

California Commission on Access to Justice

Minimum Access Standards for Administrative Agencies

January 2019

INTRODUCTION

Since its inception in 1996, the California Commission on Access to Justice has worked to ensure that all Californians are afforded equal access to California's justice and administrative agency dispute-resolution systems.

To ensure equal access to justice in California, administrative agencies, throughout the state, must implement processes and procedures to provide effective and efficient services for all who receive services from or have their disputes adjudicated by the agency.

The California Commission on Access to Justice developed these Administrative Agency Minimum Access Standards to promote access to justice in California's administrative agencies.

ADMINISTRATIVE AGENCIES SHALL BE ACCESSIBLE TO ALL AGENCY USERS

Administrative agencies will be located so that users are not required to travel unreasonable times or distances, especially where public transportation is inadequate or unavailable.

Administrative agency facilities will be safe and adequate to conduct the business of the agency.

Administrative agencies will maintain reasonable hours of operation so that users can conduct their business at the agency without undue delays.

Agency users will have access to accurate and timely information through adequate counter hours at clerks' offices and telephonic access to a live agency staff member.

Agency users will have access to accurate and timely information both on-line and through staffed self-help resources.

ADMINISTRATIVE AGENCIES WILL MEET ALL STATE AND FEDERAL DISABILITY NON DISCRIMINATION AND ACCESS REQUIREMENTS

All state and federal access requirements, including the Americans with Disabilities Act, Section 504 of the federal Rehabilitation Act, The Unruh Civil Rights, and California Government Code Section 11135 will be met for all administrative agency facilities and services. Administrative agencies must have appropriate policies, procedures, and practices regarding the following:

- Not denying services or benefits based on a person's disability.
- Providing people with disabilities with an equally effective opportunity to participate in or benefit from the governmental program, service, or activity.

- Making reasonable modifications to the agency’s policies, practices and procedures (also known as “reasonable accommodations”) unless doing so would fundamentally alter the program. This could include, for example, modifying application processes by simplifying the process or providing assistance to complete the application process.
- Where appropriate, providing voluntary and confidential screening for people who need assistance or accommodation with the agency’s procedures or policies.
- Ensuring that, for construction begun after January 26, 1992, facilities comply with state and federal physical accessibility standards. With regard to facilities constructed prior to that date, services, programs, and activities when viewed in their entirety, must be readily accessible to and useable by individuals with disabilities.
- Ensuring communication with people with disabilities is as effective as communication with others, including by making appropriate auxiliary aids and services available such as Braille, audio, large-print and alternative communication methods, e.g., American Sign Language interpreters for people who are Deaf or Hard of Hearing.
- Adequately documenting and flagging an individual’s need for reasonable modifications or need for alternative communication methods in client files.
- Providing adequate grievance procedures for people who believe they were discriminated against on the basis of disability, including failure to provide reasonable modifications or effective communication, and providing appropriate notification to individuals of their rights to file grievances.
- Ensuring that agency websites, kiosks, and other information technology are accessible to people disabilities and meet state and federal accessibility standards. For example, individuals who need to adjust font size or colors should be able to do so and those who use assistive technology, such as screen readers, should be able to access and fully use the website.
- Permitting the use of service animals by people with disabilities.
- Providing information about the agencies’ disability access obligations and designating employees to address concerns. Displaying this information in public areas and providing adequate and regular individual notifications to all clients and applicants.
- Providing sufficient training for staff regarding policies, procedures, and practices for disability access.

ADMINISTRATIVE AGENCIES WILL PROVIDE LANGUAGE ACCESS AND COMPLY WITH ALL NON DISCRIMINATION LAWS

Administrative agencies shall comply with state and federal laws, including: California Government Code section 11135, which prohibits discrimination based on race, national origin and ethnic group identity; the Dymally-Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and any applicable agency rule or regulation; and Title VI of the U.S. Civil Rights Act, which requires that any agency that receives federal funds ensure its *entire* program complies with the relevant Limited English Proficiency (LEP) guidance issued by the agency or agencies from which it receives federal funding. Such guidance includes developing a language access plan that assesses which languages are frequently encountered, identifies which of the agency's vital documents that should be translated into the frequently encountered languages, and what measures the agency will take to provide prompt oral interpretation, among other factors. This includes:

- Publicizing the language assistance services that are provided to the general public, through means such as posting signs in all public and intake areas and on outreach materials, as well as providing multi-language telephone menus.
- Establishing a process for identifying the language of the person making contact with the agency, such as the use of “I speak” cards, and for flagging ongoing cases with the need for language services, to ensure timely and appropriate language access.
- Providing access to qualified interpreters or qualified bilingual staff at all points of contact with all state agencies, including all hearings and proceedings, public counters, clerk's offices, filing windows and rooms, and other areas of public contact.
- Providing multilingual materials in languages spoken by populations that comprise at least five percent or 1,000 individuals, whichever is less, of the people served by the statewide or local office or facility of the state agency.
- Determining the language needs of individuals in the agency's service area by using data from a variety of sources.
- Having a Language Access Compliance Policy or Plan that includes a biennial language survey and requires biennial updates to the implementation plan as required by the Dymally-Alatorre Bilingual Services Act.
- For state agencies subject to the requirements of the Dymally-Alatorre Bilingual Services Act, translating and making accessible on the homepage of the agency website, forms and processes for submitting complaints for violations of the Act. Translated copies of the forms must be available in physical offices for individuals to access.

