

Congress of the United States
House of Representatives
Washington, DC 20515

December 19, 2011

The Honorable Eric H. Holder, Jr.
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Thank you for the hard work and dedication you and the Department of Justice (DOJ) have shown toward improving opportunities for individuals with disabilities. Recently, we commissioned a review by the Government Accountability Office (GAO) that examined individuals with disabilities' access to accommodation on standardized testing required for admission to postsecondary schools or professional certification. We are troubled by GAO's findings and some of the questionable testing company practices used when required to "best ensure" the tests accurately measure achievement for individuals with disabilities. However, your Department reviewed and commented on GAO's report¹ and we believe those comments show a willingness to make the changes necessary to ensure the rights of individuals with disabilities are being protected.

Each year, nearly 8 million individuals take standardized tests for entry into graduate school or professional certification. These tests are gateways to graduate degrees and certain professions, including medicine and law. Often, individuals with disabilities need accommodations to access these standardized tests and demonstrate their knowledge. Federal laws, including the Americans with Disabilities Act (ADA),² as amended by the ADA Amendments Act, protect individuals with disabilities from discrimination on the basis of their disability, and therefore, require private testing companies to provide accommodations to individuals with disabilities.

In the study, GAO noted that only 2% of all test-takers take postsecondary and certification standardized tests with accommodations suggesting that individuals with disabilities (approximately 12% of the total population) are significantly underrepresented. GAO also found

¹ U.S. Government Accountability Office. (November 2011). *Improved Federal Enforcement Needed to Better Protect Students' Rights to Testing Accommodations (GAO-12-40)*.

² 42 U.S.C. § 12101.

The Honorable Eric H. Holder, Jr.

December 19, 2011

Page 2

that individuals with disabilities face barriers applying for accommodations and that some students with disabilities had to forgo taking exams with accommodations they had received in the past due to outright denials or extensive delays in the approval process that put them behind their peers. The report highlights barriers including difficulty understanding all the needed paperwork, considerable costs for individuals to obtain reevaluations required by testing companies, the duration of time (weeks, months or in some cases years) for approval, and the subjectiveness of testing companies in granting accommodations.

In monitoring compliance with the ADA, the GAO report found that the DOJ has clarified regulations on testing accommodations that are designed to make the process less burdensome and timelier for students in accordance with the ADA. However, GAO found that DOJ lacks a strategic approach to enforcement. Specifically, GAO found that complaints against testing companies are addressed case by case rather than approached systematically. While the ADA authorizes DOJ to conduct compliance reviews of testing companies, the DOJ has not initiated its own thorough compliance reviews of testing companies' policies, practices, and records related to testing accommodations.

The current system of applying for and obtaining testing accommodations – and seemingly haphazard enforcement – are barriers to students with disabilities. They are imposed on students who have taken on debt with the intention of proceeding to a professional or graduate career. These barriers cause unnecessary delays to their careers and impose additional financial burdens on students who have already struggled and overcome challenges to reach this point. A comprehensive, systematic approach to enforcement must be undertaken.

In addition, the current lack of communication and coordination between DOJ and the other federal departments with ADA enforcement authority —Health and Human Services (HHS) and Education— is troubling. In fact, DOJ officials told GAO that they were not aware that HHS and Education were receiving and pursuing testing accommodations complaints and that no regular meetings or exchanges take place in regard to testing accommodations. Clearly, this lack of communication must be remedied.

In order to guarantee individuals with disabilities are not unnecessarily impeded from entering graduate school or certain professions, we must ensure testing companies comply with the ADA. After reviewing this study, we request the DOJ develop a strategic approach to strengthen testing companies' compliance with the law and ensure individuals with disabilities receive access to accommodations. This strategic approach should include the use of compliance

The Honorable Eric H. Holder, Jr.

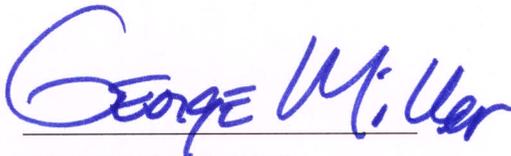
December 19, 2011

Page 3

reviews. Further, we request the DOJ provide updated technical assistance to testing companies to address the current ADA requirements and technological advances for accommodations. Additionally, we request that DOJ implement GAO's recommendation to develop a formal coordination strategy with HHS and Education. We ask that you keep us apprised of your efforts in this area.

We look forward to working with you to improve access to standardized tests for individuals with disabilities. The law must ensure that all students have an equal opportunity to succeed.

Sincerely,



GEORGE MILLER

Member of Congress



PETE STARK

Member of Congress