



January 31, 2023

Via Portal and Staff Email

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
José Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar—  
**OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

Disability Rights Education and Defense Fund (DREDF), Legal Aid at Work (LAAW), and Disability Rights Advocates (DRA) write to **OPPOSE** the proposed amendments to the rules of the State Bar, with the “high level framework.” We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein, and which is attached hereto as Exhibits A (track changes) and B (clean).

DREDF, LAAW, and DRA are nonprofit law and public policy organizations committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. We collectively have

## Testing Accommodations on the State Bar– **OPPOSE**

January 31, 2023

Page 2

extensive experience representing disabled individuals who need accommodations to access the legal profession, including disabled law graduates who need testing accommodations to take the California bar exam on an equal basis as nondisabled graduates.

The minimum standards for a fair, effective, and lawful approach to testing accommodations have been developed and articulated by the U.S. Department of Justice (DOJ) and by the judicial process through litigation against the Law School Admissions Council (LSAC).<sup>1</sup> The outcome in the LSAC litigation systemically altered the pipeline for the legal profession nationwide and opened the doors to law school for candidates who now need accommodations to take the California Bar Exam on an equal playing field.

Despite these developments, law graduates with disabilities routinely report that their requests for testing accommodations on the California bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as on the LSAT, in college, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar.<sup>2</sup> Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

The proposal before the Board of Trustees is described as “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice and the LSAC litigation.<sup>3</sup> While we welcome this stated intent, the proposal fails to meet the minimum DOJ and LSAC standards in numerous respects and will not effectively further

---

<sup>1</sup> See U.S. Dep’t of Justice, ADA Requirements: Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); Consent Decree in *Dep’t of Fair Emp’t & Hous. v. Law Sch. Admission Council Inc.*, No. 12-CV-01830-JCS (N.D. Cal., May 29, 2014); <https://calcivilrights.ca.gov/legalrecords/consent-decree-in-dfeh-v-lsac/>, and <https://clearinghouse.net/doc/69024/>; Best Practices Panel Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; *DFEH v. LSAC*, 2015 U.S. Dist. LEXIS 104751 (N.D. Cal. Aug. 7, 2015) (deciding challenges to Best Practices Report); see also 42 U.S.C. § 12189; 28 C.F.R. § 36.309; *Enyart v. Nat’l Conference of Bar Exam’rs, Inc.*, 630 F.3d 1153, 1162 (9th Cir. 2011); 28 C.F.R. Part 35, App. A, Other Issues (section 36.309 “is useful as a guide for determining what constitutes discriminatory conduct by a public entity in testing situations”).

<sup>2</sup> These assessment are almost never covered by insurance and require that test takers spend thousands of dollars.

<sup>3</sup> See Oct. 14, 2022, Memorandum of Christina Doell, Program Manager to Committee of Bar Examiners (referencing U.S. Department of Justice guidance and LSAC litigation outcomes as guide for proposal), Attached to Agenda Item III(C), at <https://board.calbar.ca.gov/Agenda.aspx?id=16831&tid=0&show=100034380>.

the goals of elimination of bias and professional diversity. The proposal further eliminates a longstanding procedural right for test takers denied accommodations and weakens State Bar response deadlines.

DREDF, LAAW, and DRA, together with their constituents and clients, are considering all avenues for bringing the State Bar into compliance with applicable standards for testing accommodations. Avenues include this comment opportunity, class action litigation, and federal agency action. These options have differences in cost and disruption to the State Bar.

## **INTRODUCTION**

A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only six percent of California attorneys report having a disability,<sup>4</sup> a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.<sup>5</sup>

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school.

The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal

---

<sup>4</sup> State Bar of California, 2022 Report Card on the Diversity of California's Legal Profession, Diversity of 2022 California Licensed Attorneys, Fig. 7, <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>.

<sup>5</sup> Demographic data on gender, race/ethnicity, sexual orientation, gender identity, and veteran and disability status of California State Justices and Judges (2022) at 14-18, <https://www.courts.ca.gov/documents/2022-JO-Demographic-Data.pdf>.

profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities, including disabled people of color, in the legal profession.

