

**CONFIDENTIAL REPORT OF THE ADA MONITOR in**

*Department of Fair Employment and Housing v. LSAC*, Case No. 3:12-cv-01830 (N.D. Cal. 2014)  
February 16, 2017

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**I. Introduction and Overview**

This report is submitted as part of the settlement of *Department of Fair Employment and Housing v. LSAC*, Case No. 3:12-cv-01830 (N.D. Cal. 2014). This Report consolidates findings and conclusions regarding Year One and Year Two requirements, explained in more detail below. A prior preliminary draft was shared with the parties, in which they were provided time to review and provide comments. See Appendix A, for responses on several overarching comments. All comments and suggestions were carefully considered in the development of this Report. Appendix B provides a partial log of files removed with key points of analysis relevant to and illustrative of conclusions reached in the report.

**A. The Court Orders and Reports Defining the ADA Monitors Responsibilities**

On May 29, 2014, the federal court in *Department of Fair Employment and Housing v. LSAC*, Case No. 3:12-cv-01830 (N.D. Cal.) entered a Consent Decree [Decree], which set forth the terms of an agreement between the parties in the referenced action regarding testing accommodations for candidates for law school who take the Law School Admission Test [LSAT]. In implementation of part of that Order, a Best Practices Panel [Panel] was established to set forth best practices comporting with federal requirements associated with testing accommodations for students with disabilities; and on January 31, 2015, the Panel issued the "Final Report of the 'Best Practices' Panel" [Final Report] over the partial objections of one Panel member who filed a "Minority Report." An August 7, 2015 Order [Order] regarding the recommendations of a Best Practices Panel addressed and modified several challenges to the Report submitted raised by the Law School Admission Council [LSAC]. The effective date of The Final Report as modified took effect with the December 2015 LSAT test administration by LSAC, based on an August 2015 agreement between the parties.

Part of the Consent Decree contemplates the parties' retention of an independent ADA Monitor [Monitor] "to assist the United States, the DFEH, and the Court in evaluating LSAC's compliance with the Decree. Under the terms of the Decree, no party to the litigation "shall have any supervisory authority" over the Monitor's activities or otherwise "interfere with the independent functions" of the Monitor (except to the extent that LSAC supervises movements and access at its offices). Para. 24.

Pursuant to the Court's Decree, the Monitor is to audit LSAC's compliance by reviewing reports and then requesting additional information to evaluate compliance with provisions of the

Decree in which his responsibilities are set forth (paras. 8 and 23) for years one, two and four of implementation of the Decree. The requirements are—

***For years one, two and four:***

*Paragraph 8 of the Decree:*

1. That the LSAC maintain for the term of the Decree and track in readily searchable format detailed information for each request for testing accommodations made by each candidate<sup>1</sup>;
2. That the LSAC maintain relevant documentation regarding any complaints filed with government agencies or courts regarding the failure of the LSAC to provide appropriate testing accommodations, including tracking of certain specified information in a searchable format<sup>2</sup>;
3. That the LSAC maintain for a minimum of the term of the Order copies of relevant correspondence regarding candidates whose accommodations have been denied in whole or in part;
4. That the LSAC establish a separate electronic mailbox and email address dedicated to the receipt of complaints, to remain posted during the term of the Order.

*Paragraph 23 of the Decree*

5. That the LSAC provide a written report after each administration of the LSAT (after at least two months following the Order) that tracks the information set forth in fn. 1, above.
6. That the LSAC provide a report after 18 months of the date of the Order a report regarding actions taken to comply with the Order.<sup>3</sup>

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<sup>1</sup> The following information must be included: date of request; date of candidate's birth; LSAC account no.; test date requested; disabilities relevant to request; testing accommodations requested; accommodations previously received; 504 plan history; IEP history; whether LSAC requested additional documentation from the candidate; whether the request was granted/denied in full/part; date of LSAC decision letter; reviewing outside consultant[s] names; others reviewing request; reasons for decisions; fees paid by candidate.

