TENNESSEE BOARD OF LAW EXAMINERS

POLICY ON 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;
- resulting in a deleterious effect on other applicants taking the bar examination;
- compromising the security of the examination; and/or
- compromising the integrity, the reliability, or the validity of the examination.

1 Board Policies and Procedures, Item 8.
REQUESTS FOR NON-STANDARD TESTING ACCOMMODATIONS:

A. Regular Requests: A regular NST Petition shall be on forms prescribed by the Board and shall consist of all of the following:
   i. a statement of the applicant, including a description of the applicant’s disability and the testing accommodations requested;
   ii. a statement on the prescribed form from the applicant’s medical or psychological physician or licensed professional in the field related to the applicant’s claimed disability;
   iii. a statement on the prescribed form 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 from the testing authority that provided testing accommodations to the applicant on the LSAT, MPRE or bar examination in another jurisdiction; and
   v. such additional documentation for specific disabilities as detailed in Appendices 1, 2, and 3.

B. Upon request, the applicant shall submit an authorization for release of records from the medical and/or psychological authorities 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. Applicants requesting additional testing time must submit documentation from applicant’s physicians or other licensed professionals that details the basis for the requested additional time and the amount of additional time recommended. If a specific amount of additional time is not indicated, applicant’s request may not be approved due to insufficient information. Please note that double time testing is conducted in Nashville, Tennessee, for all exam administrations. Travel expenses to Nashville are the responsibility of the applicant.

D. All applicable items must be completed and received by the Board on or before the filing deadline for the current exam period. Each examination administration requires that an applicant submit a new request and supporting documentation. The application is specific to one examination administration and does not carry forward.

E. 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 suggests 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.

F. Emergency Requests
   a. An applicant may file an emergency NST Petition 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 Petition.

G. FORMS: All forms necessary to complete a regular or emergency NST Petition are available on
   the Tennessee Board of Law Examiners website.

H. An applicant may be required to submit to independent diagnostic testing at the Board’s
   expense, by a physician or specialist selected by the Board. The Board may also, at its
   expense, have the information submitted by the applicant evaluated by a physician or
   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 ADAAA. The burden of proof is on the applicant to
   establish a disability as defined by the ADAAA 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 Petition 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 Petitions, supporting documentation, and information developed
   by the Board with respect to the requests shall remain confidential.

APPENDIX 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. 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 should 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 specific diagnostic statement which should not include nonspecific terms such as “learning differences,” “learning styles” or “academic problems,” and
- A rationale for each recommended accommodation based on diagnostic information presented (background history, test scores, documented observations, etc).

**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 list of tests is provided as a guide to assessment instruments appropriate for the adult population. It is not intended to be all-inclusive and will vary with the needs of the individual being evaluated:

1. **Aptitude/Cognitive Ability**
   - Wechsler Adult Intelligence IV (WAIS IV) (or most current version, including IQ, Index and scaled scores)
   - Woodcock-Johnson III (WJ III): Tests of Cognitive Abilities
   - Stanford-Binet Intelligence Scale (4th Ed.)
   - Kaufman Adolescent and Adult Intelligence Test

   **Please note:** The Slossen Intelligence Test and the Kaufman Brief Intelligence Test are primarily screening instruments and should not be considered comprehensive measures of aptitude/cognitive ability.

2. **Achievement**
   - Woodcock-Johnson III (WJ III): Tests of Achievement
   - Wechsler Individual Achievement Test (WIAT)
   - Scholastic Abilities Test for Adults (SATA)

   **Please note:** The Wide Range Achievement Test: Third Edition (WRAT-3), the Peabody Individual Achievement Test (PIAT, PIAT-R) and the Nelson-Denny Reading Test (timed and untimed) are not comprehensive measures of academic achievement and should not be used as sole measures in this area.

3. **Information Processing**
   - Wechsler Memory Scale-III
   - Swanson Cognitive Process Test (S-CPT)
• Test of Adolescent/Adult Wordfinding (TAWF)
• Information from subtest, index and/or cluster scores on the WAIS-III (Working Memory; Perceptual Organization; Processing Speed) and/or the Woodcock Johnson III (WJ III): Tests of Cognitive Ability; (Visual Processing; Short Term Memory; Long Term Memory; Processing Speed) and/or The Detroit Tests of Learning Aptitude-Adult (DTLA-A) as well as other neuropsychological instruments that measure rapid automatized naming and/or phonological processing.

APPENDIX 2 - ADDITIONAL DOCUMENTATION FOR ACCOMMODATIONS BASED ON ATTENTION DEFICIT/HYPER-ACTIVITY DISORDER (AD/HD):

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, Fourth Edition (DSM-IV-TR) (or most current version) are used as the basic guidelines for determination of Attention Deficit/Hyperactivity Disorder (AD/HD) diagnosis. The diagnosis depends on objective evidence of AD/HD symptoms across the applicant’s development and cause the applicant clinically significant impairment within multiple environments. An applicant self-report alone is generally insufficient to establish evidence for the diagnosis. An applicant warranting an AD/HD diagnosis should meet basic DSM-IV-TR criteria including:

• Sufficient numbers of symptoms (delineated in DSM-IV-TR) of inattention and/or hyperactivity-impulsivity that have persisted for at least six months to a degree that is “maladaptive” and inconsistent with developmental level. The exact symptoms should be described in detail.
• Objective evidence that symptoms of inattention and/or hyperactivity-impulsivity that caused impairment were present during childhood.
• Objective evidence indicating that current impairment from the symptoms is observable in two or more settings. There must be clear evidence of clinically significant impairment within the academic setting. However, there must also be evidence that these problems are not confined to the academic setting.
• A determination that the symptoms of AD/HD are not a function of some other mental disorder (such as mood, anxiety, or personality disorders; psychosis, substance abuse, low cognitive ability, etc.).
• Indication of the specific AD/HD diagnostic subtype; predominantly inattentive type, hyperactive-impulsive type, combined type, or not otherwise specified.

Formal Testing: AD/HD evaluation is primarily based on in-depth history consistent with a chronic and pervasive history of AD/HD symptoms beginning during childhood and persisting to the present day. The evaluation should provide a broad, comprehensive understanding of:

• the applicant’s relevant background including family, academic, social, vocational, medical, and psychiatric history;
• how AD/HD 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 AD/HD diagnosis independent of history and interview. However, such findings can augment clinical data. They are 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 AD/HD (inattention, working memory, etc.).

APPENDIX 3 - ADDITIONAL DOCUMENTATION FOR ACCOMMODATIONS BASED ON PSYCHOLOGICAL DISABILITY:
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. The report should include the following:
• psychiatric/psychological history
• relevant developmental, educational and familial history
• relevant medical and medication history
• results of full mental status examination
• description of current functional limitations 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, including but not limited to WAIS-III (all subscores and verbal and performance IQ, full scale score), Beck’s Depression Scale, Trailmaking Test A and B or Colormaking Trailmaking Test A and B, Minnesota Multiphasic Personality Inventory, Rorschach Psychodiagnostic Test, Thematic Apperception Test, or Million Clinical Multiaxial Inventory.
• diagnostic formulation, including discussion of differential or “rule out” diagnoses
• prognosis