Despite this accepted understanding of the role of testing accommodations, law graduates with disabilities routinely report that their requests for testing accommodations on the California bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam (sometimes after the deadline to appeal the denial has passed), with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

### **SPECIFIC COMMENTS**

#### **The new rules should require timely responses to accommodation requests.**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner (within two weeks), such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. See 2014 U.S. DOJ Guidance. Instead, the existing and proposed rules make no such commitment,<sup>6</sup> and the proposed rules

---

<sup>6</sup> See Rule 4.84 & Proposed Rule 4.84 (recommending that test takers submit requests six months before exam); Rule 4.88(A) & Proposed Rule 4.88(B) (promising State Bar response

eliminate and extend existing deadlines for State Bar responses.<sup>7</sup> Timely responses will be much more feasible for State Bar staff and reviewers with the other changes discussed herein.

With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

**The new framework should commit the State Bar to more and more diverse consultants.**

The State Bar should increase in number and diversify in expertise its pool of expert consultants that it uses to review and evaluate requests for testing accommodations. See *DFEH v. LSAC Consent Decree*, at Injunctive Relief, ¶ 6. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a stringent, stingy, and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. There is no such provision in the proposal.

**The rules should embrace automatic grants of previously approved testing accommodations without convoluted exceptions.**

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the GRE, ACT, SAT, LSAT, GMAT, DAT, MCAT, or MPRE. See LSAC Consent Decree, at Injunctive Relief, ¶ 5(a); LSAC Policy on Prior Testing Accommodations, <https://www.lsac.org/lsat/lsac-policy-accommodations-test->

---

within 60 days, which is longer than the length of time between the registration deadline and the exam).

<sup>7</sup> See Proposed Rule 4.88(A) (changing start of 60-day response deadline to when State Bar deems the request “complete” rather than to when the request is submitted), (B) (deleting State Bar promise to provide final determination at least one month before exam if test taker submits requests six months before exam).

[takers-disabilities/policy-prior-testing-accommodations](#). The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A “high-level framework” that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but instead subjects this simple concept to a byzantine set of extensive exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the “most recently approved” of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

The rules should similarly require that the State Bar automatically grant candidates the same testing accommodations that they previously received on prior high-stakes test in college or law school, such as on timed in-class exams in college or law school. See 2014 U.S. DOJ Guidance; *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*\*45, 53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework” states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

**The rules should specify that required documentation is limited and narrowly tailored.**

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities.<sup>8</sup> These comprehensive reports cost thousands of dollars and are not covered by insurance. The State Bar should clarify that it is no longer requiring comprehensive evaluation reports with underlying test results.

**The rules should give more weight to a qualified professional who has individually assessed the applicant compared to the opinion of a consultant.**

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

**The rules should include additional procedural elements.**

**Option for Independent Review.**

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is

---

<sup>8</sup> Compare Form C re Specific Learning Disorder, Form D re ADHD, and Form E re Psychological Disabilities, all requiring “comprehensive evaluation report” and all underlying “records and test results,” <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>, with proposed draft Qualified Professional Certification, Section 5, stating that documentation “may consist of, where appropriate, a comprehensive evaluation” and “standardized test data from appropriate evaluation instruments.”

critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

**Adequate Time to Seek Review.**

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

**No “Cap” on Reviews with Additional Information.**

Any candidate may seek or have need to seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C). This language should be excluded.

**The proposal should commit the State Bar to staff and consultant training.**

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its “zero sum game” mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

**The proposal should include an assessment of leadership.**

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the



Testing Accommodations on the State Bar– **OPPOSE**

January 31, 2023

Page 9

Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

### **CONCLUSION**

For the reasons stated in this letter, DREDF, LAAW, and DRA **OPPOSE** the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Claudia Center

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

Alexis Alvarez  
Laura Alvarenga Scalia

LEGAL AID AT WORK

Jinny Kim

DISABILITY RIGHTS ADVOCATES

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

## CHAPTER 7. TESTING ACCOMMODATIONS

### Rule 4.80 Eligibility for testing accommodations

Applicants with disabilities are granted reasonable testing accommodations if provided that they are otherwise eligible to take an examination and, in accordance with these rules, they

