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) "Disability Coordinator" means the Board agent 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.

(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 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 a requested accommodation falls outside the scope of the assigned Board agent or Chair of the Board's authority, the assigned Board agent or Chair of the Board shall submit the request to the Disability Coordinator. In evaluating a request for accommodation, the Disability Coordinator may consult with the assigned Board agent 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 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 assigned Board agent, Chair of the Board, or Disability Coordinator, 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) In general, requests should be made with as much notice as possible. If the request is made less than 10 days before the date the accommodation is needed, the applicant must state any reasons the request was not made earlier.

(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. Board agents responsible for implementing any accommodation shall be made aware of all accommodation(s) granted by the Board.

(6) 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 a request for accommodation is being considered, the Board agent to whom the case is assigned, the Disability Coordinator, or the reviewing officer in 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 Board shall respond to a request for accommodation within 20 days. The response shall be in writing, or in an alternative format as may be appropriate, 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 any of the following:

(1) The applicant requests that the accommodation be terminated;

(2) The applicant requests and the Board approves a modification to the accommodation;

(3) The Board agent determines that, in practice, the circumstances described in subsections (e)(1), (e)(2), (e)(3), or (e)(4) exist;

(4) The service, program, or activity being accommodated has concluded.

(e) Denial of Accommodation Request

A request for accommodation may be denied in whole or in part 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;

(3) The requested accommodation would fundamentally alter the nature of the service, program, or activity provided by the Board; or

(4) The requested accommodation is inconsistent with disability accommodation law as set forth in governing statute, regulation or Board or appellate court decisional law.

(f) Review Procedure

(1) An applicant whose accommodation request has been denied in whole or in part may seek review of the response within 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.

(A) If the accommodation request was denied in whole or in part pursuant to subsection (e) by a Board agent, the applicant must submit a request for review 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. The response to the request for review will constitute the final response of the Board.

(B) If the accommodation request was denied in whole or in part pursuant to subsection (e) by any of the division heads listed in subsection (f)(1)(A), the Chair of the Board, or the Disability Coordinator, the applicant must submit a request for review 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 20 days of the applicant's request. The Board agent assigned to the applicant's proceeding shall be notified of the final response.

Authority cited: Section 7470.4(c), Business and Professions Code; Sections 3509(a), 3513(h), 3524.52(a), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3599.52(a), 71639.1(b), and 71825(b), Government Code; Sections 28849(b), 40122.1(a), 98160.5, 99561(f), 100309(b), and 102399(b), Public Utilities Code; and Section 10421(e), Welfare and Institutions Code.

Reference: Section 7470.4(c), Business and Professions Code; Section 51, Civil Code; Sections 3509(a), 3513(h), 3514.5, 3524.52(a), 3524.55, 3551(a), 3555.5(c), 3541.3(g), 3541.3(n), 3541.5, 3563(m), 3563.2, 3599.52(a), 71639.1(b), and 71825(b), Government Code; Sections 28849(b), 40122.1(a), 98160.5(b), 99561(m), 99561.2, 100309(b), and 102399(b), Public Utilities Code; and Section 10421(e), Welfare and Institutions Code; title 42 section 12101, United States Code.