

DON'T PULL THE FIRE ALARM!
PREVENTING TEST ACCOMMODATIONS ESCALATIONS FROM BECOMING
CRISES

September 2017

John Hosterman, PhD

Paradigm Testing

Donald Balasa, JD, MBA

American Association of Medical Assistants

Heather Case, DVM

Internat'l Council for Veterinary Assessment

Isabelle Gonthier, PhD

Yardstick Assessment Strategies

Maria Incrocci, PhD, RPh

National Association of Boards of Pharmacy

Kendra Johnson, EdD

Graduate Management Admission Council

Joshua Stopek, CPA

The American Institute of CPAs

Bea Awoniyi, PhD

Santa Fe College & Past President,

Association on Higher Education & Disability

Patricia Latham, JD

Private Practice Attorney & Past President,

Learning Disabilities Association of America

Donna Morere, PhD

Gallaudet University

PURPOSE

The purpose of this White Paper is to articulate an overall philosophy regarding testing accommodations escalations, to discuss the importance of taking a deliberate, individualized approach to reviewing test accommodation requests, and to provide specific strategies to avoid escalations becoming crises. This paper will not focus on the direct legal risks of approving (or not) any particular accommodation. Similarly, this paper will not focus on providing tips for how to handle different types of accommodations requests; by their very nature, accommodations must be uniquely tailored to the individual, the task, and the setting.

This paper will discuss the most common types of accommodations situations that can escalate into crises, and provide sensible strategies that can be implemented proactively to avoid these crises. And while the primary focus of the paper is on the emotionally-charged and legally-scary world of disability accommodations, many of the principles discussed can be applied to other types of candidate escalations as well.

INTRODUCTION

When an angry candidate claiming to have a disability calls the CEO or Legal office demanding an explanation as to why their test accommodation request was denied, it's easy to panic. Call an emergency meeting! Send out a mass email to everyone in the organization! Alert the Legal team to start working on a defense! And most definitely, PULL THE FIRE ALARM!

When a testing accommodations situation rapidly escalates into a perceived crisis, there is significant legal and business risk if the situation is not managed properly. Organizations need strategies to deal with escalations before they become crises. In this paper, we will summarize the range of business risks associated with the "pulling the fire alarm" approach to accommodations escalations, and we will use concrete examples to illustrate each point. We will emphasize the importance of taking a consistent and fair approach to evaluating test accommodations requests, one that both ensures access for candidates with disabilities while also respecting the organization's established policies and procedures that all candidates must follow.

WHAT CAUSES THE PANIC

1. You get a threatening letter or phone call.

We have seen a troubling decline in civility from some candidates and their advocates. Call center staff have been screamed at, called racist names, and been verbally abused on the phone. Some staff have been personally threatened with physical harm, and staff have had angry letters sent to their homes, frightening their families. Test centers and test-center staff have been threatened with bombing and violence. In some cases, the police are called; at other times, we need counselors to work with staff who have been jolted by the abuse and threats. The determination of who poses a

serious threat and who is just “blowing off steam” has become a critical part of our business. We have seen the letters and heard the phone calls.

There are a number of factors contributing to this turmoil. For example, some candidates with disabilities have a long history of having had accommodations, perhaps dating back to elementary school. They’ve used those accommodations in high school, at university, and beyond—in many cases without anyone questioning the continued need for those accommodations, or suggesting alternatives. There can be a shock to some candidates when a testing entity asks for current, comprehensive documentation to substantiate the need for accommodations. This can lead to anger and frustration.

Other candidates who ask for testing accommodations have no history of having a disability or using accommodations—they are simply trying to gain an advantage in what may be a competitive situation. Some individuals “shop around” until they find a doctor willing to write a letter indicating a particular diagnosis and need for accommodations, and they may have spent thousands of dollars to obtain this documentation. Then, when a testing entity notifies them that there is insufficient evidence of a disability and need for accommodations, the candidate may be infuriated.

Sometimes the angry or tearful letter or phone call comes directly from the candidate; other times, it is from the parent, attorney, doctor, or congressman’s office. Often a candidate or their advocate believe that the person at the testing entity that handles accommodations has not been fair; their solution is to start contacting everyone they can find at the organization, threatening legal action or pleading for assistance.

How it goes wrong

Staff, including senior executives, have “good customer service” in mind, and want to be helpful. A business executive who doesn’t manage day-to-day accommodations processing may say, “I’ll look into it for you” or “I’ll get to the bottom of it”—rather than re-directing the candidate to the appropriate accommodations specialist who may have already been working on the situation, perhaps with the organization’s own legal counsel. Rather than providing “good customer service,” the staff person who offers to intervene may be creating more confusion and adding more legal risk.

