Settlement between the Law School Admission Council and the Department of Justice will set the Benchmark for testing accommodations.

By: Matthew Dietz

On May 20, 2014, the Department of Justice announced a settlement with the administrators of the LSAT, the Law School Admissions Council (LSAC), for alleged violation of the Americans with Disabilities Act for denying disability accommodations for test-takers. For the past twenty years, testing agencies, schools, and the Florida Bar have applied different standards prior to allowing or denying testing accommodations. As a result, the person would need to re-establish the fact that they have a disability and produce ever-shifting amounts of proof, sometimes from preschool, to establish a disability.

As LSAC was known as one of the more difficult testing agencies to obtain an accommodation, the Department of Justice's settlement will establish a benchmark for standards for other testing agencies.

1. **If testing accommodations were granted on any post-secondary admission test, the test taker would be entitled to the same accommodation on any future exam.**

The starting point of any inquiry into disability and accommodations is where there is a history of accommodations being received in a secondary school or post-secondary school setting, and where an evaluator has done an individualized assessment of a person with a disability, the testing agency may not challenge such evaluations. The settlement makes clear that if a person has been qualified for accommodations for the SAT I and II, ACT, GED, GRE, GMAT, DAT and MCAT examinations, that person may receive the same accommodation on the LSAT. The settlement provides that this is limited up to double time or other accommodations that would result in a one day administration of the test and most accommodations for other sensory or physical disabilities.

2. **If the testing accommodations are extensive or have not been requested or approved in the past, the documentation required must be reasonable and limited to the accommodation requested.**

The settlement adopts prior guidance under the ADA which places emphasis on documentation provided by a qualified professional who has made an individualized assessment of the applicant, but the settlement spells out the various types of documentation that should be considered:

- Factors such as late-in-life diagnosis of disability, recent onset of a disability, progression of a disability, or lack of resources
- Past testing accommodations on other tests, or accommodations provided in public schools
- Psycho-social educational testing that is conducted within five years of the date of the request
- Any other objective evidence relating to the diagnosed impairment and impact on the test-taker

3. **Further, LSAC may not disqualify a candidate solely because the person has a high IQ or a high level of academic success, and cannot disqualify a person because he or she has no formal history of receiving an accommodation.**

Under the amendments to the ADA in 2008, Congress specifically found that it was critical to reject the assumption that an individual who performs well academically or otherwise cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking. For these people, the disability is demonstrated by the additional amount of time or effort an individual has to expend when performing a major life activity because of the effects of an impairment, even if the individual is able to achieve the same or similar result as someone without the impairment. Congress noted that "because specific learning disabilities are neurologically-based impairments, the process of reading for an individual with a reading disability (e.g. dyslexia) is word-by-word, and otherwise cumbersome, painful, deliberate and slow—throughout life." 76 F.R. 17012-17013.

4. **LSAC cannot add administrative barriers that may delay or deter test-takers from receiving an accommodations or indicate to law schools who received test accommodations.**

Many test taking entities do not advise the applicant of its decision regarding accommodations shortly prior to the administration of the exam. This practice gives the applicant no time to supplement the information provided or appeal the adverse decision. The settlement requires LSAT to provide a list of documentation it requires to substantiate a request for testing accommodations, and it requires LSAT to respond to each testing request with 14 business days of receipt. So as long as the test taker applies more than 14 days prior to the deadline for requesting accommodations, then the candidate can supplement the documentation, if needed. Further, the settlement prohibited LSAC from indicating which test-takers have received accommodations when reporting scores.

5. **$6,730,000 in damages to class members.**

The settlement provides damages to the class – all those individuals who requested accommodations on the LSAT between January 1, 2009, and May 20, 2014. Each of the claimants will receive a pro-rata portion of the damage amount, and must apply within one-hundred and eight days from the time that the claims administrator sends notice to all persons on a list of potential claimants provided by LSAC.

Effect of this Settlement Agreement

It is clear that the Department of Justice's intent was to set clear standards for the testing industry in how to evaluate testing accommodations. Previously, the regulations and the guidelines under the ADA provided generalities into what a testing agency could consider, but allowed each to use its discretion within the general guidelines. This settlement removes discretion from a testing agency and certainty for a test-taker with a disability to receive the same accommodation for all tests that that person takes. While this settlement solely involved the LSAT, there should be no question that the same standards will apply to all professional licensing exams as well.

For a copy of the settlement see http://www.ada.gov/defh_v_lsac/lsac_consentdecree.htm