

DISABILITY DOCUMENTATION DILEMMAS: A VIEW FROM THE TRENCHES

Robert L. Mapou, Ph.D., A.B.P.P.
Board Certified in Clinical Neuropsychology
Director, Adult Neuropsychology
The Stixrud Group, LLC
Silver Spring, MD

Departments of Psychiatry and Neurology
Uniformed Services University of the Health Sciences, Bethesda, MD

Department of Neurology (Psychology)
Georgetown University School of Medicine, Washington, DC

THE BEST CURRENT RESOURCE:

LOVETT, B. J AND LEWANDOWSKI, L. J. (2015).
*TESTING ACCOMMODATIONS FOR STUDENTS
WITH DISABILITIES: RESEARCH BASED PRACTICE.*
WASHINGTON, DC:
AMERICAN PSYCHOLOGICAL ASSOCIATION

TESTING ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

LOVETT & LEWANDOWSKI (2015)

- ▶ A “must read” for anyone doing evaluations for accommodations
- ▶ Covers special education law, disability law, and legal definitions of disability
- ▶ Reviews extant, but limited research on accommodations for students with high-incidence disabilities (LD, ADHD)
- ▶ Provides a research and clinically-based approach for determining
 - ▶ Whether a student qualifies for accommodations based on the law
 - ▶ What accommodations are appropriate and reasonable

WOULD YOU RECOMMEND ACCOMMODATIONS FOR:

- ▶ A student with clear documentation of LD and skills below the level of most people in reading/writing/math
- ▶ A student with ADHD who works more slowly than most people on timed tasks
- ▶ A student with ADHD who is fine when taking his/her medication
- ▶ A student with a 130 General Ability Index and average reading comprehension and expressive writing skills
- ▶ A student who was never diagnosed with LD or ADHD before college and has always had above average scores on standardized tests
- ▶ A student who was never diagnosed with LD or ADHD before college, has always done well in school, but is now flunking out of college

WHAT IS A DISABILITY? (USA LAW)

DEFINITION OF A DISABILITY UNDER THE 1990 AMERICANS WITH DISABILITIES ACT

- ▶ A disability is:
 - ▶ “a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual”
- ▶ A person is considered disabled if:
 - ▶ “the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people”
 - ▶ The person has a record of impairment.

ISSUES TO CONSIDER

- ▶ Everyone has strengths and weaknesses
- ▶ Variability in test performance is the norm, not the exception (Binder et al., 2009; Schretlen et al., 2003, 2008)
- ▶ Individuals may have weaknesses relative to their potential, but this does not always meet *legal* disability criteria

THEREFORE . . .

**NOT ALL WEAKNESSES ARE
DISABILITIES!**

ADA AMENDMENTS ACT OF 2008

- ▶ Designed to address limitations of the original law
- ▶ Mitigating factors, such as medication or the use of compensatory strategies, do not negate the presence of a disability.
- ▶ A disability can be cyclical (e.g., multiple sclerosis, seizure disorder)

ADA AMENDMENTS ACT OF 2008

- ▶ Additional life activities relevant to LD and ADHD have been added
 - ▶ Reading
 - ▶ Concentrating
 - ▶ Thinking
 - ▶ Learning
 - ▶ Communicating
 - ▶ Working

ADA AMENDMENTS ACT OF 2008

- ▶ There does not have to be a history of accommodations to establish a disability
- ▶ A disability no longer has to “significantly limit” or “severely restrict” functioning, as prior legal cases had established.
- ▶ But, the comparison group is still “most people” or “the average person”

ADA AMENDMENTS ACT OF 2008

EEOC REGULATIONS - 2011

- ▶ Regulations were issued by the Equal Opportunity Employment Commission in March 2011
- ▶ The intent was to cover people with less severe impairments and to refocus on discriminatory conduct, not on whether one has a disability.

ADA AMENDMENTS ACT OF 2008

EEOC REGULATIONS - 2011

- ▶ Assessment should focus on
 - ▶ How a major life activity is substantially limited, NOT what a person CAN do despite an impairment
 - ▶ How much effort or time a person requires to complete a major life activity
- ▶ The comparison to most people should be based on “commonsense judgment,” rather than requiring scientific or medical evidence

DOCUMENTATION GUIDELINES

Association on Higher Education and Disability (1997, July). *Guidelines for documentation of a learning disability in adolescents and adults*. (First guidelines, no longer used).

