

July 6, 2016

Walt MacDonald, Ph.D.
President
Educational Testing Service
225 Phillips Boulevard
Ewing, New Jersey 08618

Re: Case No. 02-16-2076
Educational Testing Service

Dear President MacDonald:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Educational Testing Service (ETS). The complainant alleged that on or about December 8, 2015, ETS discriminated against her on the basis of her disability (Attention-Deficit/Hyperactivity Disorder), by requiring her to obtain a psycho-educational evaluation in support of her request for extended time on the Praxis Series examinations.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. ETS is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

In its investigation, OCR reviewed documentation that ETS submitted. OCR also interviewed the complainant and ETS staff. OCR made the following determinations.

ETS is a nonprofit organization that develops, administers, and scores a variety of standardized tests including the Praxis Series examinations.¹ OCR determined that test-takers with disabilities seeking accommodations on ETS-administered tests, including the Praxis Series examinations, must submit their test registration materials and supporting documentation to ETS via electronic mail message (email), mail or fax. ETS typically notifies the test-taker of any approved accommodations in writing within six weeks of the submission of these materials.

¹ The Praxis Series is a group of examinations used for licensing and certification of teacher candidates. The examinations measure the reading, writing, and mathematics skills, subject-specific content knowledge, as well as general and subject-specific teaching skills with a focus on specialized content knowledge used in K-12 teaching.

OCR determined that on or about November 21, 2015, the complainant completed the Praxis I examination administered by ETS. OCR further determined the complainant did not request any testing modifications based on her disability (Attention-Deficit/Hyperactivity Disorder, or ADHD) prior to taking the Praxis I examination. Rather, after completing the Praxis I, the complainant submitted an email to ETS on November 21, 2015, in which she complained that the cubicle she was provided during the examination was too small for her height, and that as a result, when she pulled her chair close to the cubicle desk to view the computer screen, her feet hit the metal wall underneath the desk, which made a loud distracting noise that interfered with her ability to complete the examination. OCR determined that on or about November 30, 2015, ETS staff contacted the complainant via telephone regarding her email complaint of November 21, 2015; and, ETS staff thereafter communicated with the complainant via telephone and email on multiple occasions between December 4, 2015 and December 7, 2015.² OCR further determined that during the course of these communications with ETS, the complainant outlined her concerns related to her height and the proctor's use of a cell phone during the exam, and asked about the possibility of cancelling her score and obtaining a refund of test fees. However, the complainant did not request accommodations based on her disability of ADHD.

The complainant alleged that she contacted ETS Disability Services on December 8, 2015, to ask questions about the process for obtaining accommodations for a future administration of the Praxis. She stated that the customer service representative (CSR) from ETS Disability Services informed her that she should not submit a request for accommodations on the basis of ADHD unless she had obtained an updated psycho-educational assessment. The complainant asserted that she had gathered the documentation required to document her ADHD as a mental health condition pursuant to ETS's Guidelines for Documentation of Psychiatric Disabilities in Adolescents and Adults (Psychiatric Guidelines).³ The complainant asserted that the CSR informed her that ETS does not view ADHD as a mental health condition, and instead views it as a learning disability for which psycho-educational testing is required.⁴ The complainant further asserted that the CSR directed her to ETS's website, and indicated that she needed to have all of the documentation listed on the website in order to apply for accommodations for ADHD as a learning disability. The complainant stated that in reliance upon the information provided by the CSR from ETS Disability Services during the telephone call on December 8, 2015, she did not request accommodations on any Praxis Series examination. The complainant subsequently took Praxis Series examinations in or around December 2015 and April 2016.

ETS denied receiving a request for accommodations from the complainant to date. ETS further asserted that it is not the practice of ETS Disability Services CSRs to advise callers about the adequacy of their documentation in support of a request for accommodations. According to ETS's Director of Disability Policy (Director), CSRs receive biannual training from the office of Disability Policy and ongoing supervision and training from a supervising CSR. The Director

² ETS provided to OCR documentation of its communications with the complainant between November 21, 2015 and December 7, 2015. The documentation included copies of email correspondence between the complainant and ETS, and notes from telephone conversations with the complainant.

