Testing Accommodations for Coloradans with Disabilities in Municipal Licensing and Certification Exams

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Summary: This article is intended to familiarize CIRSA members that offer exams related to licensing or certification for professional or trade purposes with the testing accommodation requirements of House Bill 24-1342, which took effect January 1, 2025.

Many trades, professions, and related career and employment opportunities require a professional license or trade certification. Licenses and certifications are designed to provide assurance that the holder obtains the requisite knowledge, experience, and skills necessary to perform the duties required of their profession or trade. To obtain a professional license or trade certification, it's often the case that an individual must pass a standardized test, which, at the municipal level, might include a city- or town- administered standardized test that is required to become a peace officer candidate or obtain a contractor license or trade certification in the jurisdiction. As such, standardized tests serve as either a gateway or roadblock to employment opportunities.

Standardized tests are designed to require test-takers to demonstrate their aptitude or achievement level in certain trades or professions on a level playing field, by requiring all test-takers to answer the same questions, in the same way, with test scores determined in a standard and consistent manner. But what if the playing field isn't actually level?

What if a test-taker has a disability that makes it difficult or impossible to read the test questions in the standard print size? What if their disability makes them substantially more prone than others to distraction by the things they hear or see? If not given a test booklet in larger font or braille in the first instance, or allowed to take the test in a room that eliminates visual or auditory distractions in the second instance, is the test really determining their true aptitude for the profession or trade?

These are examples of situations for which testing entities must offer testing accommodations[i] to individuals with disabilities under the Americans with Disabilities Act (ADA). But do the ADA's testing accommodation requirements go far enough to ensure that all individuals with disabilities have an equal opportunity to demonstrate their true aptitude on standardized tests? The Colorado legislature doesn't think so. In 2024, the Colorado legislature passed House Bill 24-1342, which became law as of January 1, 2025 (the Act), with the stated intention of removing existing barriers that may deny some individuals with disabilities from receiving testing accommodations for licensing and certification exams.[ii]

The Act, which is codified in Section 24-34-806 of the Colorado Revised Statutes (C.R.S.), serves not only to incorporate the required testing accommodations of the ADA (a federal law) into Colorado law but goes further to limit the evidence and documentation that testing entities may require in support of a request for testing accommodations. The Act further creates a private right of action so that individuals may sue testing entities in Colorado courts to seek redress in the form of civil damages or statutory fines and includes a specific waiver of sovereign immunity for violations of the Act.

"Testing entity" is defined under the Act as a private entity or a state or local government of Colorado "that offers an exam related to licensing or certification for professional or trade purposes and has control over testing accommodation decisions." The requirements that a local government both offer the exam and have "control over testing accommodation

decisions" are key to understanding the scope of the Act. On the one hand, if a city were to offer[iii] its own exam required for obtaining a contractor's license and retain control[iv] over requests for accommodations, then the city would be deemed a "testing entity." On the other hand, a local government should not be deemed a "testing entity" solely by requiring passage of an exam offered and administered by another entity as a prerequisite to obtaining a license or certification from the local government. For example, while a city may require by ordinance that a contractor show they have passed the appropriate International Code Council (ICC) exam in order to obtain a contractor license from the city, if it's the ICC—rather than the city—that's offering the test and controlling accommodation requests by test-takers, then the city should not be deemed a "testing entity." However, the city should be sure to direct requests for testing accommodations to the administrators of the ICC test.

The Act prohibits testing entities from requiring individuals with disabilities to undergo additional diagnostic testing or psychological assessments to receive the same testing accommodation that the individual received in the past. This prohibition applies if the requesting individual provides proof of having received the accommodation on a past standardized exam or high-stakes test, and provides a letter signed and dated by the individual's treating medical professional that recommends the individual receive the requested testing accommodation.