A threat of legal action can result in panic and overreaction by the organization. There are few situations that can result in a quicker sense of hysteria than a candidate claiming to have a disability threatening to sue based on discrimination. We have seen senior executives and legal counsel quickly abandon protocol and established procedures in favor of crisis meetings and finger pointing. This institutional overreaction lends itself to poor staff morale, inconsistent application of policies and procedures, and added risk.

Strategies for preventing a crisis

Have a robust appeal process. An appeal process is a mechanism for candidates to obtain another look at their request for accommodations, if the initial decision was to not approve the request in full.

In some cases, an organization may approve less than what was asked for (e.g., 50% extra time instead of triple-time), or may approve an alternate accommodation (extra breaks instead of 50% extra time), or return the application as “Incomplete” (not denied, but the candidate feels it is being denied), or the organization may deny the request altogether. In our experience, the full denial is an uncommon occurrence; for one of our member organizations that processes several thousand accommodations requests per year, we found a “full denial” rate of only about 7%. When appealing, we strongly encourage candidates to provide additional information to document their need for accommodations. In many cases, this additional documentation will be sufficient to render an approval of some or all of the candidate’s request.

It is quite common for candidates and their advocates to disregard or circumvent the organization’s appeal process. Some individuals may believe they are “special” and should not have to follow the same process as everyone else. Others believe that if they can gain a sympathetic ear from an organization’s senior executive or legal counsel, then they can avoid going through the appeal process. We have seen situations where a candidate’s attorney calls or emails demanding that their client’s accommodations request be reconsidered—then back down when the attorney discovers that their client has not availed themselves of the organization’s appeal process that is clearly posted on the website.

A robust appeal process should have the following features:

- The process uses a panel of independent experts who “call it the way they see it”—they can review the documentation and candidate requests without having preconceptions, fears of lawsuits, or other biases. The panel of experts must represent a variety of disciplines, such as psychology, assistive technology, medicine, disabilities, low vision, deaf and hard of hearing, and so on.
- The process is highly visible to candidates. The appeal process should be a clearly articulated on the organization’s website, with an *Appeal Form* and *Guidelines*. If a candidate’s request is not approved in full, they should receive a decision letter that describes the rationale for the decision and explains what recourse the candidate has, including the appeal process with a link to the appeal form.
- The process is administered consistently. This means establishing internal policies and procedures and following these *consistently*. For example, an institution may choose to send all appeals to two experts, or just one; an organization may have a policy that the final decision will be made when the majority of experts agree on a decision, or the organization may have a policy that the candidate is awarded the accommodation decision of whichever expert’s recommendation is most favorable to the candidate. Some organizations “expedite” appeal requests over other accommodations requests; other organizations put all requests into the same queue and take them in turn. None of these approaches is necessarily “best”; the critical element is to ensure that the appeal process is well documented and its policies followed consistently.

Have a communication plan for managing angry or disgruntled accommodations candidates. If a candidate is frustrated or furious they may start calling and emailing everyone s/he can at the organization, including the CEO and legal counsel, until they find someone who agrees to intervene. The candidate may look for small discrepancies between the messages from different staff they speak to, and exploit these discrepancies. The candidate is hoping that if they create enough chaos or angst, the organization will give up and approve whatever modifications the candidate is demanding. And we have seen this strategy be successful quite frequently.

- Each organization should have a well-documented *communication plan* for managing accommodations candidates who attempt to circumvent standard procedures. In most cases, this means ensuring that all candidates who are inquiring about accommodations are re-directed to the appropriate staff person who manages the accommodations process. Staff who do not manage accommodations processing—including legal staff and senior executives—should follow this same communications plan, even as they may be tempted to jump into the fray.
- The organization’s leadership and legal staff, should be educated (and reminded, if needed) about the risks of prematurely intervening in a situation with which they’re not familiar.
- The communication plan should describe how to handle these phone calls and emails (e.g., what to say, what NOT to say), and this plan should be clearly documented.
- The communication plan should be *enforced*; senior executives and attorneys are not immune from creating havoc by intervening in candidate situations before knowing all the facts.

Have internal or external disability/accommodation expertise. All but the largest test sponsors do not have internal experts in the areas of disabilities and accommodations. Frequently, the organization has delegated the work of managing accommodations requests to a staff person who does not have any background in this area (and who may have no desire to take on this work). In some organizations, accommodations requests are reviewed by a single outside consultant who may have expertise in one or two areas.

Other organizations have contracted with an outside vendor who has the full range of needed expertise, including a panel of experts in the areas of learning disabilities, ADHD, psychology, medicine, visual disorders, and hearing impairments.