³ Specifically, the complainant had obtained a letter from her doctor verifying her ADHD diagnosis, and verification from a university indicating that during her attendance, she had received accommodations as a student with a disability.

⁴ ETS's Psychiatric Guidelines do not require that a test-taker applying for accommodations provide psycho-educational testing as supporting documentation.

asserted that CSRs are specifically trained to refer complex questions from callers to higher-level staff within ETS Disability Services, such as questions regarding the sufficiency of documentation supporting test-takers' requests for disability-related accommodations. The Director informed OCR that ETS employs a psychologist and rehabilitation counselor as members of its Disability Services staff, and that these individuals are typically the staff members that would respond to questions such as the complainant's regarding the sufficiency of her disability-related documentation.

ETS denied that it requires test-takers applying for disability-related accommodations to provide psycho-educational assessments in support of their applications for accommodations. The Director acknowledged that ETS's current Policy Statement for Documentation of Attention-Deficit/Hyperactivity Disorder in Adolescents and Adults (ADHD Policy) refers to "a complete psychoeducational or neuro-psychological assessment [as] the primary tool for determining the degree to which the ADHD currently impacts the individual relative to taking standardized tests", and states that "relevant testing information must be provided." However, the Director asserted that in practice, psycho-educational testing is important but not mandatory;⁵ and ETS frequently approves requests for accommodations without such documentation and will accept a certificate of eligibility (COE) from a test-taker, as an alternative.⁶ The Director further asserted that ETS is flexible regarding the documentation that ETS requires from its applicants for accommodations, and that each case is fact specific. The Director also informed OCR that ETS is currently revising the ADHD Policy, and that a new edition would be published later in 2016.

During the course of OCR's investigation, ETS provided to OCR a draft of its revised ADHD Policy, entitled "Guidelines for Documentation of Attention-Deficit/Hyperactivity Disorder in Adolescents and Adults, Third Edition 2016" (ADHD Guidelines). OCR reviewed ETS's ADHD Guidelines, which state that a complete psychoeducational or neuropsychological assessment is often recommended when determining the degree to which ADHD affects the test-taker's performance; however, the new ADHD Guidelines do not specifically require test-takers applying for accommodations to submit psycho-educational testing information. Rather, the ADHD Guidelines require test-takers to submit documentation addressing the diagnostic criteria for ADHD set forth in the *Diagnostic and Statistical Manual of Mental Disorders (5th edition)* (DSM-5); evidence of early ADHD impairment; and evidence that ADHD affects the test-taker's current academic performance. The ADHD Guidelines suggest that in support of a request for accommodations, a test-taker submit a diagnostic report from a qualified professional that includes supporting clinical data and a rationale supporting any requested accommodations. Additionally, the ADHD Guidelines permit test-takers to submit a "documentation update" if the test-taker's documentation is more than five years old.⁷ Further, the ADHD Guidelines indicate

⁵ The Director asserted that it is his clinical opinion that cognitive testing of a test-taker is important for an ADHD diagnosis because it evaluates the test-taker's executive functioning; the Director asserted that ETS relies on such testing to determine to what degree ADHD may limit the test-taker's functioning.

⁶ The Director explained that a COE is a document signed by the director of a disability services office at a college or university campus, an employer's human resources department, or a vocational rehabilitation counselor, in which the individual attests that the test-taker has provided documentation satisfying the organization's standards for requesting accommodations.

⁷ ETS defines a "documentation update" as a report by a qualified professional including a summary of the original disability documentation findings as well as clinical data sufficient to establish the test-taker's current eligibility and the appropriateness of the requested testing accommodation(s).

that ETS conducts an individualized assessment of any application for accommodations. ETS advised OCR that the ADHD Guidelines will be effective in July 2016.

On June 30, 2016, ETS voluntarily entered into the attached resolution agreement to resolve the allegation in this complaint without further investigation. OCR will monitor implementation of the resolution agreement.

This letter should not be interpreted to address ETS's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that ETS may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; Grace Kim, Compliance Team Attorney, at (646) 428-3977 or grace.d.kim@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: [XXXXXXXXXXXX](#), Esq.
[XXXXXXXXXXXX](#), Esq.