

PERB Regulation 32142

Requests for Accommodation for Persons with Disabilities

(a) Definitions

- (1) "Persons with disabilities" means individuals covered by California Civil Code Section 51 et seq.; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); or other applicable state and federal laws. This definition includes persons who have or have had a physical and/or mental condition, disorder, or health impairment that limits one or more major life activities, have a record of such impairment, or are regarded as having such an impairment.
- (2) "Applicant" means any representative, party, witness, or other person with an interest in attending or participating in any proceeding before the Board.
- (3) "Accommodation" means actions that result in services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment devices, materials in alternative formats, readers, or certified interpreters for persons with hearing limitations; relocating services or programs to accessible facilities; or providing services at alternative sites or on alternative schedules. Although not required where other actions are effective in providing access to Board services, programs, or activities, alteration of existing facilities by the Board may be an accommodation.
- (4) "Proceeding before the Board" means any investigatory or adjudicatory proceeding before the Board, including but not limited to an informal conference, prehearing conference, or formal hearing, or any proceeding conducted by the State Mediation and Conciliation Service or Office of the General Counsel.
- (5) "Confidential information" under this Section means any medical or other health information obtained by the Board or voluntarily disclosed by the applicant, and all oral or written communications from the applicant concerning the request for accommodation.
- (6) "ADA Disability Coordinator" means the person designated by the Board itself to help coordinate responses to accommodation requests. In the circumstance set forth in subsection (b)(2), the Disability Coordinator shall render a decision on such a request ~~receive, consider, and make decisions regarding requests for accommodations in proceedings before the Board.~~

(b) Process for Requesting Accommodations

- (1) It is the intent of the Board that any person with a disability in need of accommodation in any proceeding before the Board have their request for

accommodation resolved directly by the ~~person~~ Board agent to whom the matter is currently assigned, or by the Chair of the Board if the matter is before the Board itself.

- (2) When an ~~initial request~~ requested for accommodation cannot be met or falls outside the scope of the assigned ~~person's~~ Board agent's authority, the assigned Board agent shall submit the request ~~a request for accommodation must be submitted to the ADA Disability Coordinator. In evaluating a request for accommodation, the ADA Disability Coordinator may consult with the assigned Board agent, conciliator, or Chair of the Board to determine whether the requested accommodation would fundamentally alter the nature of the service, program, or activity provided by the Board.~~
- ~~(3) A request for accommodation may be submitted on a form provided by the Board or in another written format that substantially satisfies the requirements of (b)(4) of this Section.~~
- (3) A request for accommodation must may be made orally or in writing. A written request must include: (a) the name of the case, (b) a description of the accommodation(s) sought, and (c) a statement of the limitation(s) necessitating the accommodation. -A request to continue a formal hearing as an accommodation must comply with Section 32205. The person to whom the request is submitted, in their discretion, may require the applicant to provide, with or without verification, additional information about the limitation(s) or the requested accommodation(s), including the severity of the limitation(s), and how the requested accommodation will enable the applicant to participate in the proceeding before the Board.
- (4) Requests for accommodation must be made as far in advance as possible, but no later than 21 ~~business~~ days before the requested implementation date. The person to whom the request is submitted, in their discretion, may waive this requirement.
- (5) The Board will keep confidential all information of the applicant concerning the request for accommodation unless confidentiality is waived in writing by the applicant, disclosure is required by law, or, with notice to the applicant, when the Board agent determines the disclosure is necessary to ensure the fairness of the proceeding. The applicant's identity and confidential information will not be disclosed to the public or to persons other than those involved in the accommodation process. Persons responsible for implementing any accommodation shall be made aware of all accommodation(s) granted by the Board.
- (6) ~~Permitted communication~~ Requests for accommodation under this Section must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the case proceedings before the Board.

(7) At any time during the process in which this a request for accommodation is being considered, the person to whom the case is assigned, the ADA-Disability Coordinator, or the reviewing officer in Subsection-subsection (f) may place the scheduled proceeding in abeyance or grant a continuance. No continuance or abeyance shall be granted as an accommodation without affording all parties notice and an opportunity to be heard.

(c) Response to Request for Accommodation

The ~~person to whom~~ Board shall respond to a request for accommodation is ~~submitted shall respond to the request- within 5 business 10 days_ of the request by informing the applicant~~ The response shall be in writing, or in an alternative format as may be appropriate, ~~of and must include~~ the following:

- (1) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason(s) therefore; or that an alternative accommodation is granted; and
- (2) The nature and duration of the accommodation to be provided, if any. The response shall include whether the accommodation is for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

(d) Duration of Accommodations

The accommodation provided for in the response to the request for accommodation must remain in effect for the period specified unless (1) the applicant requests that the accommodation be terminated, (2) the applicant requests and the Board approves a modification to the accommodation, or (3) the board agent determines that, in practice, the accommodation has resulted in the circumstances described in Subsection (e)(1), (e)(2) or (e)(3).

(e) Denial of Accommodation Request

A request for accommodation may be denied only when the Board determines that:

- (1) The applicant has failed to satisfy the requirements of Subsection (b);
- (2) The requested accommodation would create an undue financial or administrative burden on the Board; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity provided by the Board.

(f) Review Procedure

- (1) An applicant whose accommodation request has been denied or partially granted may seek review of the response within ~~40 business~~ 20 days of the date of the response by submitting a written request for review, including (a) the name of the case, (b) a description of the accommodation(s) sought, and (c) the reason(s) the response to the request for accommodation requires review. The response to the request for review will constitute the final response of the Board.
- (A) If the accommodation request was denied or partially granted by a Board agent ~~or conciliator~~, the applicant must submit a request for review ~~must be submitted~~ to the head of the division wherein the determination was made, i.e., the General Counsel, the Chief Administrative Law Judge, or the Director of the State Mediation and Conciliation Service, as appropriate.
- (B) If the accommodation request was denied or partially granted by any of the division heads listed in subsection (f)(1)(A) of this Section, the Chair of the Board, or the ~~ADA Disability~~ Coordinator, the applicant must submit a request for review ~~shall be submitted~~ to the Board itself. The Chair of the Board shall not participate in the review of an accommodation decision rendered by the Chair.
- (2) A final response to the request for review shall occur within ~~40- 20 business~~ 20 business days of the applicant's request. The Board agent ~~person~~ assigned to the applicant's proceeding ~~of the applicant~~ shall be notified of the final response.