

# Recent Changes in Serving Test Takers with Disabilities: ETS and ACT Responses to LSAC Consent Decree and DOJ

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# Agenda

- Some Basics of U.S. Disability Law
- History Lesson: LSAC Consent Decree
  - Best practices panel report and magistrate's decision
- DOJ Technical Assistance Document
- Changes at ETS in light of the DOJ technical assistance
  - Expansion of the Certification of Eligibility (COE): Accommodations History
  - Importance of the personal statement
  - Revised Guidelines for Documenting ADHD in Adolescents and Adults
- Changes at ACT in light of the DOJ technical assistance
  - New online accommodations request system
  - New decision criteria giving greater weight to IEPs/504 plans
  - Corporate-wide accessibility policy
- Q/A

# Some Basics of U.S. Disability Law

# Some basics of U.S. disability law

- K-12 level: School districts must identify and accommodate children with disabilities.
- 1973 Rehabilitation Act requires accessible websites, digital communications, and more.
- Americans with Disabilities Act (ADA) (1990) established numerous protections for individuals with disabilities in a variety of settings.
  - Subsequent Supreme Court decisions narrowed these protections.
  - Congress, in the 2009 ADA Amendments Act (ADA AA), expanded both the protections themselves and the range of disabilities covered.

# History Lesson: LSAC Consent Decree

# LSAC Consent Decree Highlights (May 2014)

- 3 individuals with disabilities brought a class action lawsuit in CA.
- DOJ intervened, resulting in national impact.
- As a result of the lawsuit, LSAC signed a Consent Decree which outlined a process for automatically approving most accommodations requests. As part of this process, LSAC agreed to:
  - strictly limit its analysis of disability documentation;
  - give considerable weight to approvals by other standardized testing entities;
  - approve most disability accommodations from evaluations that are no more than 5 years old;
  - not deny accommodations solely on the basis of a candidate's high IQ.

# Recommendations of the Best Practices Panel

- Provide training for internal and external reviewers
- Provide written explanations to the test taker about accommodations not approved
- Discontinue flagging of test scores
- Allow accommodations based solely on a diagnosis
- Grant accommodations based on approvals from another standardized test agency
- Accept documentation completed at any time after age 13

# Magistrate's Decision

- LSAC contested several of the recommendations proposed by the best practices panel.
- Case was heard by a magistrate in California.
- Magistrate emphasized that the panel indicated that the recommendations were to be implemented “generally.”
- Testing agencies must provide a rationale if an accommodation is not approved.



# Department of Justice (DOJ) Technical Assistance Document

# DOJ Technical Assistance Document

- In September 2015 the Department of Justice (DOJ) issued a technical assistance document specifically targeted at testing agencies that provide testing accommodations on high-stakes tests (e.g., GED, ISEE, SAT, ACT, GRE, LSAT, GMAT, MCAT, etc.). Some key points are:
  - Determination of whether a person has a disability should not require extensive analysis.
  - The impact on test taker's ability due to side effects of medication must be considered.
  - Determination of what constitutes a substantial limitation to a major life activity is based on a comparison to "most people in the general population."
  - A person with a history of academic success may still be a person with a disability who is entitled to testing accommodations under the ADA.

# DOJ Technical Assistance Document (cont'd.)

- Any documentation requested by a testing entity to support testing accommodations must be reasonable and limited to what is needed to evaluate a particular request.
- Proof of past testing accommodations in similar test settings is generally sufficient to support a request for the same testing accommodations for another high-stakes test.
- If a test taker previously received testing accommodations under an IEP or a 504 Plan in a public school or private school, he or she should generally receive the same testing accommodations for a current standardized test.

# DOJ Technical Assistance Document (cont'd.)

- The absence of a formal history of testing accommodations does not preclude a candidate from now receiving testing accommodations.
- Testing agencies should defer to the recommendations from a qualified professional. A testing entity should “generally accept such documentation and provide the recommended accommodation without further inquiry.”
- Reports from qualified professionals should take precedence over opinions from testing agency reviewers who never conducted the requisite assessment of the candidate.

