

Court Orders & Papers

ADA Complaint

This is a draft complaint for an ADA lawsuit against the Law School Admission Council regarding testing accommodations for someone with ADHD and another mental health issue. It includes a useful format for ADA litigation in general.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LD, :

:

Plaintiff :

:

v. : Civil Action No.

:

LAW SCHOOL ADMISSIONS COUNCIL, INC., :

KIM DEMPSEY, :

:

Defendants :

JURY TRIAL DEMANDED

FOR DAMAGE CLAIMS

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff LD, a 22 year old 19__/20__ graduate from the University of ____, in ____, brings this Complaint against the Law School Admissions Council, Inc. (LSAC) and its agent, Kim Dempsey, to ensure that she is permitted to take the Law School Admissions Test (LSAT) free from the illegal discrimination against her which the Defendants currently plan to impose. Ms. LD recently graduated from the University of _____ in _____ with a Bachelor's Degree in

_____. Defendants have refused to permit her to take the LSAT with reasonable accommodations for her disabilities (accommodations recommended by her treating psychiatrist and her neuropsychologist) and, absent immediate relief from this Court, she will be unable to take the LSAT on Saturday, December 4, 1999 under conditions which accurately reflect her aptitude and abilities.

2. This action seeks emergency, preliminary and permanent injunctive relief, and damages, against Defendants based on the LSAC's discriminatory conduct against Plaintiff LD, a person with disabilities. Plaintiff LD has requested certain simple and inexpensive accommodations in the manner in which the LSAT is administered. She has requested to take the examination in one and one-half the standard period of time, and to take the examination in a separate quiet room. Each of these accommodations is recommended by her treating psychiatrist and her neuropsychologist.

3. These accommodations are necessary to ensure that the LSAT is accessible to Plaintiff LD who has Attention Deficit Hyperactivity Disorder, and _____ Disorder, both of which are recognized mental disorders which substantially affect her thinking, learning, concentration, expression and other basic life functions. The requested accommodations are the same as those granted by Plaintiff's college, the University of Washington.

4. The LSAC has refused to grant Plaintiff LD any accommodations at all, which refusal violates the Americans with Disabilities Act, 42 U.S.C. §§12101, et seq. (the "ADA"). The ADA prohibits entities such as the LSAC from discriminating against people with disabilities in the administration of tests and examinations. 42 U.S.C. §12189 (Title III of the ADA). The ADA permits awards of damages for its violation. Both compensatory and punitive damages are sought in this case. The ADA further provides that defendants who violate the ADA are liable for costs of litigation, including attorneys' fees, pursuant to specific provisions of the ADA and the Civil Rights Act of 1964.

5. Absent urgent and immediate relief, Plaintiff LD will be deprived of the benefits of appropriate testing for her law school admission process, will be denied or delayed in law school admission, and will lose the benefit of her extensive preparation and study for the LSAT, and will suffer further emotional distress and embarrassment. Defendants' violation of the ADA has already compelled her to miss the October 1999 LSAT. This Court's aid is sought to ensure that they do not deny her the opportunity to take the December 4, 1999 LSAT, an examination which is necessary to her law school application effort.

PARTIES

6. Plaintiff LD is an individual residing in _____. She graduated with a Bachelor's Degree in _____ in June 19___. Since graduation, she has been a research assistant for a book on _____.

7. Defendant Law School Admission Council, Inc. (LSAC) is a private organization in Newtown, PA. Among other functions, the LSAC prepares and administers the Law School Admission Test, the professional examination generally required for admission ABA-accredited law schools and the examination which is utilized by law schools generally for ranking and

admissions decisions. . Without justification, and contrary to the evidence before it, and in knowing and flagrant disregard of the law, including the ADA, and in bad faith, Defendant LSAC denied Ms. LD's request for accommodations in the October and December, 1999 LSAT.

