

Date of Hearing: March 27, 2012

ASSEMBLY COMMITTEE ON HIGHER EDUCATION  
Marty Block, Chair  
AB 2122 (Lara) – As Amended: March 21, 2012

SUBJECT: Standardized testing: accommodations.

SUMMARY: Requires the test sponsor of the Law School Admission Test (LSAT) to provide reasonable accommodations to a disabled test subject, as specified. Specifically, this bill:

- 1) Requires that the LSAT test sponsor process for determining whether to grant a reasonable accommodation be made public, that the decision whether or not to approve a request to be conveyed to the requester within a reasonable amount of time and that the reasons for denial be stated if the request is not approved.
- 2) Requires the test sponsor of the LSAT to establish a timely appeals process for a test subject who has been denied an accommodation request.
- 3) Requires the test sponsor of the LSAT to provide accommodations to a test subject who has received formal testing accommodations from a postsecondary educational institution.
- 4) Prohibits the test sponsor of the LSAT from notifying a test score recipient that the score of any test subject was obtained by a test subject who received accommodations.
- 5) Requires the test sponsor of the LSAT to clearly post on their website regarding refund policies for individuals whose requests for accommodations are denied.

EXISTING LAW defines test sponsors as any individual, partnership, corporation, association, company, firm, institution, society, trust, or joint stock company which develops, sponsors, or administers standardized tests; establishes various requirements and procedures for test sponsors to follow in administering standardized tests for admission to, or placement in, postsecondary educational institutions; and, subjects any test sponsor who violates the requirements or procedures of administering standardized tests to a civil penalty of up to \$750 per violation.

FEDERAL LAW requires entities that offer examinations relating to applications for postsecondary education to offer examinations in a place and manner accessible to persons with disabilities, including providing modifications to the examination and appropriate auxiliary aids or services for persons with disabilities to assure that the examination is selected and administered to best ensure that the examination results accurately reflect the individual's aptitude or achievement level. Test sponsors are authorized to request appropriate documentation related to requests for testing accommodations, modifications or auxiliary aids.

FISCAL EFFECT: Unknown. This bill has been keyed non-fiscal by Legislative Counsel.

COMMENTS: Background. There are numerous test sponsors conducting testing services in California. While all test sponsors have established testing accommodations procedures, as required by the Americans with Disabilities Act, the process for test subjects to receive formal

testing accommodations and the requirements for verifying disabilities and granting accommodations varies significantly among test sponsors, including:

- 1) Educational Testing Service (ETS), which administers the Graduate Record Examinations, requires test subjects to submit requests for accommodations, including current documentation from a qualified professional supporting each testing accommodation requested, by the specified registration deadline. Recognizing the costs associated with obtaining current documentation, ETS authorizes applicants with long-standing learning disabilities basic accommodations, such as time and on-half and rest breaks, without requiring diagnostic reevaluation.
- 2) College Board, which administers the Scholastic Aptitude/Assessment Test, requires accommodation requests to be approved by College Board's Services for Students with Disabilities. Documentation must be provided showing that the student has a disability, that the disability causes a functional limitation that affects participation in tests, and that the requested accommodations area appropriate. Students generally work through their high school disability services office to receive accommodations from College Board.
- 3) The Law School Admissions Council (LSAC), which administers the LSAT, requires applicants seeking accommodations to first register to take the examination and then to complete and submit for review an extensive Accommodations Request Packet. The Accommodations Request Packet requires, among other items, copies of accommodations provided for prior related testing and coursework and an Evaluator Form completed by a qualified professional verifying the disability and need for accommodations. LSAC indicates initial responses to requests for accommodations occur within 14 days of receipt. However, depending on the nature of the request and documentation submitted, LSAC indicates the process for approval may take "substantially longer".

Purpose of this bill. According to the author, unlike other test sponsors, an LSAT applicant must provide a highly specific diagnosis and report for LSAC to even consider certain accommodation requests. The author indicates that LSAC requires a private diagnosis assessment and report that may cost over \$3,000, a cost that bars low-income individuals from access. According to the author, this bill is designed to create greater access for individuals with disabilities taking the LSAT by requiring, among other provisions, LSAC to provide accommodations to an individual who has received formal testing accommodations by a postsecondary institution.

Testing accommodations. This bill would require LSAT test sponsors to provide accommodations to test subjects who received formal testing accommodations from a postsecondary educational institution. According to the author, an individual may have a well-documented history of accommodations, yet LSAT will only "consider" prior postsecondary testing accommodations. LSAC argues that no single factor should be used in determining the need for an accommodation and that other objective and credible evidence, in addition to prior academic use of accommodations, should be evaluated. Noting that a recent study showed students in private schools four times more likely to receive accommodations from LSAC, the author argues this policy has resulted in lack of access for individuals who cannot afford the required diagnosis and report. Based on information obtained by committee staff, the process for receiving formal testing accommodations from a postsecondary institution appears to vary widely among colleges and universities. If a goal of the author is to provide equal access to

LSAT accommodations for persons with disabilities, it is not clear that this provision would accomplish that goal.

Public, timely process. This bill would require the process for LSAT test sponsors to determine whether to grant accommodations to be public and decisions and rationale for decisions made through this process to be conveyed to the requesting test subject in a "reasonable amount of time". This bill would also require the LSAT test sponsor to establish a "timely appeals process" for a test subject who has been denied an accommodation request. Committee staff understands the author's intent is that test subjects have the opportunity to receive a response to a request for accommodation with time to appeal a denial prior to the date of the test. The author may wish to amend the bill to be consistent with that stated intent.

Flagging test scores. This bill would prohibit LSAT test sponsors from notifying test score recipients if a test subject received testing accommodations, a practice commonly referred to as "flagging" a score. According to the author, when extra time is given as an accommodation, LSAC marks the score report with an asterisk and sends a letter to all recipient law schools to notify of the accommodation, noting that there is no way to determine the comparability of the scores earned under "nonstandard" and "standard" conditions. The author argues that LSAC current process of flagging is regarded as highly stigmatizing and discriminatory by disability rights organizations. The author notes that ETS agreed to stop the practice of flagging on all tests effective October 2001, in response to a discrimination lawsuit. LSAC indicates that test scores are only "flagged" if extra time is provided as an accommodation and that evidence demonstrates that standard and nonstandard-time scores are not comparable. LSAC believes that it has an obligation to provide accurate score-interpretation information and that "flagging" test scores that received extra time is consistent with that obligation.

Applicability to LSAT. This bill would require LSAT test sponsors to abide by outlined provisions for providing accommodations to test subjects, but not sponsors of other postsecondary education related tests, many of whom do not currently follow all of the provisions outlined in this bill. According to the author, this bill targets LSAC as the process for test subjects to request and obtain accommodations when taking the LSAT creates significant barriers for persons with disabilities. If the requirements established by this bill are the appropriate standards for verifying a disability for testing accommodations, the author may wish to consider applying these standards to all test sponsors.

Existing protections. Existing law specifically prohibits discrimination based on disability and provides the Department of Fair Housing and Employment (department) powers to investigate, mediate and prosecute violations. Committee staff understands the department is currently investigating at least one discrimination complaint against the LSAC.

REGISTERED SUPPORT / OPPOSITION:

Support

2 individuals

Opposition

Law School Admission Council

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