<sup>2</sup> The following information must be included: nature of complaint; name of candidate filing complaint; outcome of complaint.

<sup>3</sup> The following information must be included: LSAC's actions taken to comply with the Decree; further actions LSAC intends to take to comply with the Decree; the relevant timeline, if applicable; any difficulties in complying with the Decree, if any.

***For years two and four:***

*Paragraph 7 of the Decree*

7. That the LSAC adopt and implement Best Practices established by the Panel (subject to any modification based on appeals of the Panel report or action). (Details of the process and scope of responsibility surrounding the Panel are set forth in detail in paragraph 7.)

**B. Scope of the Audit/Information Collected**

The ADA Monitor submitting this report was retained by the parties in October of 2015. The findings and conclusions set forth below are based on a combination of reviews of extensive documentation and correspondence, interviews with LSAC staff (in person and by phone), on-site visits and observations; and on-site file reviews conducted on two separate occasions; and subsequent file reviews of files provided by mail. All parties were kept apprised of the status of the work of the Monitor, as requested.

Multiple interviews were conducted with Joan VanTol, general counsel, and Dr. Kim Dempsey, Manager of Accommodated Testing. Interviews were also conducted with Dan Bernsteine, former President of LSAC, and several disability associates responsible for the process/intake of requests for accommodations, the preliminary reviews of requests, the setting up relevant files and accounts. The Monitor visited the offices of the LSAC for two days over the course of the summer of 2016 (in May and June), during which interviews were conducted, processes observed, and files/filing systems reviewed. Unless indicated herein, references to interviews indicate discussions with Ms. VanTol and/or Dr. Dempsey.

Information collected and/or reviewed includes:

- ◆ All relevant court orders and best practice reports;
- ◆ All logs of information submitted by the LSAC regarding test-takers seeking accommodations, following each LSAT administration—as required in the Decree and including specified information therein;
- ◆ The LSAC's required report regarding actions taken to comply with the Order (11/25/15);
- ◆ Logs of complaints filed in court or with administrative agencies, with specified fields of information, themselves<sup>4</sup>;
- ◆ Actual files of individuals requesting accommodations, with the complete history of action undertaken by LSAC pursuant to the Order and Final Report;<sup>5</sup>

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<sup>4</sup> Fields in files maintained by the LSAC reflect logs of pending cases involving the LSAC, and include the name the case; all parties and counsel; the nature of the case; and a log of proceedings, pleadings, motions, etc. Individual complaints in many of the cases were reviewed.

<sup>5</sup> A partial list of files reviewed by the Monitor is found at Appendix A. During visits to LSAC, the Monitor reviewed dozens of files in detail. The first collection of files reviewed were selected at random based on the following

- ◆ LSAC's overall file management system and process for filing and documenting requests and actions regarding accommodations, including LSAC's overall filing system on site.
- ◆ Professional development materials for LSAC staff and consultants retained as part of the Final Report.

No difficulties were experienced in conducting the audit. LSAC staff were professional, courteous, and timely with respect to all requests for access and information. LSAC was not responsible for any delays in the production of this Report.

## **II. Conclusions and Evidentiary Foundations**

Based on the extensive information reviewed and discerned from interviews, and as detailed below, the Monitor concludes that the LSAC has substantially complied with all provisions subject to the Monitor's review. (Minor exceptions are noted specifically, below.)

Overall, the Monitor conducted a multi-phase inquiry, with initial interviews by phone, followed by two site visits that included a comprehensive review of the operations process; discussion of questions about background and key issues relevant to the Monitor's Report; several rounds of file reviews, beginning with general, more random reviews, and then narrowing target files over time. A number of follow-up interviews by phone centered on questions about accommodation request file decisions, logs, and the like. Written documentation, informed by interview information, provides the basis for all conclusions, as expressed below.