Educational Testing Service (2007). *Policy statement for documentation of a learning disability in adolescents and adults* (2nd Edition).

Educational Testing Service (2008). *Policy statement for documentation of attention-deficit/hyperactivity disorder in adolescents and adults* (2nd Edition).

SUPPORTING ACCOMMODATION REQUESTS: GUIDELINES ON DOCUMENTATION PRACTICES

ASSOCIATION ON HIGHER EDUCATION AND DISABILITY
(2012, MAY)

▶ Background:

- ▶ The ADA Amendments Act of 2008 was designed “to make it easier for individuals with disabilities to obtain protection under the ADA.”
- ▶ No legislation or regulation specifies the type of documentation necessary to obtain accommodations

SUPPORTING ACCOMMODATION REQUESTS: GUIDANCE ON DOCUMENTATION PRACTICES

ASSOCIATION ON HIGHER EDUCATION AND DISABILITY
(2012, MAY)

- ▶ Sources and Forms of Documentation
 - ▶ Primary Documentation: Student's Self-Report
 - ▶ Secondary Documentation: Observation and Interaction
 - ▶ Tertiary Documentation: Information from External or Third Parties

SUPPORTING ACCOMMODATION REQUESTS: GUIDELINES ON DOCUMENTATION PRACTICES

ASSOCIATION ON HIGHER EDUCATION AND DISABILITY
(2012, MAY)

- ▶ Documentation Process
 - ▶ Individual Review
 - ▶ Commonsense Standard
 - ▶ Non-burdensome Process
 - ▶ Current and Relevant Information

ADA AMENDMENTS ACT OF 2008

NEW DEVELOPMENTS—DOJ REGULATIONS

- ▶ Notice of Proposed Rulemaking to implement regulations was issued in February 2014 by the DOJ.
- ▶ Designed to replicate the 2011 EEOC regulations
- ▶ Increased focus on “national examination test takers (e.g., LSAT, CPA, and other professional examinations”
 - ▶ Likely reflecting increased complaints to the DOJ about testing issues.

ADA AMENDMENTS ACT OF 2008

NEW DEVELOPMENTS—DOJ REGULATIONS

- ▶ Recommendations:
 - ▶ Definition of a disability “should not demand extensive analysis”
 - ▶ “Impairments” that may not affect functioning are not distinguished from “disabilities” that do.
 - ▶ “Substantially limits” should not be a “demanding standard”
 - ▶ Updated evaluation should not be required if there is history of documentation, regardless of the nature of that documentation.
- ▶ There were responses from the testing agencies and from disability advocates
- ▶ Most psychologists did not learn of this until after the public comment period closed.

LSAC CONSENT DECREE

MAY 2014

- ▶ The US DOJ joined a class action lawsuit against the LSAC, because of alleged discrimination in disability determination.
- ▶ A landmark settlement was reached due to “widespread and systemic discrimination in violation of the ADA.”
- ▶ The LSAC agreed to the following:
 - ▶ LSAT will no longer be flagged when accommodations are provided
 - ▶ Updated evaluation will not be required if
 - ▶ Accommodations were granted previously on a college entrance exam or GED
 - ▶ The same accommodations are being requested to the LSAT.

LSAC CONSENT DECREE

MAY 2014

- ▶ The LSAC agreed to the following:
 - ▶ An expert panel will develop “best practices” for reviewing future accommodation requests, which may or may not be adapted.
 - ▶ Civil penalty compensation fund of \$7.8 million for over 6000 applicants denied accommodations on the LSAT
 - ▶ Only flagging is permanent

LSAC CONSENT DECREE: EXPERT PANEL RECOMMENDATIONS JANUARY 2015

- ▶ Most relevant recommendation:
 - ▶ Documentation from the age of 13 and older should be accepted without needing an updated evaluation

TESTING ACCOMMODATIONS

U.S. DOJ, CIVIL RIGHTS DIVISION, DISABILITY RIGHTS SECTION, SEPTEMBER 2015

- ▶ Covers all standardized tests
- ▶ “Documentation: Any documentation if required by a testing entity in support of a request for testing accommodations must be reasonable and limited to the need for the requested accommodations.”