- (A) have submitted an approved Application for Registration for the examination for which testing accommodations are requested, which has been approved; and
- (B) have submitted a Request petition for Testing Accommodations on the State Bar's forms with the required documentation, which has been approved.;
- ~~(C) establish to the satisfaction of the State Bar the existence of a disability that prevents them from taking an examination under standard testing conditions; that testing accommodations are necessary to address the functional limitations related to their disabilities; and the testing accommodations sought are reasonable and appropriate for their disabilities; and,~~
- ~~(D) separately apply for the examination for which testing accommodations are requested.~~

### Rule 4.81 Testing accommodations in general

- (A) Requests~~Petitions~~ for Testing Accommodations are processed on a case-by-case basis consistent with these rules.
- (B) The State Bar responds to Requests ~~makes its best effort to process petitions~~ for Testing Accommodations consistent with the timelines set out in these rules; however, Requests for Testing Accommodations that do not include the required documentation may be denied ~~expeditiously but does not process petitions that are incomplete.~~
- (C) Timelines ~~limits in testing accommodation~~ these rules are solely to expedite the processing of ~~petitions~~ Requests for Testing Accommodations and are not jurisdictional. The State Bar may extend ~~them~~ the timeline for good cause, so long as the extension does not interfere with the applicant's ability to seek review in time for the exam or to equally prepare for and access the exam.
- (D) An examination application fee is not refunded if a Request for Testing Accommodations is denied.

### Rule 4.82 Definitions and standards

These definitions and standards apply to the rules on and ~~petitions~~ requests for testing accommodations.

- (A) A "disability" is a physical or mental impairment that limits one or more of an applicant's major life ~~activities, and~~ activities ~~limits an applicant's ability to~~

Exhibit A

~~demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination.~~

- (B) A “physical impairment” is a physiological disorder or condition or an anatomical loss affecting one or more of the body’s systems.
- (C) A “mental impairment” is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.
- (D) Disabilities include, but are not limited to, deafness, blindness, paralysis, missing limbs, diabetes, seizure disorders, learning disabilities, ADD, ADHD, autism, developmental disabilities, anxiety disorders, and mood disorders. These disabilities and other conditions are “non-temporary” for purposes of these rules.
- (E) To receive testing accommodations, a qualified applicant must demonstrate a disability that limits the applicant’s ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination. An applicant is entitled to an accommodation that best ensures that the results of the examination will accurately reflect the applicant’s knowledge, skills, and abilities tested on an examination and not the applicant’s disability.
- (F) A “reasonable testing accommodation” is an adjustment to or modification of standard testing conditions that addresses the functional limitations related to an applicant’s disability by modifications to rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services.
- (G) The State Bar may deny an ~~adjustment or modification~~ if it finds that it would:
- (1) compromise the security or validity of an examination or the integrity or of the examination process;
  - (2) impose an undue burden on the State Bar; or
  - (3) fundamentally alter the nature of an examination or the Committee’s ability to assess through the examination whether the applicant
    - (a) possesses the knowledge, skills, and abilities tested on an examination; and
    - (b) meets the essential eligibility requirements for admission.

**Rule 4.83 Guidelines for testing accommodations**

~~(A) The State Bar publishes guidelines for documenting the need for testing accommodations based on learning disabilities and attention deficit/hyperactivity disorder, including testing required to establish the existence of the disability and the reasonableness of the accommodations requested.~~

~~(B) The State Bar may publish guidelines for other disabilities accommodated on past examinations.~~

**Rule 4.84 When to file a petition request for testing accommodations**

(A) A Request Petition For Testing Accommodations is not an application for a bar examination. Filing one does not constitute filing the other or initiate its processing. An applicant must separately apply for an examination.

(B) An applicant is encouraged to file a Petition Request For Testing Accommodations as far in advance as practicable. ~~To allow sufficient processing time, general applicants are encouraged to submit their petitions at least by the beginning of their last year of law study and attorney applicants no later than six months prior to the examination they wish to take. If an applicant waits until the final examination application deadline for a particular examination to petition for testing accommodations, it is possible that processing will not be completed or the applicant will not be able to complete all required or available procedures prior to administration of the examination.~~

(C) A Petition Request For Testing Accommodations must be complete and receipt must be no later than

(1) January 1 for the February California Bar Examination;

(2) June 1 for the July California Bar Examination;

(3) May 15 for the June First-Year Law Students' Examination; or

(4) September 15 for the October First-Year Law Students' Examination.