8. Defendant Kim Dempsey is an employee and agent of LSAC, and is the spokesperson for their Accommodated Testing section. On information and belief, Ms. Dempsey, who has not reported any credentials in the field of disabilities, makes the decisions for LSAC regarding Accommodated Testing for Plaintiff LD and others. Without justification, and contrary to the evidence before her, and in knowing and flagrant disregard of the law, including the ADA, and in bad faith, Defendant Kim Dempsey denied, or caused the denial of, Ms. LD's request for accommodations in the October and December, 1999 LSAT.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 28 U.S.C. §1331 for civil actions arising under the Constitution and laws of the United States and under on account of diversity of citizenship. Plaintiff LD is a resident and citizen of the State of Washington; Defendant LSAC is a corporation headquartered and with its sole office in Newtown, PA.

10. This Court also has jurisdiction over this action under 42 U.S.C. §12133, of the Americans with Disabilities Act, which incorporates the provisions of 29 U.S.C. §794a, for violations of Title II of the Americans with Disabilities Act, and under the Americans with Disabilities Act generally.

11. This Court has authority to hear this case pursuant to 42 U.S.C. §1983, §1985(3), and 1988.

12. Venue in this District is proper under 28 U.S.C. §1391 and 42 U.S.C. §2000e-5(f) in that the acts of discrimination have taken place in this District, the examination is being given in this District, and Defendants are officed in this District.

FACTS

A. Introduction

13. Plaintiff LD, a graduating senior at the University of _____, timely applied to the Defendant Law School Admissions Council, Inc. (LSAC) to grant her reasonable accommodations for her learning and other mental disabilities so that she could sit for the October 1999 Law School Admission Test (LSAT).

14. Defendants refused to grant any accommodations, Ms. LD was unable to take the examination, and Ms. LD provided additional information to LSAC with a request for accommodations for the Saturday, December 4, 1999 LSAT.

15. The accommodations requested are simple and minimal: that Plaintiff LD be given additional time and be permitted to take the examination in a quiet, separate room.

16. Plaintiff supported his request with opinions from two medical experts, one her personal treating physician-psychiatrist, and the other her neuropsychologist. These experts who know Ms. LD personally, found that without these accommodations, her test performance would be impaired and would not accurately reflect her aptitude and abilities.

17. Plaintiff had already for two years been receiving the exact same accommodations from the University of _____.

18. The Defendants have refused to grant Plaintiff's request. The reasons advanced by the LSAC for denying the request are that a) Ms. LD is not disabled (although they have provided no expert reports or references to support that conclusion) and b) Ms. LD is not limited in her functioning levels (although they provide no documentation of that assertion).

19. The Defendants blatantly and knowingly violate the Americans With Disabilities Act ("ADA") 42 U.S. C. 12101 et. seq., and will cause immediate and irreparable injury to Plaintiff since she will be forced either to forgo the LSAT examination or to take the examination in a manner which denies her an equal opportunity to pass the examination as individuals without disabilities. This result would contravene both the letter and spirit of the ADA which demands that discrimination against individuals with disabilities end and that persons with disabilities receive equal access to all professional and related examinations.

20. In the early 1900's, the legal community tested would-be lawyers by seeing how they did in the first year of law studies; there were enough spaces to admit every applicant who met minimal credentials. In the 1920's, with more applicants than spaces, selection testing began and, in 1948, the LSAT was born. As the Supreme Court has noted, "It has been with us ever since."

21. The Defendant Law School Admissions Council, Inc. ("LSAC") administers the Law School Admissions Test ("LSAT") is central to any law school candidate's admission to ABA-accredited law schools. In addition to administering the LSAT which Plaintiff LD must take in the normal process to gain admission to an accredited law school, Defendant LSAC provides lists of names of LSAT-takers and provides to law schools a summary of law school applicants' LSAT and college record, among other activities designed to emphasize LSAC's centrality to the admissions process. See *Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n*, 107 F.3d 1026 (3rd Cir. 1997) (affirming summary judgment in antitrust case in which LSAC was a defendant).

22. Admission to law schools is fiercely competitive. Only a small proportion of many applicants are admitted to major law schools. Dealing with such large number of applicants results in law schools using numerical formulas for screening. It is typical that the LSAT score is a prime component of the computation, with the formula provided by the Defendant LSAC's Law School Data Assembly Service, typically giving the LSAT more weight than other factors.