# DOJ Technical Assistance Document (cont'd.)

- Diagnostic reports that are lacking some test scores must still be considered by testing agencies.
- Testing agencies must respond in a timely manner to requests for accommodations.
- No flagging of test scores

# Changes at ETS in Light of the DOJ Technical Assistance

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- We believe IEPs/504s are often limited and vary widely in depth and quality.
- The older the IEP/504, the less relevant it becomes for determining reasonable accommodations on ETS tests. For most tests, IEP/504 Plans will serve as supporting evidence, and disability documentation will be needed.
- IEPs/504s can be used as primary documentation for limited accommodations for HiSET only. This will be an in-house decision.
- If the IEP/504 is 5 years old or less but the accommodations requested go beyond basic accommodations, relevant evaluations will be requested and sent for panel review.

# Changes at ETS in Light of the DOJ Technical Assistance

- ETS will continue to require documentation for all individuals who are requesting accommodations and whose disabilities were first identified within the last 12 months.
- Requests for documentation will be limited in scope.
- Approvals from other testing agencies for 50% extended time and breaks will be automatically approved if the accommodations were granted within the last 5 years. For all other accommodations and older approvals, documentation will be requested.



# Changes at ETS in Light of the DOJ Technical Assistance

- ETS has trained its panel of external experts that decisions about the accommodation appropriateness should not require extensive analysis and must be made regardless of the positive effects of medication, hearing aids, mobility devices, learning strategies, etc.
- We engage in an interactive process with test takers by soliciting their viewpoints through the use of personal statements and through communication with the ETS Disability Policy Coordinators.

# Expansion of the Certification of Eligibility (COE): Accommodations History

# Expansion of COE Eligibility

- Why are we expanding the eligibility for the COE to include most disabilities?
  - Changes in the legal landscape
    - *Department of Justice (DOJ) Technical Assistance Document:*
      - “the Department continues to receive questions and complaints relating to excessive and burdensome documentation demands, failures to provide needed testing accommodations, and failures to respond to requests for testing accommodations in a timely manner.”
  - Feedback from the panel reviewers
  - To continue to be a leader in the field

# Expansion of COE Eligibility

- Expanded COE eligibility will include ASD, TBI, physical, and psychiatric disabilities for 50% extended test time and extra breaks.
- Medical disabilities/chronic health conditions and “other”
  - Most documentation still needs to be reviewed due to their episodic/transitory nature.
  - Also, accommodations for these disability categories may be different in college/university settings vs. in high-stakes standardized test settings.

# Personal Statement



# Tips for Writing a Personal Statement

- It is important that the personal statement be written by you, as the test taker.
- The content of the personal statement should address the limitations that result from the disability and how they affect you in your daily life, specifically within academic and test-taking settings.
- If you have used accommodations on another high-stakes standardized test (e.g. ACT, SAT, LSAT, GMAT, MCAT), please describe how they helped “level the playing field.”
- If you have used practice tests, it may be helpful to describe how you felt your disability impacted you during the practice test and how the requested accommodations would ensure equal access.

# Revised Guidelines for Documenting ADHD in Adolescents and Adults: 3<sup>rd</sup> Edition

# Changes to 3<sup>rd</sup> Edition of “ETS Guidelines for Documenting ADHD in Adolescents and Adults” (*Formatting*):

- Condensed and simplified our ADHD documentation guidelines from over 20 pages to 6 pages.
- New bulleted format with hot links to appendix information such as the “ETS Bulletin Supplement for Test takers with Disabilities” or the “ETS Tips for Evaluators” brochure.
- Q & A format, with more white space and less text



# Changes to 3<sup>rd</sup> Edition of “ETS Guidelines for Documenting ADHD in Adolescents and Adults” (*Content*):

- Expansion of the audience of the document to include both the test taker and the evaluator
- More specific information about who is qualified to conduct the evaluation
- Softer wording (e.g., “must be included” vs. “may be helpful”), including the word “generally” whenever appropriate
- Less emphasis on a diagnosis and more emphasis on current functional limitations
- Acknowledgment that other conditions often co-occur with ADHD and that it is often difficult to tease out the primary disability from a secondary one.

