



Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

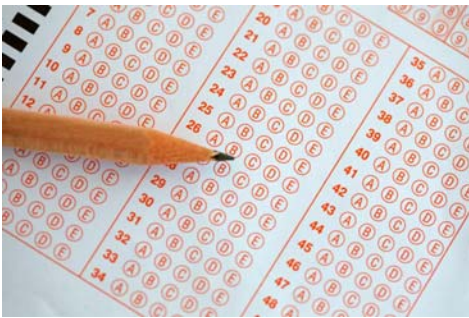
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#3 - Examinations and Courses



The Department of Justice (DOJ) has issued revised ADA Title III (private businesses, a.k.a. places of public accommodation) regulations regarding examinations and courses. (§36.309) These regulations took effect March 15, 2011 and affect exams and courses related to applications, licensing, certification or credentialing for secondary or postsecondary education or professional or trade purposes. The general rule has not changed from the original ADA:

covered entities must continue to offer exams and courses in a location and manner that is accessible to individuals with disabilities or offer alternative accessible arrangements, and examinations should be administered so that the results accurately reflect the individual's aptitude or achievement level, not the impairment. What DOJ has done is move some of the language from the original ADA preamble into the regulatory text. This change affects three areas in particular:

Requests for Documentation Must Be “Reasonable and Limited”

- If an entity requires documentation of disability before granting an accommodation request, then the documentation requirement needs to be reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.
- In general, when testing entities receive documentation provided by a qualified professional who has made an individualized assessment of an applicant that supports the need for the modification, accommodation, or aid requested, the entity should accept that documentation and provide the accommodation.
- What is considered “acceptable” documentation will depend on the nature of the disability and the specific modification or aid being requested. Possible forms of acceptable documentation may include a recommendation from a qualified professional, a psycho-educational evaluation, history of a diagnosis, participation in a Special Education program, or a prior accommodation from another standardized testing agency.

- A “qualified professional” is one who is licensed or otherwise credentialed and who possesses expertise in the disability for which the modifications or accommodations are sought. Examples of a qualified professional may include a doctor, psychologist, nurse, physical, occupational or speech therapist, vocational rehabilitation specialist, school counselor, or licensed mental health professional. Testing entities should ask qualified professionals in the pertinent field to evaluate the request and materials presented by the individual requesting the accommodation.
- An “individualized assessment” means that a qualified professional has individually and personally evaluated the candidate rather than only reviewed documents about the candidate. Personal familiarity with the candidate will always outweigh not having personal knowledge of the candidate.

Prior Modifications Received in Similar Situations Should Be Granted “Considerable Weight”

- When considering requests for modifications, covered entities need to give considerable weight to documentation of past modifications that were received in similar testing situations (e.g., if an accommodation was granted when the individual took the SAT’s, then it should also be granted when that same individual takes GRE’s, if requested).
- Entities should also give considerable weight to documentation of modifications that were provided in response to an Individualized Education Plan (IEP) or a Section 504 Plan because the history of testing accommodations determined through the rigors of a process required by Federal law is useful and instructive.

Covered Entity Must Respond to Requests for Modifications in a “Timely Manner”

- Covered entities need to respond to requests for modifications, accommodations, or aids in a timely manner to ensure the same level of opportunity and access for individuals with disabilities that exists for persons without disabilities.
- If testing entities fail to act quickly and/or they seek unnecessary documentation, then it could result in an extended delay, thereby denying equal opportunity or equal treatment in an examination setting, creating possible grounds for disability discrimination.

Call your Regional ADA Center at 1.800.949.4232 for more information on Examinations and Courses and to get other Fact Sheets in our nine part series!