23. Without fair participation in the LSAT testing, Plaintiff LD will be at a disadvantage when law schools examine her record. Having recently graduated from the University of Washington in Seattle, and in the midst of the law school application process, Ms. LD is seeking from the Defendant LSAC no more than the accommodations recommended by her doctors and what her

University has provided.

B. Background, Nature of the Disabilities, and History of Accommodations

24. Plaintiff LD's childhood, and primary and secondary school record demonstrate persistent and long-standing symptoms of Attention Deficit Hyperactivity Disorder. In more recent years, and with significant special supports, she has a positive record of academic accomplishment, especially since she was formally diagnosed with ADHD and _____ in _____ and began receiving medication. Plaintiff LD has been able to achieve these successes, in large part, due to the willingness of her University and teachers to understand her special needs and make reasonable accommodations that give her the same opportunities as those without disabilities.

25. Plaintiff LD has two mental disorders which are relevant here. First, Plaintiff LD has been diagnosed with Attention Deficit Hyperactivity Disorder, and specifically meets the DSM-IV criteria for ADHD. The DSM-IV is the official diagnostic manual which, for the psychiatric and related professions, defines mental disabilities; it is the Diagnostic and Statistical Manual, 4th Edition, prepared and published by the American Psychiatric Association. Ms. LD meets the criteria for early childhood onset of ADHD, and has a _____ history for this disorder. She has been treated for ADHD with medication.

26. Plaintiff has also been diagnosed with, and treated for _____ for several years. She meets the DSM-IV criteria for that disorder. _____ affects Ms. LD's thinking processes, and substantially limits her in the major life functions of thinking, learning, concentration, expression and other basic life functions.

27. Both of these disabilities severely affect Plaintiff's test-taking abilities, _____ affects such academically important areas as motivation, productivity, sleep and concentration. ADHD affects similar domains, and the very process of concentration, learning and communicating the results of that learning in testing and other situations. The impairment in basic life functions significantly impairs the ability of an individual suffering from these disabilities to take a timed examination administered to a large group, such as the LSAT.

28. These serious impairments can, however, be reduced by making simple and reasonable accommodations in the test-taking process. In recognition of Plaintiff's disabilities, and the simple accommodations she requires, Ms. LD's University provided Plaintiff with a separate room for her college examinations, and has permitted her additional time for each exam. As a result, she has been able to have her exams reflect her abilities and aptitude.

29. Plaintiff LD is _____ years old and is a senior at the University of _____ in _____.

30. Ms. LD's ADHD started in childhood and primary school, _____. Her grades were _____.

31. Ms. LD received a formal diagnosis in _____ from her psychiatrist, Dr. _____, and was given trials of various medications. She currently takes _____ to reduce her distractibility and impulsivity, and to stabilize her _____. The medications provide some relief but do not fully mitigate her disabilities; she remains significantly impaired in her life functions.

32. Since the medications have been in place, Ms. LD has had some improvement in her ability to focus her attention, and improvements in her college transcripts, which showed a significant rise in her grade point average following diagnosis and appropriate treatment in _____, together with the reasonable accommodations provided by her University.

33. Ms. LD received accommodations at the University of _____ which consisted of extra time on tests and a private room for testing. This was granted after the University's review of her medical and related documentation. As the University of _____ confirmed to LSAC, "These accommodations were approved due to the ongoing effects of her disability without regard to any medications he took to help mitigate the effects of her disability" because the medications are not a cure for the "distractibility and focus that can interfere with" test-taking abilities. _____ Letter from _____, Director, Disabled _____ Services, University of _____, Attachment A, incorporated herein by reference as if fully set forth.

34. The University of _____ provided Ms. LD with accommodations in testing beginning in her _____ year, which included 50% more time for tests and the use of a 'quiet room.' These accommodations reduce the distractions of the environment and of her own thinking, and also reduces the emotional upset caused by these distractions, upset which further impacts on her ability to perform well on tests.