If a deadline falls on a non-business day, the deadline will be the next business day. Deadlines are not extended or waived for any reason except as permitted in Rule 4.87.

(D) ~~If a disability is temporary, Depending on the nature of a disability and the date on which a petition is filed,~~ the State Bar may ~~determine that the changing nature of a disability requires~~ that the applicant file a new petition request nearer the examination date or that a decision regarding the petition request be deferred.

**Rule 4.85 Initial Petition Request For Testing Accommodations**

(A) An applicant with a qualified disability seeking testing accommodations must file a Petition Request for Testing Accommodations on the State Bar's form.

- (B) In addition to the Petition-Request for Testing Accommodations, a qualified applicant seeking testing accommodations must also provide with the ~~petition request~~ the documentation required for specific specialist verification forms the State Bar ~~determines are appropriate~~ to verify the applicant's' disability or disabilities and the applicant's need for the requested testing accommodations to demonstrate the knowledge, skills, and abilities tested on an examination. The State Bar will only require documentation that is reasonable, limited, and narrowly tailored to verify disability and the need for the requested accommodations.
- (C) If a law school has provided testing accommodations, a qualified applicant must submit the petition-Request with the designated State Bar form, completed by a law school official or legal education supervisor.
- (D) If another state has provided-approved accommodations for the qualified applicant for its bar examination, a qualified applicant must submit the petition Request with the designated State Bar form, completed by an official responsible for testing accommodations.
- (E) If another testing agency has provided-approved accommodations for its examination, and the qualified applicant seeks to rely on this prior approval, a-the qualified applicant ~~may be required to~~ must submit the petition-Request with documentation demonstrating a copy of the prior approval of accommodations notice.
- (F) If the qualified applicant seeks to rely upon the documentation of a qualified professional who has made an individualized assessment of the applicant, the qualified applicant must submit the Request with this documentation.
- (1) Qualified professionals have flexibility in the type and source of the supporting documentation they submit to support testing accommodations.
  - (2) The State Bar will not require comprehensive evaluation reports.
- (G) Requests for Testing Accommodations that do not include the required forms and documentation may be denied. A Petition for Testing Accommodations is considered complete only upon receipt of all required forms that have been completed according to instructions. A petition that is incomplete by a final examination application deadline is not processed for that examination.

**Rule 4.86 Subsequent petitions-requests for testing accommodations**

- (A) Testing accommodations are not automatically extended upon failure of an examination to subsequent exams. The qualified applicant must submit a new Request for Testing Accommodations but must be requested for a subsequent examination any time before the subsequent examination application deadline.

However, the State Bar will automatically grant at least the same testing accommodations that it has previously granted a qualified applicant with a non-temporary disability.

- (B) An applicant ~~with a who is non-temporary permanently disability~~ led may petition for the same accommodations may incorporate prior supporting documentation into a new Request. rather than submit an entirely new petition. A subsequent petition must be made in accordance with State Bar's requirements.
- (C) An applicant ~~who has with~~ a temporary disability ~~or who seeks different accommodations than those previously granted~~ must file a new Request Petition for Testing Accommodations with all supporting documentation before by the examination application ~~final filing deadline if filed in connection with a particular administration of an examination.~~

#### **Rule 4.87 Emergency requests for testing accommodations**

An applicant who becomes disabled after a final examination application filing deadline may file a Petition Request for Testing Accommodations, which must include the forms required by Rule 4.85, with a request that it be considered as an emergency petition request. Documentation explaining the nature, date, and circumstances of the emergency must be filed with the petition request. Receipt of the petition request and supporting documentation must be at least ten days before the first day of the examination. ~~This rule does not apply to disabilities that existed before the final deadline for an examination application, whether or not they were diagnosed or a visit to a treating professional could be arranged.~~

#### **Rule 4.88 State Bar response to Petition Request For Testing Accommodations**

- (A) ~~The State Bar will respond within two weeks to a~~ An applicant who has filed submitted a Request Petition For Testing Accommodations in accordance with these rules ~~is notified in writing within thirty days of receipt when additional information is required, and within sixty days when the petition is granted, granted with modifications, denied, or action is pending.~~
- (B) The State Bar will automatically grant testing accommodations as follows:
  - (1) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations it has previously approved for the applicant on any exam administered by the State Bar.
  - (2) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another testing agency for a standardized test such as the GRE, ACT, SAT, LSAT, GMAT, DAT, MCAT, or MPRE.
  - (3) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another state bar.