## Changes to 3<sup>rd</sup> Edition (*Content*), cont'd:

- Welcoming test takers to provide additional sources of information to support the diagnosis, beyond psycho-educational or neuropsychological reports
- Comprehensive neuropsychological reports or psycho-educational reports “may be helpful” but are not required for most accommodations.
- Inviting other sources of documentation, including the personal statement and/or letter from DS service provider attesting to the effectiveness of accommodations.
- More emphasis on the importance of the clinical interview and the gathering of supporting data from multiple sources

## Changes to 3<sup>rd</sup> Edition (*Content*), cont'd

- Documentation that is more than 5 years old may be considered, if applicable.
- Specific recommendations are offered for submitting a “documentation update” for outdated documentation.

# Changes at ACT in Light of the DOJ

3/27/2017



*Measuring the Power of Learning.™*

# Changes at ACT in Light of the DOJ Technical Assistance

- Lessened documentation requirements:
  - Developed an online accommodations portal aimed at guiding examinees through the request process so that they only provide necessary documentation based on diagnosis, type of plan, length of time on plan and requested accommodations
  - Majority of applicants need to submit only copy of accommodations plan to have requests approved.

## Changes at ACT: Lessened documentation requirements (cont'd)

- Greatly expanded the types of diagnoses to which this policy applies to include mental health disorders and speech and language disorders instead of only learning disabilities
- We do treat public school students and private school students differently because public school students are accommodated under the known standards of IDEA and Section 504 while private school students are accommodated under varied and frequently unknown standards.



## New Accommodation Request

- 1. Examinee Details
- 2. Testing Information
- 3. Diagnosed Disabilities
- 4. Plan Details
- 5. Accommodations
- 6. Documentation
- 7. Review

### Diagnosed Disabilities Step 3 of 7

KATIE FEATHERSTON

Accommodations PIN: KFNI8L7B

\*Please check all that apply.

# Changes at ACT in Light of the DOJ Technical Assistance (cont'd)

- ACT continues to make an individual determination on each accommodations request and may seek additional information to help explain an unusual request.
- Developed processing efficiencies to quicken turnaround of accommodations decision to ensure sufficient notice of a need for additional information that the examinee can still test on the desired test date.
- ACT has developed new and different ways to communicate how one can request accommodations and inform applicants about the limited documentation required. Our website contains videos and infographics geared toward both the examinee and her/his parents and the schools. We have provided checklists and other tools to simplify what can be a complicated process.



## Requesting Accommodations 3 Step Checklist for Students and Parents



Create an account or log in



### No.1 Register

- Register for the ACT test
- Indicate need for accommodations
- Select type of accommodations needed\*
- Complete Registration

\*Which accommodation do I select? [Click here](#) for more info



You'll receive an email



### No. 2 Forward Email

- Receive email from ACT with accommodation instructions
- Complete Consent to Release Information form
- Forward the email and form to your school official



School submits request



### No. 3 Check In

- School official submits your request to ACT
- ACT reviews request and notifies your school official
- School official should contact you within two weeks of submitting your request.

ACT<sup>®</sup>

# ACT Accessibility Policy

- Approved by Senior Management Team; all team members must consent to policy
- Goal of being [WCAG 2.0](#) Level AA (Web Content Accessibility Guidelines) compliant within 18 months
- Objective guidelines, recognized internationally
- Meets Legal Requirements of ADA, Section 508, state laws, Dept. of Justice
- ACT Standards are set by the Accessibility and Accommodations Oversight Board, which is responsible for working with others (e.g., Internal Audit) to ensure compliance.

# ACT Accessibility Policy

- **Why the need for a Corporate Accessibility Policy?**
  - **Mission:** Our mission is to achieve education and workplace success for ALL customers
  - **Market:**
    - About 20% of the population have a disability, with buying power of \$461 billion
    - ELs are fastest growing segment of K-12 pipeline; need language accessibility
  - **Legal requirements**
    - ADA requirements to provide accessible products and services
    - Department of Justice enforcement
    - State Accessibility Laws apply to ACT under state and district contracts
- **Two Kinds of Accessibility**
  - **Open:** General information and interactions (web pages, documents, forms, manuals, instructions, registration systems, etc.)
  - **Controlled:** Assessment-specific content dictates which pathways we can make available (timing, formats, translations, etc.)

Q/A

# Contact Information

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