

 Council on Licensure,  
Enforcement and Regulation

**Test Accommodations  
Under the ADA – Dazed  
and Confused in 2010?**

  
2010 Annual Educational Conference - September 23-25

Presenters: Elizabeth D. Azari, JD  
Janet D. Carson, JD  
Marlene Dunham  
Catherine Farmer, PsyD  
Ruth C. Loew, PhD

*Promoting Regulatory Excellence*

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CLEAR 2010  
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September 23-25  
Nashville, Tennessee

**Agenda**

- What frameworks are important to your consideration of test accommodation requests?
- What does measurement have to do with it?
- What is today's legal framework under the amended ADA?
- What practical considerations challenge you?
- What questions remain?

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**Audience Survey**

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### Measurement Framework

- Standardized exams permit examinees to demonstrate knowledge, skills and abilities in a highly controlled context.
- Accommodation – a change made to an aspect of the context (e.g., content, format, environment, administrative procedures).
- Exam purpose, format, delivery method, frequency and length play a part when evaluating requests for test accommodations.

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### Legal Framework

- The ADA as originally enacted was in effect from January 26, 1992 to December 31, 2008
- The ADA Amendments Act (in print ADAAA) was enacted in September 2008
- The amended ADA has been in effect since January 1, 2009
- DOJ and EEOC regulations

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### Why an Amended ADA?

- Congress expressed its view that regulatory and judicial interpretations of the ADA had narrowed the broad scope of protection it had intended.
- The regulatory and judicial interpretations referenced (with displeasure) in the ADAAA were all in the employment context.

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<p>Amended ADA: Definition of Disability</p> <ul style="list-style-type: none"><li>• The ADA retains the definition of "disability" contained in the original ADA: "A physical or mental <u>impairment</u> that <u>substantially limits</u> one or more <u>major life activities</u> of such individual."</li><li>• This definition "shall be construed in favor of broad coverage of individuals ...."</li></ul>		

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<p>Amended ADA: "Impairment"</p> <ul style="list-style-type: none"><li>• "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."</li><li>• The fact that an individual has a disability does <u>not</u> answer the question of what, if any, accommodations are reasonable and appropriate.</li></ul>		

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<p>Hypothetical Case</p>		
<p>Discussion</p>		

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Amended ADA: "Substantially Limits"

- Retains the "substantially limits" standard of the original ADA
- Affirmatively rejects past Supreme Court and EEOC interpretations of that standard

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Amended ADA: Standards

- Not necessary to establish that an individual has an impairment that "prevents", "severely restricts", or "significantly restricts" the individual.
- "By retaining the essential elements of the definition of disability, including the key term 'substantially limits', we reaffirm that not every individual with a physical or mental impairment is covered ...."
- Presume "average person" or "most people in the general population" standard applies.

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Amended ADA: "Major Life Activities"

- ADAAA includes a non-exhaustive list of major life activities:
  - breathing, eating, sleeping
  - seeing, hearing, speaking
  - walking, standing, lifting, bending
  - caring for oneself, performing manual tasks
  - learning, reading, concentrating, thinking
  - communicating
  - working

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<p>Hypothetical Case</p>  <p>Discussion</p>		

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<p>Amended ADA: "Major Life Activities"</p> <ul style="list-style-type: none"><li>• Adds "the operation of a major bodily function" as an example of a major life activity.</li><li>• Such functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.</li></ul>		

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<p>Hypothetical Case</p>  <p>Discussion</p>		

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**Amended ADA: "Mitigating Measures"**

- "The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures."
- Examples include:
  - Medication, medical supplies, equipment, or appliances
  - Low-vision devices (but not ordinary eye-glasses or contact lenses)
  - Hearing aids, cochlear implants, or other implantable hearing devices

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**Mitigating Measures – More Examples**

- Prosthetics
- Mobility devices
- Oxygen therapy, equipment or supplies
- Use of assistive technology
- Reasonable accommodations or auxiliary aids or services
- Learned behavioral or adaptive neurological modifications

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**Hypothetical Cases**

**Discussion**

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### Amended ADA: Fundamental Alteration

- The ADA reaffirms that:
  - Reasonable modifications in policies, practices or procedures are required, unless an entity can demonstrate that such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

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### Hypothetical Case

Discussion

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### Practical Considerations

- Measurement principles
- New item formats
- Implementation and security challenges
- Recurring misconceptions
- Differences between ADA and other laws (e.g., IDEA) in scope and purpose
- Documentation review issues
- Budgetary constraints

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<h3>Parting Thoughts</h3> <ul style="list-style-type: none"><li>• Evolving</li><li>• Dynamic</li><li>• Stay on top of it - resources</li></ul>		

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<h3>Resources</h3> <ul style="list-style-type: none"><li>• Standards for Educational and Psychological Testing (1999)<ul style="list-style-type: none"><li>– American Educational Research Association (AERA)</li><li>– American Psychological Association (APA)</li><li>– National Council on Measurement in Education (NCME)</li></ul></li><li>• The Americans with Disabilities Act: Information for Credentialing Examinations, Revised Edition February, 2004<ul style="list-style-type: none"><li>– <a href="http://www.clearhq.org/publications.htm">http://www.clearhq.org/publications.htm</a></li></ul></li></ul>		

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<h3>Resources</h3> <ul style="list-style-type: none"><li>• ADA<ul style="list-style-type: none"><li>– <a href="http://www.ada.gov/pubs/ada.htm">www.ada.gov/pubs/ada.htm</a></li></ul></li><li>• Implementing regulations – Title III<ul style="list-style-type: none"><li>– <a href="http://www.ada.gov/regs2010/titleIII_2010/reg3_2010.html">www.ada.gov/regs2010/titleIII_2010/reg3_2010.html</a></li></ul></li></ul>		

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<b>Resources</b>		
<ul style="list-style-type: none"><li>• American Printing House for the Blind – <a href="http://www.aph.org">www.aph.org</a></li><li>• American Foundation for the Blind – <a href="http://www.afb.org">www.afb.org</a></li><li>• National Federation of the Blind – <a href="http://www.nfb.org">www.nfb.org</a></li></ul>		

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<b>Resources</b>		
<ul style="list-style-type: none"><li>• Mounty, J. and Martin, D., eds. (2005) <i>Assessing deaf adults: critical issues in testing and evaluation.</i> Washington, DC: Gallaudet University Press</li></ul>		

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<b>Speaker Contact Information</b>		
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