Under the Act, testing accommodations may include, but are not limited to, braille or large-print exam booklets; screen-reading technology; scribes to transfer answers to bubble sheets or record dictated notes and essays; extended time; breaks during an exam that are not counted in the total exam time; wheelchair-accessible testing stations; to the extent possible, rooms that eliminate visual and auditory distractions; physical prompts for individuals with hearing impairments; and permission to bring and take prescribed medication during the exam.

If an individual with a disability[v] is adversely affected or aggrieved by a testing entity's denial of a request for testing accommodation, the individual may bring a civil action against the testing entity in state court. If the individual proves a willful violation of the Act, the individual may recover either actual monetary damages or a statutory fine of $3,500 for each violation, and an award of attorneys' fees and costs. The Act similarly authorizes the Colorado Attorney General to investigate complaints and bring civil actions against testing entities for willful violations of the Act.

Colorado courts hearing suits brought pursuant to the Act must apply the same standards and defenses available under the ADA and implementing federal regulations. The Act specifically states that testing entities are not required to provide testing accommodations to an individual with a disability if the requested accommodation would constitute a fundamental alteration or undue burden as defined in the ADA. However, this is a high bar that requires a testing entity to prove the accommodation would fundamentally alter the essential nature or core features of the testing program.

Finally, the Act adds a specific waiver of sovereign immunity to the Colorado Governmental Immunity Act (CGIA) for actions brought against public testing entities pursuant to the Act. However, the CGIA still serves to cap damages that may be awarded against public testing entities for violations of the Act (presently $424,000 for any injury to one person in any single occurrence, and $1,195,000 for any injury to two or more persons in any single occurrence; except that, in such instance, no single person may recover more than $424,000).

From a risk management standpoint, it is important to remember that public entities are already subject to the non-discrimination and accommodation requirements of the ADA, as well as similar requirements in the Colorado Anti-Discrimination Act (CADA), all of which pre-date the Act. Thus, whether or not your entity is a testing entity under HB 24-1342, it is important to promptly and properly handle any requests for disability accommodation. But, if your entity offers testing and is a testing entity, recognize the Act not only establishes more specific rules for testing accommodations but also creates a new state cause of action that heightens potential liability for missteps. Therefore, if your entity offers any professional/trade licensing or certification exams and has control over accommodation decisions, you'll want to ensure your staff administering the exam is familiar with the Act, and that your entity has resources in place in advance to ensure

all test-takers are afforded an even playing field.

If you have questions about this article, contact CIRSA's Associate General Counsel, Nick Cotton-Baez, at nickc@cirsa.org.

Note: This article is intended for general information purposes only and is not intended or to be construed as legal advice on any specific issue. Readers should consult with their entity's own counsel for legal advice on specific issues.

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i. Testing accommodations are changes to the regular testing environment and auxiliary aids and services that allow individuals with disabilities to demonstrate their true aptitude or achievement level on standardized exams or other high-stakes tests.

ii. As used in the Act, "licensing exam" means a test that requires, in a given test administration, all test-takers to answer the same questions, in the same way; is scored in a standard or consistent manner; and is required for a professional or trade certification or licensure. C.R.S. § 24-34-806(2)(a).

iii. The Act does not draw a distinction based on location, and thus a local government that offers a test at a site not on local government property may be deemed a "testing entity" if it retains control of requests for testing accommodations at the off-site location.

iv. Some local governments may wish to contract with separate entities to host and/or administer their own licensing exams. Organizations electing to do so should ensure the contract clearly identifies the party responsible for making testing accommodation decisions and details that party's responsibilities related to such decisions. The contract should further contain provisions sufficient to protect the organization from liability. However, municipal officials should note that obligations and liability accruing under the Act and Title II of the ADA may not be fully delegable, and thus should consult their organization's attorney to understand the full extent of the contract's effect on the organization's legal obligations and liability risks.

v. The Act incorporates the ADA definition of an "individual with a disability"; i.e., a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. C.R.S. § 24-34-806(3)(a)(I).

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