- Providing information about the agencies’ language access obligations and designating employees to address concerns. Displaying this information in public areas and providing adequate and regular individual notifications to all clients and applicants.
- Providing sufficient training for staff regarding policies, procedures, and practices for language access.
- Providing adequate grievance procedures for people who believe they were discriminated against on the basis of race, national origin or ethnic group, including failure to provide required language access services, and providing appropriate notification to individuals of their rights to file grievances.

ALL PARTICIPANTS IN ADMINISTRATIVE AGENCY PROCEEDINGS SHALL RECEIVE DUE PROCESS OF LAW

Every state and local agency that serves self-represented parties should have readily accessible, easy-to-understand materials about the agency, including its decision-making and appeals-hearing processes. Materials should be available for review and copying, and should include the rules, regulations, and procedures that apply to agency actions to enable parties to research applicable authority. Among other things, due process requires that:

- Hearings must be fair, timely, and understandable to all parties.
- Hearings will be conducted by impartial, trained bench officers according to applicable laws, rules, and procedures.
- Hearings will be conducted in a timely manner, and dispositions will be reached without undue delay. Agencies shall have adequate numbers of judicial officers, staff, and other non-judicial resources to provide timely processing of caseloads.
- Remote hearings should be considered where it would facilitate accessibility to the parties. Best practices when in-person hearings cannot readily be granted in a manner that allows meaningful access (e.g., distance, disabilities that may interfere with attendance, etc.), may include use of telephonic or video hearings to accommodate individuals in the way that they currently accommodate remotely located and disabled parties. In deciding when video remote interpreting is effective, agencies may want to consider the guidelines used by California courts: <http://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>.
- Where technology is utilized, it will be designed for all users to have effective access and not deployed in a manner that discriminates against those without access to technology or the internet.

- Qualified and meaningful language and other relevant services will be provided to ensure participants understand and can participate in the proceedings.
- The notice of the hearing should include citations to the specific law or regulations governing the action, and identify how the party can review any agency rules or regulations.
- Agencies and/or Administrative Law Judges (ALJs) should provide clear information about each step or option in the hearing process, and construe rules liberally to protect the rights of the litigants.
- Where appropriate, agencies should share exculpatory evidence and provide criminal advisements.
- ALJs should develop the record neutrally and be trained to practice engaged neutrality in hearings with self-represented parties. While impartiality is required for fair adjudication, judicial passivity is not. An ALJ can be “impartial but active in developing the case,” and impartiality does not preclude a judicial solution to access issues. Best practices for the ALJ include set the stage and frame the key issues; ask clarifying questions; look at the parties as they testify, listen actively; explain the importance of making a clear record for a later appeal; provide reminders about courtesy and respect for the party speaking, so that only one person speaks at a time; ensure that all elements of a claim that are raised are addressed; and explain the relevant procedures, requirements, and issues, with additional detail and in plain language.
- Information will be provided regarding the right to have a representative or lawyer assist with the hearing when applicable.
- Orders after hearing and judgments will be timely prepared and made available to litigants.
- The reasons for the action should be stated in plain, non-technical language, with details specific to the individual’s case.
- State any applicable exceptions to the rules used to make the decision. If there are exceptions to the rules used, the notice should state what the exceptions are; if the exceptions have been determined to be inapplicable, explain why they do not apply.
- If it is possible to reverse the action or reestablish eligibility, the notice should explain how to do this and any deadlines that must be met.
- Where relevant, the notice should include the mathematical calculation or amounts used to show how the benefit or debt amount was calculated.
- Clearly and conspicuously state the right to appeal and the relevant deadline. If discretionary with the agency, the time to appeal should be sufficiently long to permit individuals to receive the notice and submit a request to appeal; when

the deadline is shorter, the notice should provide a telephonic request to appeal option.

- Itemize any aid paid pending the decision, when applicable.
- An official record shall be made to preserve adjudicatory proceedings and to preserve the right to meaningful administrative or judicial review.
- Agencies should publicize the availability of waivers and facilitate waiver applications. User fees will not be set at levels that deny access to persons of moderate income, nor at levels that create the perception that process is based upon incentives other than the fair administration of justice.
- Agencies will make resources available for alternative dispute resolution where appropriate to assist litigants in resolving their cases at a cost which does not create a barrier to utilization.
- Agencies will provide regular trainings on barriers and solutions to access to justice, including implicit bias, to all judicial officers and staff.
- Agencies should make waiting rooms “kid friendly” so that parents and caretakers with children can attend hearings when they lack childcare. Waiting rooms should be large enough to accommodate families.