### **A. Paragraph 8 Requirements of the Decree**

The LSAC has maintained to date in a readily searchable format detailed information for each candidate requesting accommodations.

The LSAC has maintained documentation regarding complaints filed with government agencies or courts regarding the failure of the LSAC to provide appropriate accommodations, including tracking of certain specified information in a searchable format, in accordance with the terms of fn. 2, above. Those "paragraph 8(b)" reports were provided to counsel for the plaintiffs (and the Monitor, once appointed) following each test administration.

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criteria—to ensure a cross section of fields related to: [1] time (2014, 2015, and 2016); [2] nature of disability asserted; [3] procedural complexity; and [4] final LSAC action. The Monitor established criteria, and Kim Dempsey and her staff were responsible for pulling the files. The Monitor's review confirmed an appropriate cross-section of files were produced. Subsequent reviews of files included ) many in which accommodations had been denied, at least in part, so that the Monitor could evaluate the rationales for decision in light of the terms of the Final Report, including those involving appeals. Dr. Dempsey was principally responsible for having on site files produced, with the assistance of Joan VanTol. Ms. VanTol was the Monitor's contact for information requested by phone and correspondence.

LSAC files reflect its maintenance of all relevant correspondence and other documentation regarding each individual who seeks accommodations on the LSAT (including all requests). Interviews with Joan Van Tol and Kim Dempsey have confirmed LSAC's intention to maintain all such records during the pendency of the Court's oversight of the Consent Decree.

The LSAC has established a separate electronic mailbox and email address dedicated to the receipt of complaints, which has remained posted to date. See <http://www.lsac.org/jd/lsat/accommodated-testing>.

#### **B. Paragraph 23 Requirements of the Decree**

The LSAC has provided a written report after each administration of the LSAT that tracks the information set forth in fn. 1, above. That information has been provided to counsel for plaintiffs.

On November 25, 2015, LSAC provided to counsel for the plaintiffs the report due 18 months after the date of the Order, outlining actions taken to comply with the Order.

#### **C. Paragraph 7 of the Decree: Best Practices**

The LSAC's action with respect to the Final Report, as modified by the Magistrate in his Order of August 7, 2015 [Final Report as modified] and effective with the December 2015 test administration, is provided, below. Due to the substantial overlapping nature of a number of the Panel's recommendations, the Monitor has consolidated those recommendations into one (where indicated), providing for each a synthesis of the recommendation from the Final Report as modified; relevant information considered regarding LSAC's adherence to the recommendations; and conclusions about satisfaction of the recommendations.

At the outset, it is also worth observing the significant trends regarding accommodations practices that correspond in time with the implementation of Final Report as modified. Based on Reports provided by LSAC, as well as relevant interviews, show the following:

For test administrations in June, September, December of 2014; and February, June, and October of 2015, the average number of accommodations denied was 87 per test administration, representing on average about a 16% denial rate per test administration.

For test administrations after the effective date of the Final Report as amended— in December 2015 and February and June of 2016—the average number of testing accommodations denied was 1 per test administration, representing on average about a .14% denial rate per test administration.<sup>6</sup>

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<sup>6</sup> Counsel for plaintiffs complains that the Monitor did not analyze these data reports. To the contrary, the Monitor reviewed the reports submitted, and relied on a distillation of fields from the massive data runs from the LSAC to inform conclusions. Nothing in the Decree requires more. (And, notably, any argument that it did

**1. Reviewer Selection and Engagement (Recommendations 1, 3, 4)**

**Requirement**

The Final Report as modified provides that the LSAC should implement a process of automatic review by outside consultants of all applications for accommodations when not approved in full by the LSAC. It recommended that LSAC maintain a list of 25-40 outside consultants, with relevant, designated expertise in particular areas, to be called upon for review as circumstances warranted.

