

Chapter 7. Testing Accommodations

Current Rules 4.80 through 4.92 are repealed. New Rules 4.80 through 4.92 are adopted to read as follows:

4.80 Definitions

These definitions 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 as compared to most people in the general population.
- (B) A “disability accommodations expert” is a qualified professional designated by the State Bar to make recommendations regarding an applicant’s testing accommodations request. A disability accommodations expert shall have a doctoral degree or Ph.D., possess knowledge of testing accommodations practices and procedures in exam settings and the Americans with Disabilities Act requirements relating to testing accommodations, and have a minimum of five years of experience in reviewing requests for testing accommodations for certification or licensure.
- (C) A “high stakes exam” refers to any of the following: California Bar Exam, First-Year Law Students’ Exam, Multistate Professional Responsibility Exam (MPRE), a bar exam in another U.S. jurisdiction, LSAT, GRE, GMAT, MCAT, DAT, SAT I, SAT II, ACT, or GED.
- (D) A “mental impairment” is a mental or psychological disorder or condition or an anatomical loss affecting one or more of the body’s systems, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.
- (E) A “permanent disability” is a disability that is long-lasting and non-temporary in nature.
- (F) A “physical impairment” is a physiological disorder or condition or an anatomical loss affecting one or more of the body’s systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine. Physical or “mental impairment” includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- (G) A “qualified professional” is a person who is licensed or otherwise properly credentialed and possesses expertise in the disability for which modifications or accommodations are sought.
- (H) An “individualized assessment” is an assessment by a qualified professional who has personal familiarity with the applicant.
- (I) 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, provided it does not:

- (1) compromise the security or validity of an examination or the integrity 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.

4.81 Purpose of Testing Accommodations

- (A) Testing accommodations are provided to ensure that an applicant who has a disability can access the examination and is afforded an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.
- (B) Applicants with disabilities are granted reasonable testing accommodations if they are otherwise eligible to take an examination and, in accordance with these rules, they:
 - (1) have an approved Application for Registration;
 - (2) submit a request for testing accommodations on the State Bar's forms with the required documentation; and
 - (3) establish to the satisfaction of the State Bar that the applicant has a disability and needs the requested testing accommodations in order to meet the purposes set forth in subsection (A).
- (C) Approval of testing accommodations does not entitle an applicant to sit for a particular exam. An applicant must separately apply for any examination for which they intend to sit.

4.82 Processing of Requests for Testing Accommodations – General Rules

- (A) Requests for Testing Accommodations are processed on a case-by-case basis consistent with these rules.
- (B) The State Bar will render a determination on any complete request received by the final filing deadline, and will endeavor to render the determination as far in advance of the exam as practicable.
- (C) The State Bar shall defer to documentation from a qualified professional who has made an individualized assessment of the applicant that supports the need for the requested testing accommodation(s) as compared to the opinions of a disability accommodations expert who has not assessed the applicant for diagnosis and treatment. The applicant and their qualified professional shall have flexibility in the type and source of supporting documentation that may be provided, in addition to the required forms, to demonstrate the applicant's disability-related functional limitations, their specific access needs, and how those needs relate to the testing accommodations requested.

- (D) Although not eligible under the automatic approval process described in Rule 4.83, considerable weight shall be given to documentation of past testing accommodations approved for timed exams administered in college or law school upon submission of proof of the accommodations approved.
- (E) The State Bar shall not deny an applicant's request for a particular testing accommodation solely because the applicant has no formal history of receiving that testing accommodation.
- (F) The State Bar shall not deny an applicant's request for testing accommodations solely based on the applicant's average or above average IQ score and/or history of academic success.
- (G) The State Bar shall neither deny a request for testing accommodations nor approve it with modifications without elevation to the State Bar's disability accommodations expect.
- (H) An examination application fee is not refunded if a request for testing accommodations is withdrawn, denied, or abandoned.