It is critical that all testing organizations have access to disability/accommodations experts, whether they are internal staff or external consultants. These relationships with disability experts should be established *before* there is a crisis.

Have an internal or external legal counsel with ADA expertise. All testing organizations have legal counsel, but very few have attorneys who specialize in disability matters. If a disability-related accommodations situation escalates to the point where legal counsel is needed, outside legal counsel who has expertise in disability matters may be required. It is critical that internal legal counsel is willing to call outside expertise when needed and do not let “turf battles” from hampering this

process. Legal counsel, whether internal or external, should have a breadth and depth of understanding of the ADA, the Office of Civil Rights (OCR) process, related federal regulations, relevant state laws, and relevant case law. With the appropriate background and expertise, counsel will be able to evaluate an accommodations situation holistically, without overreacting, and be able to balance the accessibility needs of the candidate with the business needs of the organization.

It is also helpful for staff who supervise the accommodations review process to have quick access to a disability law expert, who is more than likely an outside consultant. Oftentimes, a brief phone call with legal counsel (who has ADA expertise) can resolve a sticky situation or provide guidance that can prevent situations from escalating.

2. YOU CAN'T PROVIDE THE REQUESTED ACCOMMODATION, EVEN IF YOU WANT TO.

With the rapid rise in assistive technologies and adaptive devices to assist people with disabilities, many test sponsors have discovered that accommodations that may have been sufficient in the past are no longer suitable. In years past, a human reader or human scribe were the “standard” accommodation for individuals with reading disorders, writing disorders, visual disorders, or mobility impairments. Today, these candidates are using assistive technologies that allow them to live, work, and learn more independently. Subsequently, these individuals are asking for these same technologies when they take exams.

How it goes wrong

In some cases, an organization's staff will not have the needed expertise to know whether the requested accommodation can be implemented. This may result in the candidate being told that “We can't do that”. Similarly, an organization's I.T. staff may have no knowledge of the technology that is being requested, or how it may interact with the test sponsor's content or the test-delivery vendor's driver. Again, the candidate may be told “No” without really understanding the possibilities. Without expertise in assistive technology, an organization may deny accommodations requests when in fact an acceptable alternative solution may be possible.

In other situations, the candidate's preferred assistive technology is not (yet) compatible with the test-delivery vendor's delivery system. Some test-delivery vendors have made significant strides in incorporating assistive technologies (such as screen-reading software and screen-magnification software) into their test drivers; other vendors have much work to do on this front. Cost, of course, is a factor in vendors' reluctance to modify their systems to be more accessible. At the same time, it is difficult for test-delivery vendors to keep up with the rapid advances in assistive technologies—each new version of an assistive technology software product needs to be thoroughly checked for compatibility with the test driver, for possible security challenges (e.g., internet access is available for some third-party software), and for possible implementation challenges.

In addition to ensuring that a candidate's preferred assistive technology is compatible with the test-delivery vendor's driver and system, there will be a question about whether the test sponsor's

content is accessible. Does the test include images, and have these been “described” so a screen reading software program can “read” a description of the images to blind candidates? What happens to images that are magnified to five or six times their original size—do the images become pixelated and grainy?

When confronted with accommodations requests that (at least on the surface) seem impossible, organizations with limited internal expertise-- or who are reluctant to spend the money to hire external consultants and experts-- may be quick to tell a candidate “No” rather than look for solutions, or may quickly engage legal counsel to try to dispense with the candidate’s request; these would seem to be approaches that increase risk and do not serve candidates well.

Strategies for preventing a crisis

Spend the money and do it right. Some test sponsors and test-delivery vendors have resisted investing in the necessary human expertise and technical resources to ensure full accessibility of their content and their ability to deliver accessible content. Instead, some sponsors have essentially “dumped” this work on an internal staff person who is not appropriately trained. At the very least, organizations who follow this path should have an established escalation path to external experts who can evaluate and problem-solve more complex cases.

Empower an accessibility leader for this effort. The accessibility leader is responsible for looking holistically at the organization’s test content and ability to deliver that content in accessible formats. It is vital to ensure that this accessibility leader has all the authority that is needed (not just the responsibility). Will the organization’s accessibility leader be undermined by senior executives at budget time, or when an angry candidate creates chaos? Some organizations have gotten themselves tangled up in internal turf battles or other distracting drama—accommodations staff vs. technology staff vs. content-development staff vs. program management staff-- all of which has hampered the organization’s ability to clearly identify and obtain the necessary resources to meet the needs of candidates with disabilities. Is accessibility a true organizational priority, or just a talking point?

