

Executive Summary of the Final Report of the “Best Practices” Panel¹

Ruth Colker, J.D.²
Charles Golden, Ph.D.³
Nancy Mather, Ph.D.⁴
Nicole Ofiesh, Ph. D.⁵

Introduction

On January 26, 2015, we submitted a Final Report to DFEH, DOJ and LSAC pursuant to our responsibilities under the Consent Decree between the parties, under which we were four of the five outside experts charged with recommending Best Practices to LSAC.⁶ Because the Final Report is a dense single-spaced, 30-page report, we are providing this Executive Summary as a courtesy to the public. To the extent this Executive Summary is inconsistent with the Final Report, the Final Report is the document that is binding on the parties under the Consent Decree.

After six months of deliberation, we submitted our recommendations on the basis of careful review of written submissions from the parties, review of LSAC’s website, interviews with LSAC staff, information gathered from parties and other testing entities,

¹ The Final Report of the “Best Practices” Panel was prepared pursuant to the Consent Decree between the California Department of Fair Employment and Housing (“DFEH”), the United States Department of Justice (“DOJ”) and the Law School Admission Council, Inc, (“LSAC”) Case No. CV 12-1830-EMC (May 29, 2014). This Executive Summary is prepared in our private capacity, upon our own initiative, and is not an official document prepared pursuant to our work on the Best Practices Panel. This Executive Summary is based entirely on publicly available documents, and contains no confidential information.

² Heck-Faust Memorial Chair in Constitutional Law and Distinguished University Professor, Moritz College of Law, The Ohio State University.

³ Professor, Center for Psychological Studies, Nova Southeastern University.

⁴ Professor, Department of Disability and Psychoeducational Studies, College of Education, University of Arizona.

⁵ Nicole Ofiesh, Ph.D., LLC; Sr. Research Associate, Schwab Learning Center, Stanford University.

⁶ For a redacted copy of the Final Report and enforcement updates, see http://www.ada.gov/enforce_current.htm.

and communication with experts who we believed could provide additional expertise to the Panel. All of the recommendations were approved by four or five members of the Panel, including one member of the Panel appointed by LSAC.

Under the terms of the Consent Decree, any of the parties can state their interest to challenge any of our recommendations within one month of the issuance of our Final Report. They then have two months to file their objections in court. Unchallenged recommendations are to be implemented by LSAC no later than four months following either the expiration of the one-month notice period or LSAC's receipt of a written agreement by all parties not to challenge the Best Practices recommendations.

Implementation of challenged Best Practices is stayed pending a final determination by the district court. Nonetheless, during the duration of any such stay, LSAC must continue to implement all other, unchallenged Best Practices. At this time, the parties have not stated whether they intend to challenge any of the Best Practices.

The Consent Decree defined the ten issues that we were charged to resolve. Chiefly, these issues were determination of: (1) what kind of documentation would be necessary in support of a request for a testing accommodation(s); (2) what should be the role of outside consultants as part of LSAC's determination process of whether to approve a request for a testing accommodation(s); (3) what kind of appeals process, if any, LSAC should implement through the use of outside consultants; and (4) miscellaneous issues, such as the qualifications of testing accommodation reviewers and training for LSAC staff and outside consultants.

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Findings

The Panel concluded that LSAC's documentation requirements were excessive for most candidates who seek testing accommodations on the LSAT and inconsistent with the documentation guidelines of other national testing entities. Further, the Panel concluded that LSAC provides no guidance to its outside consultants who might be hired to assist with a review of a candidate's file. The Panel also concluded that LSAC has rejected requests for testing accommodations even in cases where there is a clear history of the existence of a disability and the provision of prior testing accommodations.

Necessary Documentation

Three categories

To facilitate a more streamlined and less burdensome process for submitting testing documentation requests, the Panel divided testing accommodation requests into three categories⁷:

1. candidate requests a testing accommodation that does not involve the provision of extra testing time within a section⁸,
2. candidate requests up to 50 % extra time for certain common impairments (learning disabilities, ADHD or psychiatric disorders) or up to 100 % extra time for a severe visual impairment, or,
3. candidate requests more than 50 % extra time for a nonvisual impairment or

⁷ Issue 2 in Final Report.

