

TENNESSEE BOARD OF LAW EXAMINERS

POLICY P-3.11: APPLICANTS REQUIRING NON-STANDARD TESTING ACCOMMODATIONS

It is the policy of the Tennessee Board of Law Examiners (“Board”) to administer the bar examination in a manner that does not discriminate, on the basis of disability, against a qualified applicant with a disability. An applicant who is otherwise eligible to take the Tennessee bar examination may file a request for non-standard testing accommodations (herein, “NST Petitions”) if, by virtue of a disability, the applicant cannot demonstrate, under standard testing conditions, that the applicant possesses the essential skills and aptitudes that the Supreme Court of Tennessee and the Board have determined are appropriate to require for admission to the practice of law in Tennessee. The process for submitting an NST Petition is attached hereto as Appendix A.

In deciding NST Petitions submitted by bar examination applicants, the Board relies upon the following definition of disability contained in the Americans with Disabilities Act Amendment Act (ADAAA): A “disability,” as used herein, is a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Thus, merely having an impairment does not make an individual disabled for purposes of the ADAAA and does not automatically qualify a bar applicant for an accommodation. To qualify under ADAAA, an applicant must demonstrate that the impairment limits a major life activity and that the limitation of the major life activity is "substantial." The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, with the exception of ordinary eyeglasses or contact lenses. The determination of a disability by the Board is an individualized inquiry and will be made on a case-by-case basis, per individual and per examination administration.

As used herein, “accommodations” means any reasonable change to the standard administration of the examination awarded to an applicant who has submitted a request for non-standard testing accommodations. Reasonable accommodations will be provided to applicants determined to have a disability. A reasonable accommodation is an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant’s disability without doing any of the following:

- fundamentally altering the nature of the examination or the Board’s ability to determine through the bar examination whether the applicant possesses the essential skills and aptitudes that the Supreme Court of Tennessee and the Board have determined are appropriate to require for admission to the practice of law in Tennessee;
- imposing an undue burden on the Board; and/or
- compromising the security of the examination.

APPENDIX A: PROCEDURE FOR APPLYING FOR NON-STANDARD TESTING ACCOMMODATIONS (Board Policy P-3.11)

REQUESTS FOR NON-STANDARD TESTING ACCOMMODATIONS

- A. **Regular Requests:** A regular Non-Standard Testing (NST) Application shall be on forms prescribed by the Board and shall consist of all of the following:
- i. the NST Application, including a description of the applicant's disability and the testing accommodations requested;
 - ii. a statement on the prescribed form from the applicant's qualified professional in the field related to the applicant's claimed disability (see Qualified Professional in paragraph B., below) listing the disability and the accommodation recommended;
 - iii. a statement on the prescribed form, if applicable, from any educational institution that provided testing accommodations to the applicant while the applicant attended the educational institution
 - iv. a statement on the prescribed form, if applicable, from the testing authority that provided testing accommodations to the applicant on the LSAT, MPRE or bar examination in another jurisdiction; and
 - v. additional documentation for specific disabilities as detailed in Sub-Appendices A-1, A-2, and A-3, which shall include:
 1. a diagnostic report summary from the Qualified Professional typed in English , on letterhead, dated and signed;
 2. for applicable disabilities, the specific diagnosis/diagnoses based upon the Diagnostic and Statistical Manual of Mental Disorders (DSM-5); and
 3. a specific recommendation regarding the accommodation in terms of the bar examination; see Paragraph C, below for additional information regarding additional testing time accommodations.
- B. **Qualified Professional:** Professionals conducting assessments, rendering diagnoses and making recommendations for accommodations must be qualified to not only diagnose the applicant's identified condition, but also be qualified to thoroughly assess, diagnose, and ultimately rule out any other potentially confounding issues/diagnoses with similar clinical presentations (differential diagnosis). For multiple diagnoses, the professional must be qualified to make all diagnoses given. Comprehensive training and relevant experience in differential diagnosis are essential. *Diagnoses made by an otherwise qualified family member will not be considered due to the inherent conflict of interest such a recommendation presents.*
- i. *For ADHD:* the evaluation must be performed by a licensed mental health professional who is trained in psychiatric, psychological, neuropsychological and/or psychoeducational assessment of adults.

- ii. *For a Learning Disorder:* the evaluation must be performed by a professional who is certified or licensed in the area of adults with learning disabilities and trained in psychiatric, psychological, neuropsychological and/or psychoeducational assessment.
- iii. *For a Psychological/Emotional/Behavioral Health Disorder:* the diagnosis must be done by a licensed mental health professional such as a psychologist or a psychiatrist and must include a license number.
- iv. *For a Physical Disability:* the evaluation must be performed by a medical doctor who specializes in the specific claimed disability and who can support an assessment of current limitations.