**Relevant Information**

Documents on file at LSAC reflect that in March 2015, the LSAC solicited through a widely circulated notice (and questionnaire to be completed by interested individuals) a request for applications for professionals "interested in assisting the ...LSAC in evaluating disability-based requests for testing accommodations from individuals who plan to take" the LSAT. Eight "broad categories" identified as potential issues of relevance for potential applicants to consider were: learning disabilities; ADHD/ADD; Neurological; Visual; Physical; Psychological; Hearing; Other/medical.

The LSAC received applications in response to that notice, and in its files it maintains records of individuals to whom it may call upon to implement the terms of the Final Report as modified. The individuals selected to be available to serve LSAC in this capacity reflect, in combination, backgrounds and expertise in the following areas (based on the Monitor's analysis of correspondence, completed questionnaires, and curriculum vitae provided by experts and maintained on file at LSAC):

- ◆ Learning Disabilities
- ◆ ADHD
- ◆ Auditory Processing Disorders
- ◆ Bipolar disorders
- ◆ Psychiatric disorders

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would seem to call into question the Monitor's ability even to rely on actual data entries in the report.) With clear evidence of rigorous protocols and faithful adherence to the Order's requirements, the Monitor made a judgment that [a] nothing more was required by the Decree; and [b] "going behind the numbers" would be unnecessarily burdensome and unwarranted. In addition, despite a request from the Monitor that counsel for plaintiffs provide their data analysis (represented as inconsistent with the Monitor's report, but without providing detail), no information was forthcoming. If that information and analysis is provided, the Monitor will attempt to reconcile any discrepancies with a supplemental analysis and report.

- ◆ Vision and visual information processing impairments leading to visual disability; optometry
- ◆ Reading (dyslexia)
- ◆ Math and written language
- ◆ Traumatic brain injury
- ◆ Mental effects of physical and neurological illness

The LSAC maintains a log of all outside consultant outreach regarding its (preliminary) denials of accommodations; and all files reviewed regarding such denials reflected consultation with outside consultants. LSAC's practice is to contact an identified consultant within 2-3 days of a decision that will require review. Logs of outreach do not reflect timelines, which should be reflected in activity moving forward to facilitate ease of establishing compliance. That said, files reviewed involving accommodation denials did reflect timely responses in accordance with governing timelines. See Appendix B.

### Conclusion

The evidence reviewed including materials described above, as well as information discerned from interviews reflects substantial compliance with recommendations 1, 3, and 4 of the Final Report as modified. The only material variation observed was in the number of LSAC outside consultants retained. LSAC explained that given the significant drop in decisions denying requested accommodations, maintaining that number of consultants was not necessary to ensure full adherence to the Final Report as modified. Agreement between the parties in April, 2016 was reached on this reduction in number. At least 9 of the 12 experts engaged by the LSAC were actually retained to review files involving testing accommodations denials during the relevant time period. Several experts were retained for services in more than one review.

## **2. Documentation (Recommendation 2)**

### Requirement

The Final Report as modified includes a recommendation that LSAC reduce the document requirements associated with accommodations requests, and that LSAC ensure that document requirements are tailored to the nature of any accommodations request. In summary:

- ◆ For requests not associated with extra time, acceptable documentation includes evidence of a disability from a qualified professional who has examined the individual; and a statement with a reasonable explanation for the accommodation.
- ◆ For requests associated with extra time requests of up to 50% extra time, acceptable documentation includes evidence of a disability from a qualified professional who has examined the individual; and a statement with a reasonable explanation for the accommodation, including with relevant supporting data as appropriate.

- ◆ For requests associated with extra time requests exceeding 50% extra time, acceptable documentation includes evidence of a disability from a qualified professional who has examined the individual; and a statement with a reasonable explanation for the accommodation, including with relevant supporting data as appropriate.

### Relevant Information

Relevant information reviewed including website regarding the LSAC's documentation requirements associated with accommodation requests, relevant training materials and resources<sup>7</sup>, and numerous files of applicants (including correspondence with applicants), including the files containing denials and expert reviews reflected in Appendix B.

