[55] *Id.*

[56] Role and Structure, United States Courts, https://www.uscourts.gov/about-federal-courts/court-role-and-structure (accessed Dec. 29, 2023).

[57] *Brown*, No. CV-21-01569-PHX-DJH, 2023 U.S. Dist. LEXIS 139128 at *1-2.

[58] *Id.* at *3.

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.* at *13.

[64] *Id.* at *10-11.

[65] *Id.*

[66] *Id.* at *1.

[67] *Id.* at *12.

[68] *Id.*

[69] *Id.* at *13.

[70] *See Jacob-Mua v. Veneman*, 289 F.3d 517, 521 (8th Cir. 2002) (*abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (2011).

[71] *See id.*

[72] *Graves*, 907 F.2d at 73.