Have a technical expert in assistive technologies. Whether internal or external, the technical expert can work with your accommodations and technology teams to devise accessibility solutions, either temporary solutions for an immediate need, or long-term solutions that would work for future candidates as well. The technical expert should be able to analyze your test content for accessibility, provide suggestions for making the content (or perhaps just one form of the test) accessible, and could, if needed, do the work of making your content accessible.

3. YOU DON’T WANT TO DO IT, OR YOU CAN’T DO IT.

Test sponsors who make accommodations decisions must balance a variety of sometimes-competing objectives, including ensuring the test is accessible for candidates with disabilities, ensuring that the resulting scores are valid and meaningful (*test validity*), ensuring that the security of the test content

(*test security*) is maintained, and ensuring that the test center can operate safely for all candidates and staff (*test safety*). We will discuss each of these issues, in order.

A fundamental business objective is ensuring that test scores are valid and meaningful to end-users, such as licensure boards, institutions of higher education, and employers. If an end-user cannot trust that all individuals who have earned a particular score have achieved the same level of mastery (or whatever the test purports to measure), then the test is rendered useless.

In some cases, a test accommodation would appear to “level the playing field” for candidates with disabilities, such as providing a modest amount of extra time (e.g., 25% or 50% extra time) for a candidate who has processing speed and reading rate difficulties due to a learning disability. However, if this same individual were to be granted triple-time, it is possible that the test will become essentially *untimed* for this person, rendering the score meaningless. The goal is to make the test score comparable—in this case, to make it *as speeded* for the individual with a learning disability as it is for all other candidates. The hope is to approximate a valid score.

We have seen a rise in requests for accommodations that would represent a fundamental alteration to the test’s construct and purpose, and clearly would invalidate the resulting score, including:

- “Untimed” testing
- 6x or 10x additional time
- Waiving portions of the test
- Making test content substitutions (e.g., substituting a course grade for a section of the test)
- Translating the test into another language “on the fly” at the test center

In some cases, these accommodations have been provided previously to candidates, who then become outraged when a testing organization declines to grant the accommodation for the test. The candidate may say, “I’ve always had this accommodation” or, “My school granted me this accommodation, why won’t you?” Of course, the answer to these concerns is complicated, and requires an explanation about the different purposes of accommodations (to ensure access vs. to promote success), the different tasks (tests in school vs. standardized high-stakes tests for entrance or licensure), and different settings (classroom vs. test center). Unfortunately, when an angry candidate or their advocate calls a test sponsor to demand an explanation as to why their request for quadruple-time was denied, the caller is not interested in a lengthy explanation—they just want to argue the point and have the decision overturned.

Another key objective for test sponsors is to ensure that the test is given fairly, to minimize or eliminate cheating, and to minimize the possibility of content being lost or stolen. In some cases, the requested test accommodation would significantly increase these risks. For example,

- Having a smartphone with the candidate during testing
- Having one’s mother or best friend be the human reader
- Testing on one’s own laptop

As noted above, in some cases these accommodations have been provided to candidates previously, most likely in an academic setting, and now the candidate cannot understand why the test sponsor is denying the request or modifying it to something else (e.g., using a contracted reader from a reputable agency rather than having Mom as the reader). This can lead to frustration, anger, and sometimes a threat of legal action.

Test centers that deliver our exams must be able to operate using good business practices, such that candidates have a comparable experience, and candidates and staff are safe. We have seen a rise in accommodations requests that would hamper normal business operations, or could put candidate or staff health or safety at risk. For example,

- Asking the test center to turn off all the lights except for a small desk lamp for the candidate
- Asking the building's maintenance staff to not use any cleaning chemicals for one week prior to the candidate's test date
- Asking the test proctor to administer medication to a candidate
- Asking the proctor to clean up after an incontinent candidate

It is possible that a previous academic institution has granted these types of requests. In many cases, there is no question that the individual has a disability; the issue is how to accommodate them appropriately given the unique setting of a test center. When a test sponsor attempts to negotiate an alternative accommodation with a candidate who has "always had" a particular modification, there can be consternation and anger. Candidates with disabilities are responsible for engaging in an interactive process with the test sponsor, to behave politely, and to work collaboratively to find a solution that meets the individual's accessibility needs but that also protects the business interests of the organization. Unfortunately, some candidates do not want to engage in this interactive process, but instead prefer to hire an attorney or call the organization's CEO.

Strategies for preventing a crisis

Keep disability experts involved. Whether internal or external, the disability expert can engage with candidates in an *interactive process*—to better understand candidates' needs and to brainstorm possible solutions. The disability expert can explain the organization's concerns to candidates, and consider unique one-off solutions that individualize the accommodation to meet the person's access needs.