### Conclusion

Evidence reviewed and interviews confirm satisfaction of this recommendation. That body of information is reflected, specifically, in the description of information provided and reviewed, above—including, notably, the review of relevant applicant files discussed earlier in this Report and those reflected in Appendix B. All judgments reviewed relied on evidence in the files, informed by opinions of qualified professionals, in line with the standards set forth above.

### **3. Outside Qualified Professionals (Recommendation 4)**

#### Requirement

The Final Report as modified recommends that the LSAC have all applications in which accommodations have been denied by LSAC staff reviewed by at least one outside consultant.

#### Relevant Information

The LSAC has retained and maintains a list of external consultants to whom it turns to for reviews of its (preliminary) denials of accommodations. It maintains a log of contacts with external consultants, by name. Since the effective date of the Final Report as modified, only 3 prospective LSAT test-takers have been denied their requested accommodations based on the merits of the requests in full.<sup>8</sup> All three files were reviewed by the Monitor. In each case, relevant information was referred to outside consultants for review, adhering to required protocols.

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<sup>7</sup> This documentation included significant training materials developed for a two-day convening conducted at LSAC in August, 2016. Those materials for reviewers reflected, among other things: an articulation of background on and relevant requirements of the Order (e.g., "What Kind of Documentation is Sufficient to Support A Request for Testing Accommodations?"); background on and key provisions of the Best Practices Report; federal laws, principles and case law; LSAC policies and procedures; illustrative forms; and sample examples of test accommodation requests (some including examples of expert reviews of LSAC decisions).

<sup>8</sup> That number does not include denials due to non-registration or late requests following established deadlines.



### Analysis/Conclusion

Evidence reviewed and interviews conducted confirm satisfaction of this requirement. In any case involving denials of at least part of an accommodations request, files reflect consultation with outside experts.

## **4. Criteria and Guidelines for Reviewers (Recommendations 5,6, and 7)**

### Requirement

The Final Report as modified recommends that the LSAC adopt a step-by-step process in making determinations regarding accommodations to address the discrete questions of [1] whether an applicant has a disability (including whether an applicant has a disability despite no record of that disability); and [2] what testing accommodations are appropriate (including consideration of relevant records of similar accommodations, appropriate documentation, and practice with respect to similarly situated candidates). Recommended procedural parameters include:

- a. Accept documentation from qualified professionals without further inquiry.
- b. Allow for "considerable weight" for accommodations given in past situations, such as with the administration of the SAT and ACT.
- c. Presumptively grant testing accommodation requests not involving requests for additional time.
- d. Establishing minimum standards for students with certain profiles.
- e. Standards for determining more than 50% extra time.

The guidelines in writing reports must be followed where accommodations are denied, including a explanation of denial to all applicants in writing.

### Relevant Information

Information reviewed in connection with this requirement included relevant files of individual applicants for testing accommodations; LSAC's website regarding information to applicants regarding the appeals process; and relevant training materials. Specifically, materials included:

- ◆ Policies and procedures that outline relevant requirements at [www.lsac.org](http://www.lsac.org), including Documentation Requirements; Policy on Prior Testing Accommodations; Procedures and Policies on the Use of Readers on the LSAT by Blind and Severely Visually Impaired Test Takers; Statement of Need for Testing Accommodation; Common Reasons Why Documentation is Deemed Insufficient; Frequently Asked Questions and Answers.
- ◆ Application forms that specifically inquire and frame key points regarding "evidence of disability," including references to prior documentation and current evidence—both

with reference to relevant information from qualified professionals.; details on the specific nature of the disability claimed and the particular accommodation sought. (These forms were evident in materials made available generally, and in individual applicant files.)

- ◆ Power point training materials that reflected the policy and practice (described in points above).
- ◆ Applicant files, which included documentation reflecting to adherence to the requirements herein.