TESTING ACCOMMODATIONS

U.S. DOJ, CIVIL RIGHTS DIVISION, DISABILITY RIGHTS SECTION, SEPTEMBER 2015

- ▶ Examples of documentation (only 1 or 2 may be required):
 - ▶ Recommendations of qualified professionals
 - ▶ Proof of past testing accommodations
 - ▶ Observations by educators
 - ▶ Results of psycho-educational or other professional evaluations
 - ▶ An applicant's history of diagnosis; and
 - ▶ An applicant's statement of his or her history regarding testing accommodations

TESTING ACCOMMODATIONS

U.S. DOJ, CIVIL RIGHTS DIVISION, DISABILITY RIGHTS SECTION, SEPTEMBER 2015

- ▶ If a candidate
 - ▶ Has previously had the same accommodations on a standardized test (e.g., SAT)
 - ▶ Has had the same accommodations in an IEP or Section 504 plan
 - ▶ Has had the same accommodations in a formal plan in a private school or
 - ▶ Has a history of informal accommodations due to a new event
- ▶ Then the candidate should be granted accommodations without the need for an updated evaluation.

TESTING ACCOMMODATIONS

U.S. DOJ, CIVIL RIGHTS DIVISION, DISABILITY RIGHTS SECTION, SEPTEMBER 2015

- ▶ Testing agencies should defer to the opinion of a “qualified professional” over the opinion of “testing entity reviewers who have never conducted the requisite assessment of the candidate.”
- ▶ Testing agencies should not require evaluators to administer a specific test when there is a clear history of accommodations.

TESTING ACCOMMODATIONS

U.S. DOJ, CIVIL RIGHTS DIVISION, DISABILITY RIGHTS SECTION, SEPTEMBER 2015

▶ Implications:

- ▶ Testing agencies and universities are being increasingly pressured to accept an evaluation regardless of when it was done.
- ▶ Poorly done evaluations that do not show data consistent with the requested accommodations should be accepted.
- ▶ If there is an IEP and evidence of prior accommodations, an evaluation may not even be required.

WHAT IS WRONG WITH THIS?

ADA AMENDMENTS ACT OF 2008 AND NEW GUIDELINES: CONSIDERATIONS

- ▶ Early identification and intervention can ameliorate, if not eliminate the problem.
- ▶ Initial documentation may have been poor, and a person may have been unjustifiably granted support and accommodations.
- ▶ Brains mature, and people change over time.
 - ▶ Frontal lobes and executive functions improve from the teens to the 20s.
 - ▶ The 24-year-old brain is not the 13-year-old brain.

ADA AMENDMENTS ACT OF 2008 AND NEW GUIDELINES: CONSIDERATIONS

- ▶ Self-report can be motivated by secondary gain.
- ▶ A diagnosis is not equivalent to a disability.
- ▶ Without an updated assessment, we will not have **DATA** about the person's current functioning.

LATEST DEVELOPMENTS

- ▶ December 2016
 - ▶ Starting in January 2017, students receiving accommodations in school will automatically receive the same accommodations on the College Board tests
 - ▶ Sparked by the DOJ Civil Rights investigation of complaints about denial of accommodations

LATEST DEVELOPMENTS

- ▶ February 2016
 - ▶ University of Arizona College of Law will accept the GRE instead of the LSAT
 - ▶ Wake Forest University and University of Hawaii began looking into this
- ▶ March 2017
 - ▶ Harvard will also accept the GRE
 - ▶ Goal is to expand access
 - ▶ ABA accreditation section starts to consider this for all law schools.

LATEST DEVELOPMENTS

March 2017 (The National Psychologist)

“Physicians can sign off on testing results for dyslexia as long as they have training in the analysis of the disability, the Louisiana State Board of Medical Examiners has preliminarily determined.

A Louisiana physician asked the board if physicians can diagnose dyslexia or if it should be ‘psychologists only.’ The board said the practice of diagnosing is acceptable as long as it is within the doctor’s education, training, and experience.