⁸ Examples of such accommodations include assignment to a wheelchair-accessible room; separate testing room; large type test booklet; marking responses in the test booklet; permission for food, drink, or medical supplies in the test room; extra breaks between sections; stop-the-clock breaks within a testing section; seating near the front of the room; sign language interpreter to sign spoken instructions; printed copy of spoken instructions with visual notification of start time, remaining time, and stop times; and special equipment or furniture.

more than 100 % extra time for a severe visual impairment.

For each of these three categories of candidates, the candidate can establish the existence of a disability through documentary evidence from a qualified professional who examined the candidate any time after the candidate reached the age of 13.⁹ The categories only differ with respect to the kind of documentation required to justify the precise testing accommodation requested. For all categories, considerable weight must be given to a candidate having a “record of” receiving past testing accommodations.¹⁰ Further, no adverse assumption should be used when a candidate has presented evidence of a current disability yet has no history of receiving testing accommodations on previous standardized exams.¹¹ Finally, in determining whether an individual has a learning disability, the Panel concluded it is appropriate to consider the condition, manner or duration under which an individual performs a major life activity, such as reading, even if the individual may receive an average score on a reading test.¹²

For candidates in the first category, the requested accommodation is unlikely to have an impact on the validity of the test taker’s score; therefore, the degree of justification should be especially nonburdensome. The Panel concluded that candidates in the first

⁹ The Panel selected age 13 as the cut-off for documentation so that candidates seeking testing accommodations under this rule are treated comparably to candidates who seek testing accommodations under Paragraph 5(a) of the Consent Decree. Paragraph 5(a) candidates are able to receive testing accommodations comparable to what they received on the ACT or SAT, possibly on the basis of documentation from age 13. This cut-off is also consistent with the awareness of other testing entities that individuals with longstanding disabilities need not have more current documentation to justify testing accommodations. For example, ETS provides that certain basic accommodations, such as time and one---half, can be obtained with documentation that is older than five years. See https://www.ets.org/disabilities/documentation/documenting_learning_disabilities/#basic.

¹⁰ Issue 4 in Final Report.

¹¹ Issue 4 in Final Report.

¹² Issue 5 in Final Report.

category may justify their specific request for a testing accommodation on the basis of a personal statement explaining why the accommodation is necessary to best ensure that the LSAT results accurately reflect his or her aptitude or achievement.¹³ Therefore, the Panel places great value in a candidate's self-awareness and self-understanding.

For candidates in the second category, the Panel concluded that the documentation should also include appropriate data or other relevant information in support of the request for extra time. The candidate's self-report is unlikely to be sufficient to justify a request for extra time.¹⁴

For candidates in the third category, the documentation should additionally include a statement why more than 50 % extra time is necessary so that the candidate's test results accurately reflect his or her aptitude or achievement levels.¹⁵

Minimum Standards¹⁶

In order to create consistency between similarly-situated candidates seeking accommodations, the Report recommends that candidates who meet the documentation requirements for learning disabilities, ADHD, and psychiatric disorders should ordinarily be granted 50 % extra time. Candidates who meet the documentation standards for severe visual impairments should ordinarily be granted 100 % extra time.

Candidates can seek more than the minimum standards by providing the following kind of additional documentation:

1. Evidence of past accommodations on other standardized tests,

¹³ Issue 2 in Final Report.

¹⁴ Issue 2 in Final Report.

¹⁵ Issue 2 in Final Report.

¹⁶ Issue 5 in Final Report.

2. Documentation from a qualified professional that explains the severity of the disorder, including relevant information such as co-morbidity with other disorders.

3. Signed statement from a postsecondary disability service provider indicating that candidate was provided more than 50 % additional time on college examinations.