4.83 Automatic Approval Process: Approval of Previously Granted Testing Accommodations on High Stakes Exams

- (A) Prior accommodations approved for a high stakes exam, as defined, will be approved by the State Bar without the need for any further documentation if all of the following are satisfied:
 - (1) The prior accommodations were approved for a permanent disability;
 - (2) The applicant submits the Request for Testing Accommodations form with the relevant sections completed;
 - (3) The applicant submits proof of the prior approval of accommodations granted by the testing entity;
 - (4) The applicant is requesting the same testing accommodations granted on the high stakes exam;
 - (5) The applicant certifies they are still experiencing the same functional limitations caused by the permanent disability for which the prior accommodations were approved;
 - (6) The State Bar offers the same or equivalent testing accommodations; and
 - (7) The request does not include more than 100 percent extra time for applicants and/or a private room. If the requested testing accommodations are for more than 100 percent extra time and/or a private room, the request will be evaluated in the same manner as those requiring submission of certification by a qualified professional as set forth in Rule 4.85.
- (B) An applicant who meets the requirements of subsection (A) need not submit the report of a qualified professional who has made an individualized assessment of the applicant.
- (C) If an applicant requests greater testing accommodations than previously approved for a high stakes exam, the State Bar shall, using the automatic approval process outlined in subsection (A), approve the same accommodations as previously granted, and shall only require submission of certification by a qualified professional to support the greater accommodations requested.

4.84 Request for Testing Accommodations – Timing of Submission

- (A) Applicants are encouraged to submit a request for testing accommodations as far in advance as practicable. A Request for Testing Accommodations may be submitted before an application to sit for a particular exam is available.
- (B) A Request for Testing Accommodations must be complete and received 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.

- (C) If a Request for Testing Accommodations is incomplete, and the request is submitted on the final application deadline for a particular examination, the applicant will not have the opportunity to remedy the lack of completeness.
- (D) A Request for Testing Accommodations that is incomplete as of the final filing deadline will be withdrawn.
- (E) If a Request for Testing Accommodations is submitted on the final application deadline for a particular exam, it is possible that there will be insufficient time for the applicant to request or for the State Bar to process a request for review pursuant to Rule 4.88 prior to the administration of the examination.
- (F) Notwithstanding subsection (A), if an applicant's request for testing accommodations is based on a temporary disability, the State Bar may require that the applicant submit a new request closer to the examination date or that a decision regarding the request be deferred until closer to the examination date.

4.85 Request for Testing Accommodations – Content of Submissions

- (A) An applicant with a disability seeking testing accommodations must submit a request for testing accommodations on the State Bar's form.
- (B) If a request does not qualify for the automatic approval process described in Rule 4.83, in addition to the Request for Testing Accommodations form, the applicant must also submit by the application filing deadline, on the State Bar's form, certification by a qualified professional, and submit any supplemental documentation needed to determine the applicant's disability-related functional limitations, their specific access needs, and how those needs relate to the testing accommodations requested. Supporting documentation shall be limited to that which is reasonable, limited and narrowly tailored to the information needed.
- (C) If an applicant is requesting the same testing accommodations as previously granted on another high stakes exam which includes more than 100 percent extra time for applicants

and/or a private room, the certification by a qualified professional described in subsection (B) shall include an explanation of why accommodations that allow for 100 percent extra time for applicants or testing in a semi-private room or distraction-reduced, are insufficient to meet the purposes set forth in Rule 4.81(A).

- (D) A request for testing accommodations is considered complete upon the State Bar's receipt of all required forms and any supporting documentation. A request may be deemed incomplete if the required forms are incomplete, or if the applicant or qualified professional does not respond in full to the required questions. A request that is incomplete by the final examination application deadline shall not be processed for that examination.

