

Ms. Vanita Gupta
 Principal Deputy Assistant
 Attorney General
 Department of Justice
 Civil Rights Division
 950 Pennsylvania Avenue
 Washington, DC, 20530-001

Dear Ms. Gupta:

The Inter Organizational Practice Committee (IOPC) is a coalition of the American Academy of Clinical Neuropsychology (AACN), the Society for Clinical Neuropsychology/Division 40 of the American Psychological Association, the American Board of Professional Neuropsychology (ABN), the National Academy of Neuropsychology (NAN), and the American Psychological Practice Organization (APAPO). We are tasked with coordinating national neuropsychology advocacy efforts, and represent thousands of neuropsychologists in the United States. Our member organizations contain professionals who are experts in comprehensive assessments that determine an individual's functional impairments and related accommodation needs. Neuropsychologists often advocate for individuals with disabilities who require testing accommodations.

The IOPC is writing to express our support to the Department of Justice (DOJ) for its commitment to establishing less burdensome guidelines for students to obtain testing accommodations. Many neuropsychologists have had to appeal denials of accommodations for candidates with well-documented histories and continued deficits. For this reason, the IOPC would like to express our support for the Department of Justice's (DOJ)'s intention to establish guidelines for obtaining testing accommodations that will be less burdensome for students. We believe that the efforts to make the documentation process less onerous are steps in the right direction. However, we do not believe that this should be done at the expense of validity and fairness. This letter outlines our grave concerns with the DOJ Guidelines on Testing Accommodations, released in September of 2015. Some of the principles outlined in the Technical Assistance document are not supported by empirical evidence and clinical experience and may inadvertently lead to granting of unnecessary, inappropriate or unhelpful accommodations. Such accommodations can be harmful to those who receive them, unfair to other test

takers, and pose the risk of making tests less affordable for low income students. We explain our concerns and offer to work with the Department of Justice on these changes:

Not all Disabled Individuals Require Accommodations

The Technical Assistance document correctly states that "individuals with disabilities are eligible to receive necessary testing accommodations." However, individuals with disabilities vary in the degree to which their disabilities affect their level of functioning, and as such, they may not require any testing accommodations. Documentation of a disability alone is therefore insufficient to determine the type and degree of necessary accommodations; a comprehensive evaluation is necessary to individualize and tailor those accommodations. Blanket granting of accommodations based on previous testing can ultimately increase administrative costs if many more students are provided with accommodations than should be and has the potential to raise test fees and eliminate lower-income individuals without disabilities from testing, which may create a situation of reverse discrimination.

The Technical Assistance document states that if an individual has previously received testing accommodations, they should be granted accommodations whenever they request it in the future. This advice does not take into account research on brain plasticity and the frequent positive changes in an individual's functional level over time. Some children with Attention Deficit Hyperactivity Disorder (AD/HD) will not show significant symptoms as adults; as their level of functional impairment diminishes, so do their accommodation needs. Some children with reading disabilities undergo effective remedial training/interventions, and therefore a student who once received read-aloud accommodations may only need extended time as an adult. Individualized neuropsychological evaluations help to document what someone's current accommodation needs are which may be different than what was recommended previously, as the remedial training they received in school helped them overcome their disabilities over time.

The 'Best Practices' document accepts as sufficient documentation an evaluation completed at age 13, without requiring an updated evaluation (or more recent evaluation) much closer in time to the test administration in question. This is problematic for several reasons. First, research does not support age 13 as a developmental age when diagnoses of learning disabilities stabilize. Age 13 is an arbitrary number in this context. It is well established that considerable brain maturity occurs in the teenage years and through the 20s. Thus, students' cognitive profiles likely change over the intervening decade, with potential improvements in attention and executive function, as well as in other areas (Antshel & Barkley, 2011a). Furthermore, college work provides more practice in reading and writing, such that some students' reading and writing speed markedly improve. Thus, deficits present earlier in life may not remain after college. Changes occur, necessitating reevaluation to determine their nature and to ensure that accommodations that are no longer necessary are not unfairly granted.

