

Litigation: Accommodations for High Stakes Testing

By: Matthew Dietz

Academic success is often measured by a score on a test. A test score can make the difference in being accepted into a desired school or in obtaining a professional license. However, a learning disability of a mental illness or disorder, or other disability, can derail a person's career or learning goals when an accommodation is not given to level the playing field. In fact, all schools, testing organizations and professional licensing organizations should (and usually do) provide for testing accommodations.

Is it fair?

A professional boxer could usually beat an amateur with one hand behind her back – but you would never be able to measure the boxer's ability when her hand is tied behind her back. In the same way, a test should be designed to test the test-taker's intelligence or mastery of the subject and not how quickly a person completes a test or the person's skills in blocking out extraneous noises. For years, accommodations have been denied to those who are intelligent, based on the rationale that accommodations were not needed due to their intelligence. When the ADA was amended in 2008 to clarify that impairments in the major life activities of learning, reading, concentrating, and thinking were disabilities, the Congressional drafters of the law commented as follows:

When considering the condition, manner, or duration in which an individual with a specific learning disability performs a major life activity, it is critical to reject the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking. The Committee believes that the comparison of individuals with specific learning disabilities to 'most people' is not problematic unto itself, but requires a careful analysis of the method and manner in which an individual's impairment limits a major life activity. For the majority of the population, the basic mechanics of reading and writing do not pose

extraordinary lifelong challenges; rather, recognizing and forming letters and words are effortless, unconscious, automatic processes. 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.

How does a person get a testing accommodation?

Most test providers have forms where a request can be made. An accommodation should be provided where the applicant has documentation that demonstrates a consistent history of a diagnosis of a disability, with a recent evaluation by qualified professional who has made a face-to-face evaluation. The earlier and more consistently an evaluation is provided, the better likelihood of the approval of the accommodation request, however, there are methods to demonstrate the existence of a disability without early evaluations, such as observations by parents or educators and a series of psycho-educational testing. Under the new ADA regulations, once a test taker receives accommodations for post-secondary school testing, such as the SATs or the ACTs, those accommodations should be presumptively accepted by other testing agencies.