Upon request, the applicant shall submit an authorization for release of records from the Qualified Professionals who provided statements to the Board if the Board reasonably determines that access to those records is reasonably necessary to determine whether an applicant's condition meets the criteria for a disability set forth in this policy.

- C. When a Qualified Professional recommends **additional time accommodations**, the Qualified Professional shall provide, in addition to the documentation outlined above, a rationale for each accommodation requested, including the specific amount of additional time recommended. The current functional limitations caused by the impairment must be relevant to each part of the bar examination (multiple choice testing, essay testing, or both) and must be necessary to ameliorate the applicant's current limitation.
 - i. Additional time accommodations permitted are time and one-half and double time.
 - ii. Approval for additional time may be for the full examination or for a specific part of the examination, depending on the current functional limitations of an applicant.
 - iii. If a specific amount of additional time is not indicated, applicant's request may not be approved due to insufficient information.
 - iv. Generally, please note that double time testing is conducted in Nashville, Tennessee, for all exam administrations; however, in appropriate circumstances, testing may be conducted in other locations.
- D. Any changes in the way the test is administered requires an Application for Non-Standard Testing, including but not limited to permission to eat food, take medication, test blood sugar and use medical equipment during the examination.
- E. All applicable items must be completed and received by the Board on or before the filing deadline for the current exam period. Applicants must submit a new request and supporting

documentation for each examination. The application is specific to one examination administration and does not carry forward.

- F. Applicants with disabilities have the responsibility to meet the same deadline for application as individuals without disabilities. As some of the forms require input from third parties, the Board strongly recommends that applicants request the appropriate individuals complete the forms well in advance of the deadline for filing the application for non-standard testing accommodations. Incomplete submissions may result in denial due to insufficient information. Materials related to accommodation requests must meet examination deadlines. Deadlines apply to receipt of all information, including documentation requested from third parties, and is a “received by” deadline, not a “postmarked by” deadline.
- G. Emergency Requests
- i. An applicant may file an emergency NST Application after the time prescribed in Paragraph E of this policy, above, but no fewer than 7 days preceding the scheduled bar examination, if all of the following conditions are met:
 - i. the applicant’s Application to the Bar of Tennessee or Application for Re-examination was timely filed and complete in all other respects;
 - ii. at the time of filing the Application to the Bar of Tennessee or the Application for Re-examination, the applicant did not have the disability;
 - iii. after acquiring the disability, the applicant promptly submits both of the following:
 1. an emergency request on a form prescribed by the Board, providing the date and circumstances under which the disability arose; and
 2. a complete NST Application, with all required documentation as outlined above and in the Sub-Appendices, attached.
 - ii. FORMS: All forms necessary to complete a regular or emergency NST Application are available on the Tennessee Board of Law Examiners website.
- H. Applicant may be referred by the Board to the Tennessee Lawyer’s Assistance Program for interview, recommendations, or review. Further, an applicant may be required to submit to independent diagnostic testing. The Board may, at its expense, have the information submitted by the applicant evaluated by a specialist selected by the Board.
- I. All reasonable accommodations granted by the Board will be provided at no additional testing cost to the applicant. Accommodations granted in other jurisdictions or by Tennessee previously do not entitle an applicant to accommodations for the current administration of the Tennessee bar exam.
- J. **Applicant’s Burden of Proof under the ADA.** The burden of proof is on the applicant to establish a disability as defined by the ADA and to establish the need for non-standard

testing accommodations. Requests for testing accommodations are evaluated on a case-by-case basis. Applicants are required to complete the NST Application in accordance with the instructions provided. The documentation necessary to support a request for testing accommodations varies with the nature of the disability. Documentation which sufficed in other testing situations or for prior Tennessee bar examinations may not be sufficient to support a request for accommodations for the current administration of the Tennessee bar examination. Applicants are encouraged to review the requirements in effect at the time of each administration of the examination.

- K. CONFIDENTIALITY: All NST Applications, supporting documentation, and information developed by the Board with respect to the requests shall remain confidential.