(4) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by the applicant's college or law school for timed, in-class, closed-book exams.

An applicant relying on this subsection who submits documentation demonstrating previously approved testing accommodations together with coupled with a self-certification of continued need need not submit the report of a qualified professional who has made an individualized assessment of the applicant.

Previously approved testing accommodations that fall under this subsection are reasonable and will not be denied based on Rule 4.85(G).

(C) In reviewing and responding to a Request for Testing Accommodations, the State Bar will give more weight to the report of qualified professional who has made an individualized assessment of the candidate as compared to the opinions of a consultant who has not assessed the candidate.

~~If a complete petition is filed at least six months before the examination for which testing accommodations are sought, the applicant may expect a final determination at least a month before the examination.~~

~~(DG) With the consent of the petitionerqualified applicant, the State Bar or a consultant may confer with a specialist who has treated the petitionerapplicant.~~

~~(ED) If the State Bar denies A notice of denial of a Petition-Request For Testing Accommodations or makes a modified grant, the State Bar response will state the basis or bases the reasons for the denial or modifications, and advises the petitioner of any right to appeal. If the State Bar finds that the requested accommodation is not required to be provided under 4.82(G), the response will include the State Bar's basis or bases for this finding. The notice-response will be sufficiently detailed to provide the applicant fair notice of the State Bar's legal and/or factual analysis and findings, including the weight provided to the documentation of the applicant's qualified professional, and may include an excerpt of a consultant's evaluation. The response will advise the applicant of rights to appeal.~~

#### **Rule 4.89 Applicant response to proposed modification or request for information**

An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request ~~will be~~ is processed on the basis of information submitted.

#### **Rule 4.90 Committee review of denied or modified ~~petition~~request**

## Exhibit A

- (A) An applicant notified that a ~~Petition-Request~~ For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within ~~ten-30~~ days of the date of the denial or modified grant unless an examination schedule requires a shorter time for or some other reasonable period established by the Committee review.
- (B) Requests for review filed in connection with a particular administration of an examination must be filed no later than the first business day of the month in which the examination is to be administered. Requests received after that date will be considered in connection with future administration of the examination.
- (C) After reviewing the request for review and supporting documentation, the Director of Admissions may withdraw the prior decision and grant the accommodations requested. The Director must make a determination within two weeks unless an examination schedule requires a shorter time.
- (D) If the Director of Admissions does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original ~~petition-request~~ and supporting documentation provided by the applicant and the Director of Admissions. ~~Oral argument is not permitted.~~ The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

### **Rule 4.91 Confidentiality of ~~Petitions-Requests~~ for Testing Accommodations**

~~Petitions-Requests~~ for Testing Accommodations, documentation submitted in support and evaluations of requests are confidential.

### **Rule 4.92 False or misleading information in ~~Petition-Request~~ For Testing Accommodations**

False or misleading information in a ~~Petition-Request~~ For Testing Accommodations is considered in determining an applicant's moral character and may result in a negative determination of moral character.



## **CHAPTER 7. TESTING ACCOMMODATIONS**

### **Rule 4.80 Eligibility for testing accommodations**

Applicants with disabilities are granted reasonable testing accommodations if they are otherwise eligible to take an examination and, in accordance with these rules, they

- (A) have submitted an Application for Registration for the examination for which testing accommodations are requested, which has been approved; and
- (B) have submitted a Request for Testing Accommodations with the required documentation, which has been approved.