‘With respect to credentialing, there may be other qualifications and/or clinical restrictions imposed by hospitals or similar institutions,’ the board noted.”

**IT MAY BE WORSE IN
CANADA.....**

TESTING ACCOMMODATIONS

HUMAN RIGHTS COMMISSION (2016)

- ▶ Colleges and universities cannot require a diagnosis.
- ▶ They may only request a note from the health care professional stating the “functional impairments” that require accommodations and the requested accommodations.

TESTING ACCOMMODATIONS

HUMAN RIGHTS COMMISSION (2016)

- ▶ Implications: Health care professionals, such as family physicians, who do not know how to assess functional impairment, will rely solely on patient report.
- ▶ Result: Testing requests to the Regional Assessment Centers have virtually stopped, because evaluations are no longer needed.

TESTING ACCOMMODATIONS

PRIMARY AND SECONDARY SCHOOLS

- ▶ Increased push to graduate all students has led to a large increase in “informal IEPs” and accommodations for students who are not passing or not getting the grades they want.
- ▶ These are not legally binding and not based on a systematic assessment or diagnosis,

TESTING ACCOMMODATIONS

PRIMARY AND SECONDARY SCHOOLS

- ▶ These accommodations often include
 - ▶ Double or unlimited time on tests
 - ▶ Formula or other information sheets for science and math classes
 - ▶ Scribes who do more than just take dictation
 - ▶ Program modifications
- ▶ Many students are very anxious, but have no understanding of the true purpose of accommodations

IS EVERYONE LOOSENING THE DEFINITION OF A DISABILITY?

ARE RELATIVE WEAKNESSES NOW A DISABILITY?

PRESSURES ON CLINICIANS AND DISABILITY SUPPORT PROFESSIONALS

- ▶ Parents want extended time to help a child “reach his/her potential.”
- ▶ Parents complain that other students are getting extended time, even when they do not have obvious difficulties.
- ▶ Parents believe extended time will solve the problem, when it may really be due to the student not completing his/her work
- ▶ Parents are very unhappy when they do not get what they want, especially after paying a lot of money for an evaluation.

PRESSURES ON CLINICIANS AND DISABILITY SUPPORT PROFESSIONALS

- ▶ Students want extended time to improve grades and standardized test scores so that they get into the prestigious college, graduate school, medical school, law school, etc.
- ▶ Students want access to psychostimulant medication to gain an edge when studying and taking tests.

**THIS IS LIKE WANTING TO
LOSE WEIGHT OR BUILD
MUSCLE**

**NO ONE WANTS TO WORK
TO IMPROVE THE SKILL!**

PROPOSED SOLUTION

EVIDENCE-BASED COMPONENTS OF ASSESSMENT

ASSESSMENT COMPONENTS

MAPOU (2004, 2008, 2009)

- ▶ History interview
- ▶ Record review
- ▶ Interview focused on ADHD symptoms
- ▶ Behavioral rating scales (self and other report)
- ▶ Intellectual/academic/cognitive evaluation, including behavioral observations
- ▶ Personality/emotional assessment
- ▶ Performance and symptom validity assessment

RATIONALE

- ▶ Bases assessment on research, not clinical lore
- ▶ Considers the whole person and his/her history
- ▶ Helps to determine if a reported problem is disabling or just a relative weaknesses
- ▶ Helps to determine if reported problems are a true (valid) reflection of difficulty

RATIONALE

- ▶ Permits monitoring change over time
 - ▶ Improvement with remediation
 - ▶ Improvement with brain maturity
 - ▶ Or, growing into an earlier deficit (e.g., executive functioning) as academic demands increase
- ▶ Permits data-based feedback and appropriate recommendations

READING DISABILITIES

- ▶ Phonological awareness
- ▶ Spoken language comprehension
 - ▶ Single word (vocabulary)
 - ▶ Sentence and discourse level
- ▶ General knowledge
- ▶ Span for auditory-verbal information
- ▶ Processing speed

READING DISABILITIES

- ▶ Word retrieval
 - ▶ Confrontation naming
 - ▶ Rapid visual naming
 - ▶ Timed word generation (verbal fluency)
- ▶ Phonological and orthographic skills
 - ▶ Decoding when reading
 - ▶ Single-word reading
 - ▶ Encoding when spelling
 - ▶ Spelling