Rule 4.86 State Bar Response to Request for Testing Accommodations

- (A) An applicant who has submitted a request for testing accommodations in accordance with these rules shall be notified in writing within thirty (30) days of receipt of the request when additional information is required to complete the request. The request for testing accommodations is deemed incomplete if the applicant fails to provide the information requested by the deadlines set forth in Rule 4.84(B).
- (B) In addition to the provisions of Rule 4.82(B), within sixty (60) days of a request for testing accommodations having been deemed complete, the State Bar will notify the applicant in writing if the request is approved, approved with modifications, denied, or action is pending.
- (C) A notice of denial of a request for testing accommodations or a notice of approval with modifications shall state the basis or bases for the denial or modifications. The notice will include a report from a disability accommodations expert explaining why the requested testing accommodations were modified or denied, and advising the applicant of the right to request a review. The report will be sufficiently detailed to provide the applicant fair notice of the State Bar's reasoning.

Rule 4.87 Emergency Requests for Testing Accommodations

- (A) An applicant who becomes disabled after a final examination application filing deadline may submit 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 submitted with the request.
- (B) The State Bar must receive the request and supporting documentation at least ten (10) days before the first day of the examination through the Applicant Portal or by physical delivery to the State Bar during regular business hours. Emergency requests received later than this deadline will not be processed.

Rule 4.88 Request for Review of Denial or Approval with Modifications

- (A) An applicant notified that a Request for Testing Accommodations has been denied or granted with modifications may request a review by the Committee. Applicants requesting

review by the timely filing deadline for the exam have 30 days from the date of the denial or modified grant to submit their request. All other requests for review must be submitted within fourteen (14) days of the date of the denial or modified grant unless an examination schedule requires a shorter time for Committee review. The applicant may submit additional supporting documentation in support of their request for review.

- (B) Notwithstanding the deadlines described in subsection (A), 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 a 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 fourteen (14) days 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 shall be based on the original request and supporting documentation and any supplemental documentation provided by the applicant in connection with the request for review.
- (E) To ensure the Committee is able to act timely, consideration of all requests for review under this section shall be delegated to a subcommittee. To assist the subcommittee, to the extent practicable, the subcommittee shall be presented with a recommendation from a disability accommodations expert to inform its decision. This shall be a different expert than the disability accommodations expert who recommended the initial denial or approval with modifications.
- (F) The decision on a request for review is final and shall not be subject to further review by the State Bar or the Committee during the same exam cycle. The applicant may submit a new request for testing accommodations for a different exam cycle.
- (G) After exhausting the review process described in this rule, an applicant may appeal a denial or approval with modifications of testing accommodations to the California Supreme Court in accordance with the California Rules of Court 9.13(d).

Rule 4.89 Subsequent Request for Testing Accommodations

- (A) Testing accommodations are not automatically applied to subsequent exams upon withdrawal from or failure of an examination. The applicant must submit a new Request for Testing Accommodations before the subsequent, applicable examination application deadline. The request will be automatically granted if the prior accommodations were approved for a permanent disability¹, the applicant requests the same testing

¹ Editorial change to clarify the process for requesting the same testing accommodations as previously approved by the State Bar.

accommodations previously granted by the State Bar, and the applicant certifies that they have the same disability-related functional limitations that qualified them for the same accommodations for a prior exam.

- (B) If an applicant is seeking different testing accommodations than previously approved by the State Bar, and the applicant has a permanent disability, they may incorporate prior supporting documentation into the new request.
- (C) An applicant with a temporary disability must submit a new Request for Testing Accommodations with all supporting documentation before the examination application deadline.

Rule 4.90 Confidentiality of Requests for Testing Accommodations

Requests for testing accommodations, documentation submitted in support, and evaluations of requests are confidential.

Rule 4.91 False or misleading information in requests 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.

Rule 4.92 Committee of Bar Examiners Oversight

The Committee of Bar Examiners shall provide oversight to ensure consistent application of standards and processes and to monitor trends in testing accommodations requests, processing, and decisions.