35. Ms. LD's neuropsychologist found after formal assessment and testing that she has _____. As the neuropsychologist noted, Ms. LD's "family _____ history is significant for _____. Dr. _____, Neuropsychologist Report, _____, 1999, Attachment B hereto, incorporated herein as if fully set forth.

36. Ms. LD's disorders, the neuropsychologist found, "are likely to have a direct impact on Ms. LD's ability to _____.

37. The neuropsychologist "strongly recommended that Ms. LD be provided fifty percent additional time to complete each portion of her LSAT test, translating into roughly 20 minutes per section." _____ Report, Attachment B.

38. The additional time is based on her condition and her clinical presentation: "This is based on her history of poor performance on standardized tests when additional time is not provided (e.g. SAT), and on the basis of the observed deficits in organization/planning and historical problems with time management. " _____ Report, Attachment B.

39. The neuropsychologist also recommended that "Ms. LD be allowed to take her test in a quiet and distraction free environment. She has a history of _____." _____ Report, Attachment B.

40. Ms. LD is under psychiatric care by Dr. _____, whom she sees one time per month for medication management. Dr. _____ has particular experience with, and has taught regarding, ADHD and other related disabilities. She is well-qualified to make diagnoses of Plaintiff LD and to determine needed accommodations. Dr. _____, the treating psychiatrist, diagnoses Plaintiff LD with ADHD and _____, and finds that Ms. LD is significantly impaired in major life functions, and requires accommodations in the LSAT testing in the form of a) additional time,

and b) testing in a private location free from distractions.

41. Dr. _____ performed a neuropsychological evaluation of Plaintiff on _____, 1999, see Report, Attachment B, and wrote a follow-up neuropsychological report on _____, 1999 (Attachment C, incorporated herein by reference as if fully set forth), the latter to respond to Defendant LSAC's denial of accommodation to Ms. LD. He administered a clinical interview and also numerous objective standardized testing, and he reviewed Ms. LD's background in primary and secondary school, and reviewed information from Ms. LD's family as well.

42. Dr. _____ found that Ms. LD's ADHD is of a "persistent nature" and had an "early onset" in childhood and was evidenced by deficits at school, at home and socially. He found that the "evidences numerous symptoms of ADHD" by both "clinical presentation and by grade reports." Attachment C, _____ Report.

43. The testing by Dr. _____, which found Ms. LD to be significantly disabled, was administered while she was on medications and thus demonstrates that, even with medication, her functioning is impaired.

44. Ms. LD has the ADHD disorder. As Dr. _____ summarized his clinical opinion:

It is my clinical opinion that Ms. LD demonstrates sufficient symptoms, which have a persistently negative impact on performance in social and academic settings, to warrant a diagnosis of Attention Deficit Disorder.

Attachment C, _____ Report.

C. Accommodations Requested and

Actions Taken by the Defendant Board

45. Plaintiff LD is seriously harmed by the Defendants' actions. Defendants' refusal to accommodate her disabilities cannot easily be quantified but it is great and severe. One cannot quantify the damage caused by postponement of the initiation of law school or the thwarting of an otherwise-promising professional education. Plaintiff LD will also suffer the mental anguish of taking an already stressful LSAT, knowing that she is highly unlikely to pass, no matter how hard she tries or how long she has studied. She has already suffered the embarrassment and distress of missing the October 1999 LSAT due to Defendants' illegal actions. Injunctive relief is necessary also because this litigation cannot be concluded before the December LSAT; if no relief is granted before that time, then Ms. LD will either have to wait an additional year before entering law school or will have to take the examination without the required accommodations.

46. Ms. LD applied on _____, 1999 to take the October 2, 1999 LSAT and, in that application requested the following accommodations: a) extra time (an additional 20 minutes per section, in addition to the standard time of 35 minutes per section), and b) a private room with no distractions.

47. LSAC's refusal to grant Ms. LD accommodations required her to cancel her taking of the October 2, 1999 LSAT in order to seek legal redress so that she might take the December 4, 1999 examination with the accommodations.

