

Disability Rights Education & Defense Fund 

February 5, 2024

Via Email Only Catherine.Bidart@doj.ca.gov

Catherine Bidart
Deputy Attorney General, Opinion Unit
California Department of Justice
Office of the Attorney General
300 S Spring Street, Suite 1702
Los Angeles, CA 90013-1256

RE: Title II of the Americans with Disabilities Act Requires Remote Participation as a Reasonable Accommodation in Brown Act Meetings

Dear Ms. Bidart:

I am writing on behalf of Disability Rights Education and Defense Fund (DREDF) to request that Attorney General Rob Bonta issue an opinion confirming that state and local entities covered by Title II of the Americans with Disabilities Act are required to accommodate disabled members of boards and commissions, including by offering remote participation in public meetings as a reasonable accommodation. Any contrary rule found in open meeting laws like the Brown Act is superseded by the legal requirements of federal disability rights laws and by our lived experiences during the COVID pandemic.

DREDF is a national nonprofit law and policy center based in Berkeley and dedicated to advancing and protecting the civil and human rights of people with disabilities. DREDF remains board- and staff-led by people with disabilities and parents of children with disabilities. DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities. Since the onset of the pandemic, and before, DREDF has worked with its constituents and partners to help people with disabilities stay safe while accessing government, health care, education, employment, and other important social and economic institutions.

During the years of the pandemic, public meetings including Brown Act meetings occurred through videoconference. Remote participation protected participants and members of the public from the transmission of COVID-19. Such protection is particularly critical for disabled people and older adults (many of whom have disabilities), as these populations risk severe outcomes and even death from COVID-19. The ability to participate remotely eliminated other disability-related barriers to participation, such as those related to mobility and transportation.

Since the official end of the public health emergency, people with disabilities, including older adults with disabilities, are being denied reasonable accommodations including videoconferencing to participate as members in public meetings. Many disabled Californians remain vulnerable to severe outcomes from COVID-19 and other infectious diseases and need to participate remotely to protect their health and well-being. Many people with disabilities also experience mobility and transportation barriers that can only be accommodated through remote participation.

Main Office: 3075 Adeline Street, Suite 210 • Berkeley, CA 94703 • 510.644.2555 •
fax 510.841.8645 • www.dredf.org
Government Affairs: Washington D.C. • 800.348.4232

State and local public meetings are covered by Title II of the Americans with Disabilities Act and are required to provide reasonable accommodations to people with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(7)(i). Remote participation for disabled people who need to participate in this way due to disability is a reasonable and feasible accommodation. Further, public entities may not use “administrative methods” or eligibility criteria that screen out disabled people or that result in disability discrimination. 28 C.F.R. §§ 35.130(b)(3)(i), (ii), (8). For a disabled person who remains vulnerable to infectious diseases or who faces mobility and transportation barriers due to their disability, an unnecessary requirement to appear in person is just such a form of disability discrimination. The requirements of the ADA supersede any rules established under state or local law.

Further, some public entities are requiring that disabled people may participate remotely as members in Brown Act meetings, but as a condition must notice their home address and open their homes to the public. But this is *also* an unlawful administrative method resulting in prohibited disability discrimination. A public entity may not require that people with disabilities endure burdensome privacy invasions as a “price” for obtaining reasonable accommodations. *See Guckenberger v. Boston Univ.*, 974 F. Supp. 106, 137-40 (D. Mass. 1997) (burdensome requirements for obtaining reasonable accommodations violated federal law); *cf.* 28 C.F.R. § 35.130(f) (public entity may not impose a surcharge on people with disabilities for methods needed for inclusion).

The City and County of San Francisco has already agreed that the ADA requires local public entities to make reasonable accommodations, including remote participation, despite any countervailing limitation set out in state or local law. Its 2023 memorandum on the topic states:

If a member of a policy body has a disability under federal law (the Americans with Disabilities Act), and their disability limits or precludes their in-person attendance at meetings – for example, if their disability confines them to their residence – then the City must make a reasonable accommodation to allow the member to participate in meetings remotely. In that situation, both City and state restrictions on attendance via teleconferencing must give way to the City's duty under federal law to reasonably accommodate the disabled member.

City and County of San Francisco, Office of the City Attorney, Paul Zarefsky and Jon Givner, Memorandum (Jan. 10, 2023), <https://www.sfcityattorney.org/wp-content/uploads/2023/01/Legal-Rules-Governing-Remote-Participation-by-Members-of-Policy-Bodies-in-Meetings-Beginning-March-1-2023.pdf>.¹

Courts have similarly held that teleconferencing is a required accommodation under the ADA, even where this accommodation modifies state open-meeting laws. *See, e.g., Palmer v. Michigan*, No. 1:22-cv-90, 2022 U.S. Dist. LEXIS 57079, *16 (W.D. Mich., Mar. 29, 2022) (granting preliminary injunction permitting disabled plaintiff to continue full virtual participation as a board member of the Community Mental Health Authority); *Silver v. City of Alexandria*, 470 F. Supp. 3d 616, 625 (W.D. La. 2020) (granting preliminary injunction requiring City of Alexandria

¹ The 2001 California Attorney General opinion about remote participation as a reasonable accommodation under the ADA, Opinion Number 00-1210 (Nov. 14, 2001), <https://oag.ca.gov/system/files/opinions/pdfs/00-1210.pdf>, is obsolete given changes in technology, our extensive experience during the pandemic, and subsequent case law.

Catherine Bidart
Deputy Attorney General, Opinion Unit
February 5, 2024
Page 3

to allow disabled plaintiff to participate and vote virtually in all regular or special Alexandria City Council meetings).

In August, people with disabilities sued the City of Berkeley, challenging the city's refusal to make reasonable accommodations that would allow them to safely participate in commission meetings from home. See *Fisher v. City of Berkeley*, 4:23-cv-4280 (N.D. Cal., filed Aug. 22, 2023), https://dralegal.org/wp-content/uploads/2023/08/1_Complaint.pdf. An appropriate Attorney General opinion outlining the application of the Americans with Disabilities Act to Brown Act meetings will bring municipalities into compliance with federal law without litigation.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Center". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Claudia Center