The Technical Assistance document appears to base its recommendations on outdated evidence that impairment from psychological disorders is permanent. Many such disorders in fact are not permanent. For instance, research has shown diagnoses of Asperger's Disorder (now part of DSM-5 Autism Spectrum Disorder) to be quite unstable and therefore subject to changes that affect what accommodations are needed (Helles, Gillberg, Gillberg & Billstedt, 2015). Even children with prior diagnoses of autism can recover to the point that accommodations can be reduced or eliminated (Helt, Kelley, Kinsbourne, Pandey, Boorstein, Herbert, & Fein, 2008). AD/HD symptoms frequently lessen or even disappear/abate from childhood to adulthood (Antshel and Barkley, 2011). In addition, learning disorders change over time, as

indicated on the NINDS Dyslexia and NINDS Dysgraphia Information pages (2016). Tanner (2009) writes that it is virtually impossible to provide a universal profile of an adult with dyslexia suggesting that universal accommodations or accommodations made for a high school student will not be necessarily the same as for an adult. For example, Svensson & Jacobson (2006) found that some adults have reached normal word identification skills despite being dyslexic as children, and word identification is, of course, a core feature of dyslexia. In addition, Lewinsohn, et al. (1994) report how, over time, psychiatric disorders alter. Thus, these examples of psychological disorders/symptoms abating over time are further evidence that repeat neuropsychological evaluations are necessary for accurate diagnoses and appropriate accommodations.

Accommodation Needs Differ According to the Type of Exam

The DOJ Technical Assistance document assumes that different types of exams (college admissions, professional licensure, and high school equivalency) would all require the same type and degree of accommodations for a given individual. However, neuropsychologists help determine the appropriate testing accommodations depending on the nature of the learning disability profile and the examination for which accommodations are being sought. Thus, for some types of exams (e.g., licensing physicians), a more rigorous standard of review is required than for other exams (e.g., high school equivalency). For example, former high school students were granted fairly extensive accommodations to meet the needs of their disability in high school, may no longer need it as medical students because their disability has lessened but also because it would be inappropriate to have this degree of accommodations in medical school, and potentially create situations where substandard physicians are graduated from medical school.

Inaccuracy of Self-Report

The Technical Assistance document suggests that self-reports of learning disabled test-takers should be used to guide their accommodation needs. As neuropsychologists know both from clinical experience and research, self-reports are frequently unreliable. The inaccuracy stems from a student's lack of expert understanding of what levels of functioning are typical and/or normal, as well as a motivation to exaggerate impairments to obtain the greatest accommodations related to their disability. For example, an individual in a high-performance setting such as a competitive college may perceive that their skills are relatively weaker than their peers, even though their skills may be within the normal range, and thus they may unknowingly report a disability where none exists. To that end, neuropsychological assessment is critical to obtain objective results and validate self-reports (Heilbronner et. al., 2009). Indeed, laws restrict diagnostic practice to certified and licensed professionals for just this reason; asking individuals to assess their own level of impairment seems to violate the spirit of those laws.

Accommodations without Disability

Related, school evaluators sometimes award academic accommodations to students even when the student is not disabled, based on extenuating circumstance (e.g., the school's curriculum is challenging, or unfamiliarity with disability policies and laws (see Crawford and Ketterlin, 2013). Thus, history of prior accommodations that were not based on formal diagnostic evaluations should not be sufficient to justify future testing accommodations. For example, in New York City independent schools, twenty percent or more of the students are receiving accommodations. A story from the NY Times from 2002 reports parents 'gaming' the system (Gross, 2002). Per that same article, a California state audit found elevated

figures for use of accommodations in private schools. Granting unnecessary accommodations to students is also a consumer protection and fairness issue. Inflated test scores may lead to admission into programs where there is not a good fit between the student's actual abilities and the demands of the program. In those cases, student consumers are at risk of academic failure, which is particularly troubling if the student has large student loan debt. Such unjustified accommodations are also unfair to others taking the same exam.