48. On September 13, 1999, LSAC wrote to Ms. LD, denying her accommodation request without providing any reason whatsoever. The letter signed by Kim Dempsey stated only that:

After reviewing the documentation you submitted, we are not able to grant your request. The documentation does not demonstrate that your ability to test under standard conditions would be substantially limited.

49. On September 18, Ms. LD wrote to LSAC complaining of the lack of explanation, and of LSAC's failure to describe what supplementary information might be required to satisfy LSAC's unknown standards.

50. On September 20, LSAC per Kim Dempsey wrote to Ms. LD stating that "The documentation submitted for review must demonstrate a significant impairment related to learning."

51. On September 20, Plaintiff LD wrote to LSAC per Kim Dempsey requesting that someone in an Assistant Director capacity provide information "in response to my appeal" of the denial of accommodation. At that point the October LSAT was less than two weeks away. She complained of LSAC's "vagueness and rather cavalier attitude in dealing with my request."

52. On September 21, LSAC per Kim Dempsey responded, repeating the same language regarding learning disabilities, and stating for the first time that LSAC had found that Ms. LD's memory/learning were average or above average:

In order to be considered for additional testing time on the LSAT a person must demonstrate a substantial limitation related to learning. Specifically the testing results would need to demonstrate an information processing deficit that impacts on your performance. Your testing results revealed average cognitive functioning and a high average working memory. Memory testing and higher executive functioning scores were all in the average or above average range. Based on the documentation provided by or on your behalf there was not a substantial limitation related to learning demonstrated.

53. That September 21 letter -- which for the first time explained the refusal to accommodate -- informed Plaintiff LD that she was too late to submit additional information, so that anything new she might have to respond to this first-time explanation of grounds had to be submitted for a future LSAT:

September 15, 1999 was the receipt deadline for submitting supplementary information and appeals. If you choose to submit additional documentation it will be considered for a future LSAT.

54. On October 6, Plaintiff LD (having sent in the form to change the date from the October to the December examination), requested accommodation for the December LSAT. The request was made to LSAC per Kim Dempsey.

55. On October 7, LSAC again denied accommodation without explanation, stating: "Your documentation has been fully reviewed. Based on the information we have on file no accommodations will be granted for the December 1999 LSAT."

56. On October 18, Plaintiff LD requested LSAC to review her file again, based on new information which had been sent the prior week.

57. With LSAC having confirmed that it received the new information, Plaintiff LD requested LSAC per Kim Dempsey on October 19 to inform her whether that information had "any influence on my request for accommodations regarding the December LSAT"

58. On October 20, LSAC per Kim Dempsey suggested that Plaintiff LD check the following week on whether LSAC's decision had changed.

59. On October 26, LSAC per Kim Dempsey informed Plaintiff LD that the denial of accommodations was not changed, that LSAC believed that Plaintiff LD does not have any disabilities at all, and that she is not significantly limited or impaired. In making this decision, Defendant Dempsey and LSAC have acted in total disregard of the facts, in bad faith, and willfully in violation of the law, including the ADA.

60. On October 29, Ms. LD requested LSAC to obtain, and to provide, an evaluation of her material from a reviewer trained in the field of her disabilities. Defendants have not responded.

D. The Law

61. Defendants are in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., ("ADA"). The ADA requires that all persons who offer examinations related to licensing for professional purposes do so in a place and manner accessible to persons with disabilities.

62. Plaintiff LD will suffer irreparable harm if she is denied the reasonable accommodations that he needs to have an equal opportunity with non-disabled individuals to pass the LSAT. There is no adequate remedy at law. Defendants, on the other hand, will suffer no harm. Any delay in her ability to have an equal opportunity to pass the LSAT jeopardizes Plaintiff LD's ability to begin her legal education. In contrast, Defendants are not harmed by allowing Plaintiff LD to take the examination with the accommodations he requests, especially in light of the fact that the accommodations are simple, inexpensive and easy to implement.