### Conclusion

Information reviewed indicates that LSAC has complied with recommendations 5, 6, and 7 of the Final Report as modified. In the Monitor's file reviews, there was no instance in which documentation from qualified professionals who expressed clear medical opinions were called into question; or where weight given to past testing accommodations was not evident. A general pattern of granting non-time related requests was also evident, though with exceptions backed by evidence and rationales. See Appendix B.

## **5. Automatic Review of Denials (Recommendation 8)**

### Requirement

The Final Report recommends that LSAC provide for the automatic review by one or two consultants of any non-approved accommodation requests (independent of any appeals process). As a matter of internal procedure, LSAC's Disability Specialists are to review requests with preliminary recommendations and transmit them to LSAC's Manager of Accommodated Testing. The Manager is responsible for contacting outside consultants in the event that requested accommodations are not (at that stage) approved by LSAC. LSAC is to retain a sufficient number of outside consultants for such reviews, who are to adhere to review protocols including response timelines, decision options, and additional reviews, as events warrant.

### Relevant Information

Information reviewed included applicant files, the log of contacts with outside consultants, and the list of outside consultants. Multiple interviews with Ms. Van Tol and Dr. Dempsey included discussions regarding the process of review and outside consultation and LSAC's actual practice and experience.

### Analysis/Conclusion

The evidence presented reflects LSAC's adherence to this recommendation. Since the implementation of the Best Practices Report, the number of accommodation requests that have been denied is very small. LSAC's experience is one reflecting timely action in accordance with the Report's requirements, engaging expert personnel that it has retained for such matters. File reviews show adherence to an appeal process involving an accommodation denials adhering to these requirements. See Appendix B.

#### **6. Timely/Streamlined Appeals Process (Recommendation 9)**

##### Requirement

The Final Report as modified provides for a process of appeals of denials of accommodations, with specified timelines. Those most relevant to actions of the LSAC and outside consultants are these:

- ◆ Candidates are to receive within one business day explanations of decisions denying requests.
- ◆ Candidates have at least 24 hours following notice of a partial or total denial of an appeal to request an appeal.
- ◆ Upon notification of an appeal, the LSAC is to contact two outside consultants to ensure availability, if needed. The consultants must agree to respond, if needed, within 24 hours of receipt of applicants' files for their review and opinion.
- ◆ Upon receipt of an appeal, the LSAC has 24 hours in which to grant the testing accommodations request, without resort to the appeals process.
- ◆ If the candidate's request is not granted in full, then the appeals process is to begin, within 24 hours.
- ◆ The result of an appeal is to be provided within one week of the submission of the appeal.

##### Relevant Information

LSAC's website describes the appeals process for applicants. Only two files in the relevant period evidenced appeals being timely made from denials of accommodations requested.

##### Analysis/Conclusion

The evidence presented reflects LSAC's adherence to this recommendation.

#### **7. Training (Recommendation 10)**

##### Requirement

The LSAC is required to conduct an annual two-day training session for all relevant staff and outside consultants, including presentation by experts in the field on how to evaluate requests for testing accommodations,

Relevant Information

LSAC's first annual training session was conducted for two days, on August 11-12, 2016. During that session, presenters provided guidance on federal legal requirements, including distillations of relevant U.S. Department of Justice technical assistance guidance; requirements of the Order and Final Report as modified; and procedural steps and obligations associated with accommodations requests, including the array of LSAC policies and procedures that are relevant to the Order, which have been outlined and detailed above. In addition, background reading and file examples were referenced as part of the professional development. Staff and consultants attending the training submitted information regarding their professional background and expertise in the field of disability accommodations. Information reflects that all relevant staff (with one exception) and outside consultants (with one exception) attended that training session. Ms. VanTol advised that subsequent briefings were held for each person unable to attend due to scheduling conflicts; and training materials were provided.