Problems with Providing Unnecessary Accommodations

Students require updated periodic neuropsychological evaluations to minimize the problem of unnecessary accommodations, which can be problematic. First, students who receive the unnecessary accommodations are given an unfair advantage. Research has shown that when high achieving students with disabilities are provided with 50% additional time, they complete more questions than their non-disabled peers do with the standard amount of time (Lewandowski et al., 2013). Second, if students are provided with accommodations that they do not need to be successful, they may begin to rely on such accommodations rather than develop the skills and coping mechanisms they will need in their careers and lives. Third, not all students with AD/HD are the same and although some work more slowly and need additional time, many do not (Lewandowski et. al., 2013). Similarly, although some students with learning disabilities may need additional time across all aspects of a test, others may only need it for only a specific portion (e.g., reading, problem-solving, or writing). If decisions are based on past history, this is likely to result in unnecessary and inappropriate accommodations and potentially unfair advantages as compared to classmates who are not receiving accommodations.

Need to Define Who is a "Qualified Professional"

We agree with Technical Assistance document in directing testing entities to "defer to documentation from a qualified professional." Documentation from third-party diagnostic evaluations is often crucial in making accommodation decisions. But deficient/inexpert documentation by some professionals makes essential that the Technical Assistance document clearly define who is a "qualified professional". Some paraprofessionals or professionals (e.g., pediatricians, family physicians) who can diagnose but not conduct testing may not adhere to official formal diagnostic criteria, they may not properly apply the legal standard of the ADA (substantial limitations compared to most people in the general population), and may fail to make specific and individualized accommodations (see Harrison et. al, 2013). Some professionals may also fail to include measures assessing a client's level of motivation/effort/performance consistency, even though neuropsychologists have shown these measures to be critical to proper interpretations. Some adolescents and adults furthermore have been diagnosed using a discrepancy model (comparing IQ to reading skills), which is widely considered a discredited model that is used as the basis of evidence. Thus, individuals may be receiving accommodations based upon an outdated clinical model. In light of these problems, "qualified professional" should be defined to clarify what procedures/types of evaluations are necessary and sufficient to produce a reasonable diagnosis and set of accommodations. These professionals, at a minimum, need to have training in both psychiatric diagnosis and neuropsychological/psychoeducational assessment.

Summary

In sum, the IOPC strongly recommends that these guidelines be improved to address the concerns that we have identified. We gladly offer our assistance in rewriting these guidelines so support DOJ's goal of

making accommodations less burdensome for students, with the added aim of maximizing the validity and utility of disability evaluations.

Respectfully submitted on behalf of the American Academy of Clinical Neuropsychology, National Academy of Neuropsychology, Division 40 (Neuropsychology) of the American Psychological Association, the American Psychological Association Practice Organization, and the American Board of Professional Neuropsychology,



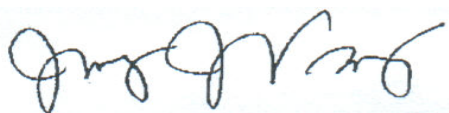
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References