### **Rule 4.81 Testing accommodations in general**

- (A) Requests for Testing Accommodations are processed on a case-by-case basis consistent with these rules.
- (B) The State Bar responds to Requests for Testing Accommodations consistent with the timelines set out in these rules; however, Requests for Testing Accommodations that do not include the required documentation may be denied.
- (C) Timelines in these rules are solely to expedite the processing of Requests for Testing Accommodations and are not jurisdictional. The State Bar may extend the timeline for good cause, so long as the extension does not interfere with the applicant's ability to seek review in time for the exam or to equally prepare for and access the exam.
- (D) An examination application fee is not refunded if a Request for Testing Accommodations is denied.

### **Rule 4.82 Definitions and standards**

These definitions and standards apply to the rules on and requests for testing accommodations.

- (A) A "disability" is a physical or mental impairment that limits one or more of an applicant's major life activities.
- (B) A "physical impairment" is a physiological disorder or condition or an anatomical loss affecting one or more of the body's systems.
- (C) A "mental impairment" is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.
- (D) Disabilities include, but are not limited to, deafness, blindness, paralysis, missing limbs, diabetes, seizure disorders, learning disabilities, ADD, ADHD, autism, developmental disabilities, anxiety disorders, and mood disorders. These disabilities and other conditions are "non-temporary" for purposes of these rules.

## Exhibit B

- (E) To receive testing accommodations, a qualified applicant must demonstrate a disability that limits the applicant's ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination. An applicant is entitled to an accommodation that best ensures that the results of the examination will accurately reflect the applicant's knowledge, skills, and abilities tested on an examination and not the applicant's disability.
- (F) A "reasonable testing accommodation" is an adjustment to or modification of standard testing conditions that addresses the functional limitations related to an applicant's disability by modifications to rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services.
- (G) The State Bar may deny an adjustment or modification if it finds that it would:
  - (1) compromise the security or validity of an examination or the integrity or of the examination process;
  - (2) impose an undue burden on the State Bar; or
  - (3) fundamentally alter the nature of an examination or the Committee's ability to assess through the examination whether the applicant
    - (a) possesses the knowledge, skills, and abilities tested on an examination; and
    - (b) meets the essential eligibility requirements for admission.

### **Rule 4.84 When to file a request for testing accommodations**

- (A) A Request For Testing Accommodations is not an application for a bar examination. Filing one does not constitute filing the other or initiate its processing. An applicant must separately apply for an examination.
- (B) An applicant is encouraged to file a Request For Testing Accommodations as far in advance as practicable.
- (C) A Request For Testing Accommodations must be complete and receipt must be no later than
  - (1) January 1 for the February California Bar Examination;
  - (2) June 1 for the July California Bar Examination;
  - (3) May 15 for the June First-Year Law Students' Examination; or
  - (4) September 15 for the October First-Year Law Students' Examination.

## Exhibit B

If a deadline falls on a non-business day, the deadline will be the next business day. Deadlines are not extended or waived for any reason except as permitted in Rule 4.87.

- (D) If a disability is temporary, the State Bar may require that the applicant file a new request nearer the examination date or that a decision regarding the request be deferred.

### **Rule 4.85 Initial Request For Testing Accommodations**

- (A) An applicant with a disability seeking testing accommodations must file a Request for Testing Accommodations on the State Bar's form.
- (B) In addition to the Request for Testing Accommodations, a qualified applicant seeking testing accommodations must also provide with the request the documentation required for the State Bar to verify the applicant's disability or disabilities and the applicant's need for the requested testing accommodations to demonstrate the knowledge, skills, and abilities tested on an examination. The State Bar will only require documentation that is reasonable, limited, and narrowly tailored to verify disability and the need for the requested accommodations.
- (C) If a law school has provided testing accommodations, a qualified applicant must submit the Request with the designated State Bar form, completed by a law school official or legal education supervisor.
- (D) If another state has approved accommodations for the qualified applicant for its bar examination, a qualified applicant must submit the Request with the designated State Bar form, completed by an official responsible for testing accommodations.
- (E) If another testing agency has approved accommodations for its examination, and the qualified applicant seeks to rely on this prior approval, the qualified applicant must submit the Request with documentation demonstrating the prior approval of accommodations.
- (F) If the qualified applicant seeks to rely upon the documentation of a qualified professional who has made an individualized assessment of the applicant, the qualified applicant must submit the Request with this documentation.
  - (1) Qualified professionals have flexibility in the type and source of the supporting documentation they submit to support testing accommodations.
  - (2) The State Bar will not require comprehensive evaluation reports.
- (G) Requests for Testing Accommodations that do not include the required forms and documentation may be denied.