4. Documented health or sensory impairments or psychiatric disorders that warrant more than 50 % additional time for the candidate to demonstrate his or her achievement or aptitude, including evidence of concurrent diagnoses and functional limitations.

Consideration and Appeals Process

The Panel concluded that LSAC should have a list of 25-40 outside consultants¹⁷ that it uses to consider applications further when their internal staff does not approve a request for a testing accommodation in full, or needs to handle appeals from candidates.

Consideration Process

The Panel concluded that once LSAC staff has designated a file as complete, a determination should be made for all requests for testing accommodations by the Manager of Accommodated Testing, within 4 working days. All decisions by LSAC staff or outside consultants not to approve requested accommodations in full shall be justified in writing.¹⁸

If the Manager of Accommodated Testing does not approve in full each of the candidate's request for testing accommodations then the consideration process shall continue with the use of one or two outside consultants.¹⁹ The file shall be transmitted to an outside consultant, with expertise in the disability area, who shall review the request

¹⁷ Issue 1 in Final Report.

¹⁸ Issues 6 and 7 in Final Report.

¹⁹ Issue 4 in Final Report.

within two working days by: (1) agreeing to the candidate's request in full, (2) fully agreeing with LSAC's recommendation, or (3) suggesting a partial approval. If the outside consultant agrees in full with the request for testing accommodations then the candidate will be notified within one business day that his or her request has been approved in full.

If the outside consultant does not recommend approving the candidate's request in full, then the file is transmitted to a second outside consultant. The second outside consultant will have the choices of: (1) approving the original request, (2) accepting the partial approval suggested by the first outside consultant, where applicable; or (3) supporting LSAC's initial stance where the first reviewer also accepted LSAC's initial stance. The decision of the second outside consultant will be the final decision and will be communicated to the candidate within one business day.

Appeals Process²⁰

Candidates are typically allowed to submit an appeal up to twelve days before the actual administration of the exam. After receiving a comprehensive decision letter explaining the rationale for the denial of a testing accommodation, in part or full, a candidate shall have four days to submit an appeal. More than four days is permissible if that appeal can be received within twelve days before the scheduled test date. If an appeal cannot be filed within twelve days of the testing date, then the candidate can request that his or her request for an appeal be rolled-over to the next testing cycle with no additional cost.

Upon receiving the request for an appeal, LSAC can decide to grant the candidate's request in full. If LSAC does not approve the candidate's request in full then the process

²⁰ Issues 8 and 9 in Final Report.

discussed above for the use of outside consultants during the consideration process shall apply, except that decisions shall be made in 24 hours rather than two days. The result of the appeal shall be provided to the candidate within one week of the submission of the appeal.

LSAC will never refuse to provide the results of an appeal (or a full consideration) because there is insufficient time to implement the requested testing accommodation for that examination cycle, unless the candidate indicates that he or she would like to terminate the testing accommodation request.

Miscellaneous Matters

The Panel was also asked to consider and establish appropriate qualifications for internal and external reviewers. The Panel recommended that reviewers have appropriate legal and technical knowledge in their field and have a wide range of disability expertise to understand the diverse needs of LSAT candidates.²¹

Finally, the Panel was asked to consider the parameters of training for both LSAC staff and outside consultants. The Panel recommended that all outside consultants should attend an annual two-day training session. During the life of the Consent Decree, at least one member of the Panel appointed by DOJ and one member of the Panel appointed by LSAC, who has approved all of the recommendations of the Panel, shall participate in the training session. When LSAC staff has his or her recommendations reversed more than 25% of the time during any testing cycle, then the relevant staff member shall receive additional training.

²¹ Issue 1 in Final Report.

Conclusion

We have developed these recommendations with the hope that their implementation will exceed the lifetime of the Consent Decree. We believe that LSAC should execute these recommendations immediately to facilitate a climate change that would be more supportive of the rights of candidates with disabilities to receive appropriate testing accommodations.