SUB-APPENDIX A-1: ADDITIONAL DOCUMENTATION FOR ACCOMMODATIONS BASED ON LEARNING DISABILITY

In order to be entitled to accommodations based on learning disability, the applicant's specific learning disabilities must have been identified by an appropriate psychoeducational assessment process that is well documented in the form of a comprehensive diagnostic report that provides clear evidence that the specific learning disability exists. The provision of reasonable accommodations is based on assessment of the *current* impact of the disability on the specific testing activity. Although a learning disability normally is lifelong, the severity and manifestations can change. The Board generally requires documentation from an evaluation conducted within the past five (5) years and after the applicant's eighteenth (18th) birthday in order to establish the current impact of the disability. Applicant must provide documentation that (s)he has a learning disability that substantially limits a major life activity, and the learning disability results in functional limitations that required accommodations in order to take the examination on an equal basis with other applicants for the examination.

The evaluation in the form of a comprehensive diagnostic report must include:

- An account of a thorough diagnostic interview that summarizes relevant components of the individual's developmental, medical, family, social and educational history;
- Clear, objective evidence of a substantial limitation to learning or performance provided through assessment in the areas of cognitive aptitude, achievement and information processing abilities (results must be obtained on standardized test(s) appropriate for the general adult population and be reported in standard scores and percentiles);
- Interpretation of the diagnostic profile that integrates assessment data, background history, observations made during the evaluation process, as well as the inclusion or ruling out of

possible coexisting conditions (such as previously diagnosed psychological issues, or English as a second language) affecting the individual's performance;

- A clear diagnostic statement of a specific learning disorder based upon the DSM-5 which should not include nonspecific terms such as "learning differences," "learning styles" or "academic problems," and that specifies all academic domains and subskills that are impaired and identify the current severity of symptoms (mild, moderate or severe).
- A rationale for each recommended accommodation based on diagnostic information presented (background history, test scores, documented observations, etc). See Board Policy P-3.11 Appendix A, sub-paragraph B.

Formal Testing: It is important that the tests used in the evaluation are reliable, valid, and age-appropriate, and that the most recent edition of each diagnostic measure is used. Scores should be reported as age-based standard scores and percentiles. The following diagnostic criteria are provided as a guide to assessment instruments appropriate for the adult population. Specific tests will vary with the needs of the individual being evaluated but such assessments must be designed to rule-out alternative diagnoses or explanations and result in a clear diagnostic statement with age-based standard scores used for all normed measures:

1. A comprehensive diagnostic interview that summarizes the applicant's academic history and learning processes throughout applicant's education, as well as other relevant developmental, medical, family, psychosocial and employment history.
2. A neuropsychological, psychological and/or psychoeducational assessment consisting of a comprehensive battery of tests that addresses aptitude, achievement and relevant aspects of cognitive function and information processing, including but not limited to the following requirements:
 - The battery must include current levels of academic functioning in reading (decoding and comprehension).
 - If requesting extra time, a timed reading measure that has been normed on adults and allows for both extended and regular administration, such as the Scholastic Abilities Test for Adults (SATA), is useful.
 - Cognitive measures that relate to the processing of words and sentences presented visually are most relevant as the examination is a reading-based test.
 - If informal assessment procedures are used for any reason, those procedures must be described in sufficient detail to establish clinical validity and utility.

SUB-APPENDIX A-2: ADDITIONAL DOCUMENTATION FOR ACCOMMODATIONS BASED ON ATTENTION- DEFICIT HYPERACTIVITY DISORDER (ADHD)

The provision of reasonable accommodations is based on assessment of the *current* impact of the disability on the specific testing activity. The Board generally requires documentation from an

evaluation conducted within the past three (3) years and after the applicant's eighteenth (18th) birthday in order to establish the current impact of the disability. The diagnostic criteria as specified in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5 or most current version) are used as the basic guidelines for determination of Attention-Deficit Hyperactivity Disorder (ADHD) diagnosis. The diagnosis depends on objective evidence of ADHD symptoms across the applicant's development and cause the applicant clinically significant impairment within multiple environments. An applicant self-report alone is insufficient to establish evidence for the diagnosis. Any assessment must be designed to rule out alternative diagnoses. An applicant warranting an ADHD diagnosis should meet basic DSM-5 criteria including:

- Sufficient numbers of symptoms (delineated in DSM-5) of inattention and/or hyperactivity-impulsivity that have persisted for at least six months to a degree that is inconsistent with developmental level and that negatively impacts directly on social and academic/occupational. The exact symptoms should be described in detail.
- Developmental history that is consistent with an ADHD diagnosis, including
 - Objective historical evidence showing that symptoms have interfered with, or reduced the quality of, functioning over time with evidence of symptom presentation prior to age 12;
 - Review of family system including specific review of family history of the presence or absence of ADHD, or symptoms consistent with ADHD, and other educational, learning, physical or psychological difficulties;
 - academic history, including elementary, secondary, and postsecondary education, as well as performance on standardized tests such as the SAT, ACT, and LSAT, IEPs, 504 Plans, report cards, and accommodations previously utilized, if any; and
 - relevant medical history, including the absence of a medical basis for the symptoms, effects of medication (positive or negative), and whether prescribed medication had been taken at the time of the evaluation.
- Clear evidence that the symptoms interfere with, or reduce the quality of, social, academic, or occupational functioning, and several symptoms must be present in two or more settings. There must be objective evidence of clinically significant impairment within the academic setting and evidence that these problems are not confined to the academic setting.
- In addition to the applicant's self-report, the information should include objective historical and current evidence from third-party sources such as rating scales filled out by parents, teachers, or others; job performance evaluations; third-party interviews; historical information garnered from transcripts, teacher comments, tutoring evaluations, and report cards; and IEPs or 504 Plans, if any, as well as relevant psychosocial history and interventions and relevant employment history.
- Indication of the specific ADHD diagnostic subtype; predominantly inattentive type, hyperactive-impulsive type, combined type, or not otherwise specified.

Formal Testing: ADHD evaluation is primarily based on in-depth history consistent with a chronic and pervasive history of ADHD symptoms beginning during childhood and persisting to the present day. It can rarely be completed in one visit with the evaluator. The evaluation should provide a broad, comprehensive understanding of:

- the applicant's relevant background including family, academic, social, vocational, medical, and psychiatric history;
- how ADHD symptoms have been manifested across various settings over time;
- how the applicant has coped with the problems; and
- what success the applicant has had in coping efforts.

Psychological testing and self-report checklists cannot be used as the sole indicator of ADHD diagnosis independent of history and interview. However, such findings can augment clinical data. Psychological testing is particularly necessary to rule out intellectual limitation as an alternative explanation for academic difficulty, to describe type and severity of learning problems and to assess the severity of cognitive deficits associated with ADHD (inattention, working memory, etc.). The report should identify which symptoms have persisted for at least six months and which symptoms were present prior to age 12 years. Further, the report should specify if symptoms are in partial remission, and should also specify the current severity of symptoms (mild, moderate, or severe).

SUB-APPENDIX A-3: ADDITIONAL DOCUMENTATION FOR ACCOMMODATIONS BASED ON PSYCHOLOGICAL/EMOTIONAL/BEHAVIORAL HEALTH DISABILITY

As used herein, “psychological disability” refers to a range of syndromes and conditions characterized by different types and degrees of emotional, developmental, cognitive, and/or behavioral manifestations. In order to be entitled to accommodations based on psychological disability, the applicant’s disability must have been identified by a comprehensive diagnostic/clinical evaluation that is well documented in the form of a comprehensive report conducted within the preceding 12 months. An evaluation that was conducted more than 12 months ago may suffice, depending on the following variables:

- a) the nature and type of the psychological disability, including its expected course;
- b) the severity of symptoms;
- c) the history of onset and/or duration of the disability; and
- d) other conditions at the time of last assessment, such as treatment status and stability of functioning.

However, if the Board determines that a submitted report from more than 12 months is insufficient and an applicant opts to withdraw from the examination, the applicant is not entitled to a refund other than that permitted by Rule 7. In addition, if symptoms vary in their chronicity and/or severity, up-to-

date documentation of current level of functioning is helpful in determining appropriate accommodations.

The comprehensive evaluation report must include the following:

- psychiatric/psychological history, including presenting symptoms when disability is active
- onset, duration, and severity of symptoms, including a description that distinguishes common test-taking anxiety from a diagnosed condition
- relevant developmental, educational and familial history
- relevant medical and medication history
- current functional limitations in academic, social, or employment settings, with the understanding that a psychological disorder usually presents itself across a variety of settings other than just the academic domain and that its expression is often influenced by context-specific variables
- review of prior accommodations utilized by the applicant (e.g., for standardized examinations such as the LSAT, ACT, or SAT; school examinations; licensing or certification examinations; classroom; etc.) and the extent to which the accommodations met the applicant's needs, recognizing, however, that accommodation needs can change over time and in different settings
- results of any tests or instruments used to support the clinical interview and support the presence of functional limitations, including any psychoeducational or neuropsychological testing, rating scales, or personality tests
- diagnostic formulation, including ***demonstration that symptoms are not better accounted for by another mental disorder, including substance intoxication, substance withdrawal or substance use disorder and do not occur exclusively during the course of another mental disorder***
- prognosis including expected progression or stability of the impact of the condition over time, if relevant to test-taking performance
- clinical rating scales as necessary to corroborate the severity of the diagnosed disorder and effort testing to identify possible malingering, as may be appropriate