Analysis/Conclusion

LSAC's August, 2016 training session comports with the outline of the Final Report as modified. Materials reflect coverage of guidance on how to evaluate and address requests for testing accommodations; review of illustrations of actual requests ("mock cases" in the terms of the Report), a comprehensive and detailed summary of the relevant legal landscape led by Robert A. Burgoyne of Norton Rose Fulbright US LLP, a recognized expert in litigation and disability issues. Taken as a whole, the materials reflect a clear effort to satisfy the "minimum objectives" set forth in the Report. The LSAC indicates that similar training sessions will be conducted annually throughout the duration of the Decree.

**D. Conclusion**

The Monitor is available to address any questions counsel for any of the parties may have. Please do not hesitate to contact me if you have questions.

## APPENDIX A

A number of comments were submitted by counsel for the parties in this matter, in response to the Monitor's October, 2016 draft of the Report, provided for their review and comment. While not all of those comments are addressed expressly below, several of the more significant points raised, principally by counsel for plaintiffs, merit a written response. These points are in addition to details in this report, which have been supplemented to address a number of requests by counsel for plaintiffs.

First, background informing the actions of the Court Monitor: The Order establishes a standard of "reasonable[ness]" regarding information "deemed necessary" by the Monitor in the furtherance of specified obligations, which are detailed in the Report. That standard has informed the Monitor's due diligence. In addition, to help assure appropriate, reasonable transparency, the Monitor provided the earlier report in draft for comment by the parties, surpassing the requirements the Order.<sup>9</sup>

Second, the Monitor's objective was not to substitute his judgment for that of experts retained pursuant to requirements of the Order and Final Report. In those instances, files were reviewed to assure adherence to basic protocols and evidentiary requirements of the Order and/or the Report, as relevant.

Third, and on more specific points asserted by the plaintiffs:

- ◆ Plaintiffs' counsel challenges the Monitor's designation of the Report as confidential, asserting that it does not "mandate" treating the report as confidential. However, the Order states that "[a]ll non-public information obtained by the ADA Monitor shall be maintained in a confidential manner." (Par. 26.a, p. 34) The Decree further states that "all

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<sup>9</sup> Nothing in the Order authorizes counsel for the parties to request that a Report provide information beyond what is specified. Under the decree, each Report "shall provide:

- (a) the scope of the audit,
- (b) a detailed list of the data collected and interviews conducted, if any, in the course of the audit,
- (c) any difficulties with conducting the audit,
- (d) an itemized assessment as to whether LSAC is complying with those provisions of the decree subject to the audit,
- (e) what data the ADA Monitor relied upon in reaching this assessment, and what data contradicts this assessment, if any; and
- (f) the ADA Monitor's recommendations for further remediation if he or she determines that compliance is deficient." (Par. 26, p. 34)

The initial draft of the Report addressed all of those elements as does this final version. The terms or general requirements of other consent decrees, referenced by plaintiffs in their submission, are simply not relevant to the plain language and particular requirements expressed in the Order.

information obtained by the ADA Monitor shall be used only for purposes of implementing this Decree.” That requirement would have no force if this report were to be made public. Therefore, the Monitor will retain the confidential designation of the Report.

- ◆ The plaintiffs have also asked that the Monitor provide “all underlying documents, data, notes, interviews, correspondence, and other information relied upon in conducting the ADA Monitor’s audit and preparing the draft Report.” This request is unwarranted, and denied, in light of the specific language of the Order. The Order does not give any party the right to obtain any documents or other information from the Monitor, beyond the reports that the Monitor is asked to produce. Importantly, as well, the Order provides for direct access to certain information from LSAC. Specifically, “[u]pon request from the United States, or the DFEH (with respect to documents and information pertaining to individuals who tested in California), LSAC will provide the requesting Party with access to the data underlying the ADA Monitor’s Audit Reports and may provide the United States, and the DFEH (to the extent such documents and information pertain to individuals who tested in California), with access to additional information as reasonably requested.... ”