**Rule 4.86 Subsequent requests for testing accommodations**

- (A) Testing accommodations are not automatically extended upon failure of an examination to subsequent exams. The qualified applicant must submit a new Request for Testing Accommodations before the subsequent examination application deadline. However, the State Bar will automatically grant at least the same testing accommodations that it has previously granted a qualified applicant with a non-temporary disability.
- (B) An applicant with a non-temporary disability may incorporate prior supporting documentation into a new Request.
- (C) An applicant with a temporary disability must file a new Request with all supporting documentation before the examination application deadline.

**Rule 4.87 Emergency requests for testing accommodations**

An applicant who becomes disabled after a final examination application filing deadline may file a Request for Testing Accommodations, which must include the forms required by Rule 4.85, with a request that it be considered as an emergency request. Documentation explaining the nature, date, and circumstances of the emergency must be filed with the request. Receipt of the request and supporting documentation must be at least ten days before the first day of the examination.

**Rule 4.88 State Bar response to Request For Testing Accommodations**

- (A) The State Bar will respond within two weeks to an applicant who has submitted a Request For Testing Accommodations in accordance with these rules.
- (B) The State Bar will automatically grant testing accommodations as follows:
  - (1) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations it has previously approved for the applicant on any exam administered by the State Bar.
  - (2) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another testing agency for a standardized test such as the GRE, ACT, SAT, LSAT, GMAT, DAT, MCAT, or MPRE.
  - (3) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another state bar.
  - (4) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by the applicant's college or law school for timed, in-class, closed-book exams.

An applicant relying on this subsection who submits documentation demonstrating previously approved testing accommodations together with

## Exhibit B

coupled with a self-certification of continued need need not submit the report of a qualified professional who has made an individualized assessment of the applicant.

Previously approved testing accommodations that fall under this subsection are reasonable and will not be denied based on Rule 4.85(G).

- (C) In reviewing and responding to a Request for Testing Accommodations, the State Bar will give more weight to the report of qualified professional who has made an individualized assessment of the candidate as compared to the opinions of a consultant who has not assessed the candidate.
- (D) With the consent of the qualified applicant, the State Bar or a consultant may confer with a specialist who has treated the applicant.
- (E) If the State Bar denies a Request For Testing Accommodations or makes a modified grant, the State Bar response will state the basis or bases for the denial or modification. If the State Bar finds that the requested accommodation is not required to be provided under 4.82(G), the response will include the State Bar's basis or bases for this finding. The response will be sufficiently detailed to provide the applicant fair notice of the State Bar's legal and/or factual analysis and findings, including the weight provided to the documentation of the applicant's qualified professional, and may include an excerpt of a consultant's evaluation. The response will advise the applicant of rights to appeal.

### **Rule 4.89 Applicant response to proposed modification or request for information**

An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request will be processed on the basis of information submitted.

### **Rule 4.90 Committee review of denied or modified request**

- (A) An applicant notified that a Request For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within 30 days of the date of the denial or modified grant unless an examination schedule requires a shorter time for Committee review.
- (B) Requests for review filed in connection with a particular administration of an examination must be filed no later than the first business day of the month in which the examination is to be administered. Requests received after that date will be considered in connection with future administration of the examination.
- (C) After reviewing the request for review and supporting documentation, the Director of Admissions may withdraw the prior decision and grant the accommodations requested. The Director must make a determination within two weeks unless an examination schedule requires a shorter time.

## Exhibit B

- (D) If the Director of Admissions does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original request and supporting documentation provided by the applicant and the Director of Admissions. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

### **Rule 4.91 Confidentiality of Requests for Testing Accommodations**

Requests for Testing Accommodations, documentation submitted in support and evaluations of requests are confidential.

### **Rule 4.92 False or misleading information in Request For Testing Accommodations**

False or misleading information in a Request For Testing Accommodations is considered in determining an applicant's moral character and may result in a negative determination of moral character.