- Antshel, K. M., & Barkley, R. (2011a). Overview and historical background of attention deficit hyperactivity disorder. *Treating attention-deficit: hyperactivity disorder: assessment and intervention in developmental context*. Civic Research Institute, New York, NY, 1-30.
- Antshel, K. M., & Barkley, R. (2011b). Children with ADHD grown up. In S. Goldstein, J. A. Naglieri, & M. DeVries (Eds.), *Learning and attention disorders in adolescence and adulthood: Assessment and treatment* (pp. 113-134). Hoboken, NJ: Wiley.
- Chan, E., Hopkins, M. R., Perrin, J. M., Herrerias, C., & Homer, C. J. (2005). Diagnostic practices for attention deficit hyperactivity disorder: a national survey of primary care physicians. *Ambulatory Pediatrics*, 5(4), 201-208.
- Crawford, L., & Ketterlin-Geller, L. R. (2013). Middle school teachers' assignment of test accommodations. *The Teacher Educator*, 48(1), 29-45.
- Gross, J. (2002, September 26). Paying for a Disability Diagnosis to Gain Time on College Boards. *New York Times*. Retrieved April 4, 2016 from www.nytimes.com.
- Harrison, A. G., Lovett, B. J., & Gordon, M. (2013). Documenting disabilities in postsecondary settings: Diagnosticians' understanding of legal regulations and diagnostic standards. *Canadian Journal of School Psychology*, 28, 303-322.
- Heilbronner, R. L., Sweet, J. J., Morgan, J. E., Larrabee, G. J., Millis, S. R., & Conference Participants 1. (2009). American Academy of Clinical Neuropsychology Consensus Conference Statement on the neuropsychological assessment of effort, response bias, and malingering. *The Clinical Neuropsychologist*, 23(7), 1093-1129.
- Helles, A., Gillberg, C. I., Gillberg, C., & Billstedt, E. (2015). Asperger syndrome in males over two decades: stability and predictors of diagnosis. *Journal of Child Psychology and Psychiatry*, 56(6), 711-718.
- Helt, M., Kelley, E., Kinsbourne, M., Pandey, J., Boorstein, H., Herbert, M., & Fein, D. (2008). Can children with autism recover? If so, how?. *Neuropsychology review*, 18(4), 339-366.
- Lewandowski, L., Cohen, J., & Lovett, B. J. (2013). Effects of extended time allotments on reading comprehension performance of college students with and without learning disabilities. *Journal of Psychoeducational Assessment*, 31(3), 326-336.
- Lewandowski, L. J., Lovett, B. J., Coddington, R. S., & Gordon, M. (2008). Symptoms of ADHD and academic concerns in college students with and without ADHD diagnoses. *Journal of Attention Disorders*, 12(2), 156-161.
- Lewinsohn, P. M., et al. (1994). Major depression in community adolescents: Age at onset, episode duration, and time to recurrence. *Journal of the American Academy of Child & Adolescent Psychiatry*, 33, 809-818.
- NINDS Dysgraphia Information Page (2016, April 4) Retrieved April 4, 2016 from <http://www.ninds.nih.gov/disorders/dysgraphia/dysgraphia.htm>
- NINDS Dyslexia Information Page (2016, April 4). Retrieved April 4, 2016 from <http://www.ninds.nih.gov/disorders/dyslexia/dyslexia.htm>
- Palmer, B., Boone, K., Less, I & Wohl, M. (1998). Base rates of 'impaired' neuropsychological test performance among healthy older adults. *Archives of Clinical Neuropsychology*, 13, 503-511.

- Popper, C., Gammon, G., West, S. & Bailey, C. (2003). Disorders usually first diagnosed in infancy, childhood or adolescence. In Hales, R. A., Yudofsky, S. C., & Gabbard, G. O. (2003). *APA Textbook of Clinical Psychiatry. Psychiatric Genetics Bölümü*, 4th Edition, New York, American Psychiatric Publishing.
- Schretlen, D. J., Munro, C. A., Anthony, J. C., & Pearlson, G. D. (2003). Examining the range of normal intraindividual variability in neuropsychological test performance. *Journal of the International Neuropsychological Society*, 9(06), 864-870.
- Searcy, C. A., Dowd, K. W., Hughes, M. G., Baldwin, S., & Pigg, T. (2015). Association of MCAT scores obtained with standard vs extra administration time with medical school admission, medical student performance, and time to graduation. *JAMA*, 313(22), 2253-2262.
- Shalev, R. S. (2004). Developmental dyscalculia. *Journal of child neurology*, 19(10), 765-771.
- Shalev, R. S., Manor, O., & Gross-Tsur, V. (2005). Developmental dyscalculia: a prospective six-year follow-up. *Developmental Medicine & Child Neurology*, 47(02), 121-125.
- Svensson, I., & Jacobson, C. (2006). How persistent are phonological difficulties? A longitudinal study of reading retarded children. *Dyslexia*, 12(1), 3-20.
- Tanner, K. (2009). Adult dyslexia and the "conundrum of failure". *Disability & Society*, 24 (6), 785-797.
- Taylor, M. J., & Heaton, R. K. (2001). Sensitivity and specificity of WAIS-III/WMS-III demographically corrected factor scores in neuropsychological assessment. *Journal of the International Neuropsychological Society*, 7(07), 867-874.