

U.S. Equal Employment Opportunity Commission (EEOC) Offers Guidance on Earlier Discussion of Requirement of High School Diploma and the Americans with Disabilities Act (ADA)

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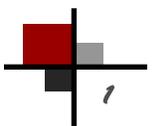
- ▶ U.S. Equal Opportunity Commission (EEOC) Offers Guidance on Earlier Discussion of Requirement of High School Diploma and the Americans with Disabilities Act (ADA)

On November 17, 2011 the EEOC issued an informal “discussion letter” in response to an inquiry from a business about how the Americans with Disabilities Act applies to qualification standards for jobs—specifically the requirement of a high school diploma. The letter is available online at the EEOC website at www.eeoc.gov/eeoc/foia/letters/2011/ada_qualification_standards.html. In that letter the EEOC noted that if an employer adopts an employee selection criterion (such as a high school diploma) that screens out an individual or a class of individuals on the basis of a disability (such as a learning disability) that criterion must be job related and consistent with business necessity—that is it accurately measures the ability to perform the job’s essential functions. The employer will not be able to make such a showing, the EEOC letter continued, “if the functions in question can easily be performed by someone who does not have a diploma. Even in a case where there can be a showing of job relatedness and business necessity, the employer may still have to demonstrate whether the applicant can still perform the essential functions of the job with or without a reasonable accommodation.”

Noting, in February 2012, that there has been “significant commentary and conjecture about the meaning and scope of the letter,” the EEOC has put up on its website question and answer guidance to clarify the issues. Three of these are substantively significant and offer the following clarifications:

- Nothing in the letter prohibits employers from having a requirement that a job applicant have a high school diploma. The employer may, however, have to allow someone who says that a disability prevented the applicant from obtaining a high school diploma to demonstrate qualification for the job in some other way.
- The ADA protects only an applicant whose disability makes it impossible for the applicant to get a high school diploma. It would not protect someone who decided not to get a high school diploma (for example, by dropping out of school).

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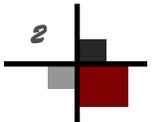
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- Even in a situation where the applicant with a disability can demonstrate the ability to do the job, the employer may still choose the best qualified applicant. The employer is not required to choose the applicant with a disability “over someone who can perform the job better.”

In the remaining two questions the EEOC noted that the discussion letter was not a new interpretation of law and noted also that consideration of the requirement of a high school diploma as a requirement that violates federal anti-discrimination law goes back to the U.S. Supreme Court’s decision in *Griggs v. Duke Power Co.* where the Court decided that a high school diploma requirement could be discriminatory because it had a disparate impact on African Americans.

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