Keep psychometricians involved. It is important for those making accommodations decisions to have a fundamental understanding of psychometric principles, to understand the psychometric properties of high-stakes testing, and to collaborate with the organization's psychometricians if/when a requested accommodation would appear to go well beyond "leveling the playing field" and could invalidate the resulting scores. Together, accommodations decision-makers and psychometricians can find alternative accommodations to suggest to a candidate, that would still ensure access but would minimize the negative impact on test validity.

Keep test security experts involved. It is important for those making accommodations decisions to understand how accommodations may impact the security of the test, and could lead to cheating and/or item harvesting. As personal-use technology evolves, and the use of personal medical devices advances, it is important that test-security experts be involved in accommodations decisions that involve technology or devices.

Keep college and/or university disability services professionals involved. It is important for those making accommodations decisions to understand what types of accommodations, adjustments, and assistive technologies were granted previously, how long the candidate has used the accommodations, and how effective those accommodations have been. With the candidate's permission, a dialogue between the testing organization's accommodations staff and the candidate's university disability-service staff can be extremely helpful to better understand the person's needs.

Keep test-center operational staff involved. Many test sponsors have only marginal understanding of the day-to-day workings of test centers, or an appreciation for the multitude of tasks that proctors must undertake to ensure consistent, fair, and safe test delivery. It is important for those making accommodations decisions to consult with those who are familiar with test center operations to ensure that accommodations are not approved that would hamper test center operations, lead to security breaches, or impact the health or safety of candidates and staff.

GUIDING PRINCIPLES

Don't panic. When a testing organization's staff panic, mistakes are made. There is a rush to make compromises that are inconsistent with established policies and procedures, and in the mad dash to make the problem go away bad precedents are established. There is almost never a need to panic, especially if an organization has followed the strategies outlined above.

Don't be bullied. Angry candidates and their advocates may try yelling, sobbing, name-calling, and use other verbally-abusive tactics to try to bully a testing organization's staff into giving in to their demands. As happens when staff panic, likewise when staff feel bullied they may be tempted to disregard established policies and practices in order to make the problem go away. Again, this can set bad precedent and lead to inconsistencies that undermine fairness to all.

Have an established communications plan, and make sure everyone knows about it (and sticks to it). Candidates who are requesting accommodations should have one email address and one phone number to call. If they contact anyone else at the organization, they should be referred to the accommodations staff.

Educate staff about the dangers of intervening. Any direct intervention by non-accommodations staff can result in bad precedents being set and added legal risk.

Have an established appeal process, and be sure it is transparent to candidates. Do not let candidates or their advocates circumvent this process, which is designed to be fair to all candidates and fair to the organization.

Make sure the accommodations staff have the necessary expertise—or allow them to consult with external experts when needed.

SUMMARY

We believe that candidates with disabilities should have full access to our tests. This is the right thing to do for our candidates. However, there has been a battle-mentality with some candidates, where they believe that rather than collaborating with test sponsors to find accommodations solutions they must be overly aggressive and threatening. In fact, we have seen this strategy have success, especially with testing organizations that are not prepared to handle accommodations-related escalations and are prone to panicking.

There are many variables that must be considered when making accommodations decisions, including the access needs of candidates, the organization's need to protect the test content and minimize cheating, the need to render valid, comparable scores, and the need to deliver tests so that all candidates and staff can have a safe, consistent testing experience. Testing organization staff who are not familiar with these sometimes-competing priorities may be tempted to make hasty decisions that resolve the current crisis, but establish precedents and inconsistencies that will foster more crises down the road. Senior executives and legal counsel are not immune to these temptations.

Technology is rapidly advancing—assistive technology for individuals with disabilities, personal technology and medical technology devices, and the technology to deliver content using unique item-types and simulations. Thus, it is important for those making accommodations decisions to have the opportunity to consult with experts in many areas—disabilities, law, medicine, assistive technology, information technology, psychometrics, and test security. While this collaborative process of drawing on expertise from a variety of disciplines will take time and involve greater cost, ultimately accommodations decisions will be made that are good for candidates with disabilities and will also protect the business; it is a win-win strategy.

Finally, it is vital that both testing organizations and candidates with disabilities engage in an interactive process to resolve any disagreements. Screaming, threatening, and hiring attorneys rarely will resolve accommodations disputes in a way that is fair or timely. By having established and transparent processes for dealing with appeals, candidates are assured that their request has undergone a thorough, impartial review, and organizations are assured that accommodations decisions are fair and defensible.