

Legal Briefs:AD/HD and Test Accommodations

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Individuals with AD/HD may seek test accommodations on a wide range of tests, including course examinations in school and college, GED, college entrance examinations, medical school and law school entrance examinations, and occupational and professional licensing examinations. What test accommodations may be required under the law? What documentation is needed to support accommodation requests? Before addressing these questions, we will first address the fundamental question of what is AD/HD.

AD/HD is a multifaceted disorder with three subtypes and an array of symptoms. AD/HD is currently classified as primarily "hyperactive/impulsive," primarily "inattentive" or "combined" (DSM-IV, 314). Further complicating the diagnostic picture is the fact that AD/HD may co-exist with one or more other conditions, such as learning disabilities, depression or anxiety.

AD/HD in particular individuals may range from a condition with mild functional impact to severe functional impact. Each of three subtypes may present in various ways and degrees depending on the individual. For example, inattention can mean at least five conditions: (1) focus diverted to outside stimuli, (2) focus diverted to one's own internal thoughts, (3) difficulty initiating focus on a task, (4) difficulty shifting focus, as appropriate, and (5) difficulty maintaining focus.

So, AD/HD does not present the same way in all individuals, but rather is a large and encompassing umbrella term. The AD/HD label alone tells us very little about a particular individual's functioning. It is essential to focus on the nature, extent and functional impact of specific symptoms, such as inattention, impulsivity and hyperactivity.

What test accommodations may be required for individuals with AD/HD under the Rehabilitation Act of 1973 (RA) and/or the Americans with Disabilities Act of 1990 (ADA)? Frequently requested test accommodations are extended time, separate testing room and permission to take breaks during the test. Whether or not any of these accommodations is required under the applicable law depends on the facts of the individual case.

What documentation is needed to support a request for test accommodations? Professional documentation of AD/HD and how it affects the functioning of the individual are of key importance. Professionals in writing diagnostic reports should include the diagnosis with reference to published criteria, an evaluation of impact on the functioning

of that individual and a description of how the impairment substantially limits a major life activity and specific recommendations regarding accommodations.

For AD/HD to be a disability under the ADA or RA, it, like any other impairment, must substantially limit a major life activity, such as learning. Substantial limitation may be shown by demonstrating that there is a restriction in the conditions, manner or duration of performance of the major life activity, taking into account any positive and negative effects of the individual's medication and compensatory strategies .

Proper professional documentation, in addition to addressing how the condition affects the person's functioning and how the condition substantially limits performing a major life activity, should be current and should be prepared by a professional with the requisite credentials.

In *Guckenberger v. Boston University*; 974 F. Supp. 106 (D. Mass. 1997), the United States District Court for Massachusetts considered a number of challenges to Boston University's (BU) disability policies. The Court held that "BU has demonstrated that its 'bright line' policy of requiring current evaluation by a person with a doctorate is necessary because AD/HD is often accompanied by co-existing physical and psychological conditions, is frequently treated by medications, and is a rapidly changing condition that usually remits over the period from adolescence through early adulthood." In so ruling, the Court wrote what it described as "a primer" on "learning disorders, ADD, and AD/HD."

An individual who has the chronic disorder classified as AD/HD has neurological problems that involve inattention, hyperactivity and impulsivity. ADD, which is a subtype of AD/HD, is manifest only as a problem with attention. Although ADD and AD/HD may interfere with a student's ability to perform effectively, they are not technically learning disabilities, in that the person's ability to acquire basic academic skills is not compromised.

The Court found that AD/HD produces symptoms similar to other medical conditions, such as hyperthyroidism, brain damage, substance abuse, depression and hormonal problems, that its proper diagnosis requires ruling out these conditions and that a "policy of requiring current evaluation by a person with a doctorate is necessary."

Let's look at a few hypothetical examples of accommodations that might be required for particular individuals with AD/HD.

Jeff, a college junior planning to apply to graduate school, has AD/HD (primarily inattentive) and reading disorder. He was initially diagnosed at age eight with both

conditions. He recently has had extensive psychoeducational testing and an in-depth AD/HD evaluation by a neurologist. The reports show that he has reading difficulties, with significantly below-average scores in word attack skills and reading speed, and that he continues to have difficulty sustaining attention and managing time. He is also easily distracted by auditory and visual stimuli. He was in special education in elementary school and had test accommodations throughout high school and college. The reports recommend doubling the test time and providing a separate room. With his history and thorough documentation of his disability and need for accommodations, Jeff is likely to be granted the requested accommodations.

Maria has AD/HD (primarily inattentive). She was diagnosed during medical school after she failed a licensing exam. Maria had always excelled in school and scored well above average on the college entrance and medical school entrance exams with no accommodations. She has requested test accommodations for her second attempt to pass the medical licensing test and has submitted a one-page letter prepared by her psychiatrist stating that she has AD/HD and test anxiety and needs double time, a separate room and breaks during the test. Maria is likely to be denied the requested accommodations. With a late diagnosis and such an impressive record of accomplishment on timed tests and in school overall, without any accommodations, Maria's psychiatrist would have to explain how AD/HD affects her functioning and show that she is substantially limited in learning, even though she has excelled without accommodations. This is a most challenging task. As to test anxiety, testing services generally will not recognize it as a basis for accommodation under the law. Some students report that preparing by taking many practice tests reduces their test anxiety. As to the requested breaks and separate room, Maria may find that she will be more comfortable with the new computer format than with the prior pencil and paper format. The computer set-up reduces visual distraction. Also, all students are permitted to take breaks and may use the allowed break time all at once or in small segments, as they wish.

Jane has AD/HD (combined type). She is a high-school junior and has just entered a new private school. She had extended test time at her prior school. Jane's neuropsychologist has evaluated her for AD/HD and has done extensive neuropsychological testing. His report shows that she has difficulty initiating focus and difficulty shifting focus from one task to another. It also shows that she has difficulties with expressive writing. The report recommends that she be given one and one half the usual test time for all of her exams. Because of her particular symptoms, the neuropsychologist has not recommended breaks during tests, as that would be counterproductive given her problems with initiating and shifting focus. She has not experienced major problems with distraction due to visual stimuli and has found the use

of earplugs to take care of distractibility due to auditory stimuli. For this reason, she is not requesting a separate test room. As to her hyperactivity, which is less of a problem than it was in elementary school, Jane finds that running every day helps her considerably. The private school is likely to grant the requested accommodation of extended test time because of the solid documentation and the history of accommodation.

These examples show the need for thorough documentation that sets forth the diagnosis of AD/HD, the impact of that impairment on the functioning of the individual and on the performance of a major life activity and specific recommendations of reasonable accommodations for that individual.

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