63. The ADA specifically contemplates that temporary injunctive relief is appropriate to remedy acts of discrimination against persons with disabilities. It incorporates the provisions of 42 U.S.C. § 2000a-3, stating that, whenever any person has engaged, or there are reasonable grounds to believe a person is about to engage, in a prohibited act, a permanent or temporary injunction, or a restraining order is an appropriate remedy for the aggrieved party. 42 U.S.C. § 12188(a)(1).

64. Plaintiff LD is protected by the ADA as she is a person with a "disability" as that term is defined by the statute. 42 U.S.C. § 12102(2)(a). Plaintiff LD has a "physical or mental impairment that substantially limits one or more of [his] major life activities." *Id.* The life activities which are substantially limited in this case are thinking, learning, concentration, expression and other basic life functions.

65. A purpose of the ADA is to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Among its findings, Congress declared that:

[T]he continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

42 U.S.C. § 12101(a)(9).

66. The Defendants here have willfully and flagrantly violated Title III of the ADA which prohibits discrimination in testing and examinations, including bar examinations.

67. Title III of the ADA, which took effect on January 26, 1992, prohibits discrimination in professional licensing examinations as follows:

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

42 U.S.C. § 12189.

68. Section 309 of Title III, 42 U.S.C. § 12189, requires that the LSAC, because it offers examinations, offer the LSAT in a place and manner accessible to persons with disabilities, including Plaintiff LD. In order to make the LSAT accessible to Plaintiff LD, she must be provided the accommodations of additional time, as attested by the her treating physician-psychiatrist and neuropsychologist. Section 309 specifically contemplates the type of accommodations requested by Plaintiff LD.

69. On July 26, 1991, the Attorney General of the United States promulgated regulations implementing Title III of the ADA that specifically address the obligations of entities that administer professional licensing exams. See 28 C.F.R. Part 36; 56 Fed. Reg. 35544-35691. The Title III regulations mandate that:

(1) Any private entity offering an examination covered by this section must assure that --

(ii) An examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered...in as timely a manner as are other examinations.

[and]

(2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.

28 C.F.R. § 36.309(b)(1)(ii) and (b)(2); 56 Fed. Reg. 35598-99 (emphasis added).

70. Because of her disability, Plaintiff LD requires special accommodations for purposes of taking the LSAT. Defendants have refused to grant accommodations necessary to make the LSAT accessible to him as a person with a disability. Accordingly, Defendants have discriminated against Plaintiff LD.

CAUSE OF ACTION

1. Incorporating by reference each of the above paragraphs of this Complaint, the Defendants have violated Plaintiff LD's rights under Title III of the Americans With Disabilities Act, by refusing to grant her reasonable accommodations in testing for the October and December, 1999 LSAT examinations.

2. Incorporating by reference each of the above paragraphs of this Complaint, Defendants LSAC and Kim Dempsey have each violated Plaintiff LD's rights under Title III of the Americans With Disabilities Act, by refusing to grant her reasonable accommodations in testing for the October and December, 1999 LSAT examinations, and have done so willfully and in disregard of the law, and in bad faith. With regard to Kim Dempsey, her decisions and actions have been without appropriate qualification to make judgments, or to make recommendations, regarding the disabilities of Plaintiff LD and the accommodations she requires.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LD respectfully prays that this Honorable Court enter the following relief:

1. Emergency, preliminary and permanent injunction requiring Defendants, for the December 4, 1999 LSAT and any subsequent LSATs, to do the following:

a. Permit Plaintiff LD to have one and one-half (1.5) times the usual amount of time for the examination. Defendant will schedule the date to permit Plaintiff LD to take LSAT, even if the result is that the examination must be conducted on another day within a month of the original dates.

b. Administer the examination in a quiet private room, free from distractions;

2. Award, after trial by jury, compensatory and punitive damages.

3. An award of reasonable attorneys' fees and costs. The Americans With Disabilities Act provides: "In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs. . . . 42 U.S.C. 12205.

4. An award of such other relief as the Court deems just, equitable and proper.

Respectfully submitted,

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LD