



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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NEW JERSEY
NEW YORK
PUERTO RICO
VIRGIN ISLANDS

December 4, 2015

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

Re: Case No. 02-15-2328
Educational Testing Services

Dear Mr. 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 ETS discriminated on the basis of disability by prohibiting testing applicants with disabilities who are seeking testing accommodations from using ETS's online registration system.

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 U.S. Department of Education (the Department). ETS is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1), states that in providing an aid, benefit or service, a recipient may not directly or through contractual, licensing, or other arrangements, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, and service that is unequal to the opportunity afforded others; provide an aid, benefit, or service that is not as effective as that

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provided to others; provide a different or separate aid, benefit, or service to disabled persons or a class of disabled persons (unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others); or, otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

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

ETS is a nonprofit organization that develops, administers, and scores a variety of standardized tests including: the High School Equivalency Test (the HiSet), ParaPro Assessment,¹ Graduate Records Examinations (GRE), Praxis,² Test of English as a Foreign Language (TOEFL), School Leadership Series,³ Georgia Assessments for the Certification of Educators (GACE)⁴, and the Texas Educator Certification Program.⁵

The complainant alleged that ETS discriminated on the basis of disability by prohibiting testing applicants with disabilities who are seeking testing accommodations from using ETS's online registration system. The complainant asserted that ETS instead required testing applicants with disabilities seeking testing accommodations to submit their test registration materials and supporting documentation to ETS by mail or facsimile (fax). The complainant asserted that testing applicants with disabilities seeking testing accommodations were then also not able to register for upcoming test dates and select testing locations since they could not use the online registration system; the complainant asserted that ETS required testing applicants with disabilities who are seeking testing accommodations to register for test dates and locations by telephone, even after being approved for testing accommodations. The complainant asserted that these requirements deprived testing applicants with disabilities who are seeking testing accommodations of equal access to ETS's registration process, and placed a greater burden on them.

OCR determined that, generally, testing applicants registering for ETS tests may either complete test registration online (including the selection of specific test dates and locations, and the payment of fees by credit/debit card or Paypal account) or submit their test registration materials and fees by mail. OCR determined, however, that ETS requires testing applicants with disabilities seeking testing accommodations to submit test registration materials⁶ to ETS Disability Services by mail, courier, or fax; these may not be submitted online or via electronic mail (email). Additionally, ETS does not allow testing applicants with disabilities seeking testing accommodations to select a test date and location until after reviewing documentation

¹ The ParaPro Assessment is a general aptitude test that is required by many states for paraprofessional certification.

² The Praxis is an examination that measures the reading, writing, and mathematics skills of teacher candidates and is used for licensing and certification.

³ The School Leadership Series is an examination used by states in the licensing of school principals, superintendents, and school leaders.

⁴ The GACE is the state-approved certification assessment for teaching candidates in Georgia.

⁵ The Texas Educator Certification Program is the state-approved certification assessment for teaching candidates in Texas.

⁶ The necessary test registration materials consist of a test application, an accommodation application, documentation supporting the request for accommodation(s), and the appropriate test fee.

supporting the request for testing accommodations and approving the request.⁷ Accordingly, testing applicants with disabilities seeking testing accommodations also may not pay their test fees online by credit/debit card or Paypal account.

Following the submission of a testing applicant with a disability's application for testing accommodations, ETS typically notifies the applicant of any approved accommodations by email within six weeks. Following the approval of testing accommodations, testing applicants with disabilities are registered for a test date and location depending on the type of test. For paper-based tests, ETS automatically registers each testing applicant with a disability who is approved for testing accommodations without input from the applicant as to a preferred testing date or location; applicants cannot indicate such preferences on the test registration form. For computer-administered tests, ETS directs applicants with disabilities who are approved for testing accommodations to contact ETS's third party test scheduler via telephone to individually match the applicant with a test center and test date based on the applicant's approved accommodation(s) and geographic location. For "alternate test formats"⁸, ETS contacts applicants directly to confirm the accommodations that have been approved and to assist with scheduling the test for the applicant at a nearby test center.

OCR requested that ETS explain the rationale for its current policy and practice with respect to test registration for testing applicants with disabilities seeking testing accommodations. ETS advised OCR that it requires test-takers with disabilities seeking testing accommodations to submit registration materials via mail or fax because ETS's website is not currently equipped to accept accommodations applications and documentation supporting the request for accommodations. ETS asserted that it also requires testing applicants with disabilities who are seeking testing accommodations to submit such applications and supporting documentation to ETS by mail or fax because test registration materials must be "bundled" into a single application packet, along with any associated fees.⁹ ETS stated that it also does not currently permit testing applicants with disabilities who are seeking testing accommodations to submit their bundled application packets via email, because it does not have a method to simultaneously accept electronic payment such as debit/credit card or Paypal account; and payment card industry security standards prohibit ETS from accepting debit/credit card payment information via email. Additionally, ETS stated that it did not allow testing applicants seeking testing accommodations to select a testing date and location for the test, because most test-takers seeking accommodations on its tests request multiple accommodations for the same examination; and as a result, ETS may need to engage with multiple vendors to provide all of the services that a test-taker requires on a particular date.¹⁰ ETS asserted that it would need to contact the vendors and test centers to coordinate the arrangements; therefore, automatic registration through the ETS website is not possible. ETS asserted that absent its current customized process for selecting test

⁷ The process for requesting accommodations is the same regardless of the test the applicant is taking.

⁸ ETS's bulletins indicate that ETS offers testing applicants with disabilities alternate test formats including braille; large-print test book; large-print answer sheet; audiocassette or CD recording; computer-voiced examinations with tactile figure supplement; computer-voiced examinations with large-print figure supplement; and the TOEFL with listening and/or speaking sections omitted, and extended time for spoken responses.

⁹ ETS asserted that bundling allows ETS to efficiently track testing applicant information from test registration through scoring.

¹⁰ For example, for a test taker who requests and is approved for a dedicated reader or scribe, 100% extended time, a separate testing location, and additional breaks, ETS must secure a reader or scribe, and a date when the test center location can also provide a separate room for a test administration of 100% extended time.

dates and locations following the approval of accommodations, a testing applicant would be at risk for signing up for a test center that is not prepared to accommodate the applicant's needs on a particular date; and depending upon the complexity of the accommodations, ETS might then be unable to obtain the accommodations for a test date or location previously reserved by the test taker.

ETS advised OCR that it is currently in the process of revamping its online test registration system so that testing applicants who are approved for its most frequently requested testing accommodations (extended time, additional breaks, screen magnification, and/or selectable background and foreground colors) will be able to register for and schedule ETS-administered examinations online. ETS asserted, and OCR confirmed, that as of November 30, 2015, ETS has created an email account that will allow testing applicants seeking testing accommodations to send accommodation requests and supporting documentation to ETS by email. ETS stated that payments will also be accepted by phone. OCR confirmed that ETS has updated relevant bulletins to reflect the availability of this option as of November 30, 2015.

On November 23, 2015, ETS voluntarily entered into the attached resolution agreement to resolve the allegations 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; Tracey Beers, Senior Compliance Team Attorney, at (646) 428-3804 or tracey.beers@ed.gov, or me, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXX XXXXXX, Esq.
XXXXXX XXXXXX, Esq.