READING DISABILITIES

- ▶ Automaticity when reading single words
- ▶ Fluency when reading text
- ▶ Timed vs. extended time reading comprehension

MATHEMATICS DISABILITIES

- ▶ Attention
- ▶ Planning, organization, and problem-solving
- ▶ Visuospatial skills
- ▶ Semantic knowledge
- ▶ Fluency when completing simple math facts
- ▶ Written calculation
- ▶ Word problem solving (written and mental)
- ▶ Mathematical knowledge and concepts

WRITTEN LANGUAGE DISABILITIES

- ▶ Fine motor speed and dexterity
- ▶ Handwriting quality
- ▶ Fluency when writing words and sentences
- ▶ Phonological and orthographic skills
 - ▶ Encoding when spelling
 - ▶ Spelling

WRITTEN LANGUAGE DISABILITIES

- ▶ Oral sentence formulation
- ▶ Verbal organization
- ▶ Essay writing

NONVERBAL LEARNING DISABILITIES

- ▶ Visuospatial skills
- ▶ Attention
- ▶ Fine motor skills
- ▶ Executive functioning, problem-solving, and reasoning abilities
- ▶ Mathematics
- ▶ Interpersonal skills

ADHD

- ▶ Evidence of childhood symptoms (DSM-5) and functional impact
- ▶ Evidence of current symptoms (DSM-5 or proposed, empirically based adult symptoms from Barkley, Murphy, & Fisher, 2008)
- ▶ Other causes are not primary
 - ▶ Sleep disturbance
 - ▶ Affective disorder
 - ▶ Anxiety disorder
 - ▶ Brain injury
 - ▶ Being on “24/7”

ADHD

- ▶ WAIS-IV Indices profile
- ▶ Attention
- ▶ Executive functions, problem-solving skills, and reasoning abilities
- ▶ Learning and memory

CASE VIGNETTES

- ▶ 15-year-old ninth grade student with ADHD
 - ▶ Previously had a 504 Plan
 - ▶ Had informal extended time in a private school
 - ▶ Parents want extended time in a new private school
- ▶ 20-year-old college student with ADHD and anxiety wanting to attend medical school
 - ▶ Received 50 percent extended time in elementary school, high school, and college, and on the SAT
 - ▶ Did not receive accommodations in middle school or on the PSAT

CASE VIGNETTES

- ▶ 24-year-old college graduate with ADHD and an earlier language disorder wanting to attend graduate school
 - ▶ Has had support and accommodations since elementary school
 - ▶ Received 100 percent extended time starting in middle school
 - ▶ Received 50 percent extended time on the College Board tests
 - ▶ Granted 50 percent extended time in college, but arranged double time with his professors
 - ▶ Given 100 percent extended time in a postgraduate program

CASE VIGNETTES

- ▶ 27-year-old college graduate wanting to attend medical school, with a history of depression and treatment with psychostimulant medication starting in college
 - ▶ Received 50 percent extended time starting in eleventh grade
 - ▶ Took the SAT without extended time but was subsequently granted 50 percent extended time and took it again.

CASE VIGNETTES

- ▶ 27-year-old medical student with history of ADHD, anxiety, and depression
 - ▶ Received 50 percent extended time since middle school
 - ▶ Received 50 percent extended time on the SAT and SAT Subject Tests
 - ▶ Did not apply for accommodations on the MCAT and scored 31
 - ▶ Wants extended time on the USMLE

CASE VIGNETTES

- ▶ 41-year-old medical student, with complex history of trauma, chronic pain, and medical issues.
 - ▶ Given 50 percent extended time in medical school
 - ▶ Diagnosed with and treated for ADHD in medical school
 - ▶ Given accommodations for her medical conditions on the USMLE, but unable to pass Step 2 CK

CONTACT INFORMATION

Robert L. Mapou, Ph.D., ABPP

The Stixrud Group

8720 Georgia Avenue

Suite 606

Silver Spring MD 20910

(301) 565-0534 x2009 (301) 565-2217 FAX

E-mail: rmapou@gmail.com

Web: stixrud.com/professional-staff/dr-robb-mapou/