



The State Bar of California

845 South Figueroa Street, Los Angeles, CA 90017

Testing Accommodations Stakeholder Input Forum September 16, 2022

Input on Testing Accommodations Framework

Purpose of the Stakeholder Input Forum:

The State Bar is **seeking input on the proposed framework**, attached, for consideration of requests for testing accommodations for applicants for the First Year Law Students' Examination (FYLSX), the California Bar Examination (CBX), and the Legal Specialization Examination (LSX). We strongly encourage participants to focus their comments on the framework, and suggestions for how it could be improved or altered.

Description of the Framework:

On June 29, 2022, the State Bar conducted a forum where we heard significant concerns about the current testing accommodations process and received recommendations for improvement.

Following our evaluation of the helpful insight received, the attached framework was developed. The framework is a high-level explanation of the approach to be followed. It is intended to assure that individuals with disabilities have equal access to the FYLSX, CBX, and LSX as those without disabilities, so that the exam accurately evaluates an individual on the knowledge, skills, and abilities the exam is designed to measure, and not a reflection of the effects of any disability. The framework does not reflect the full scope of improvements the State Bar intends to implement, which will include training of staff and outside experts, streamlining of application processing, simplification of forms, improving clarity of the website and the Applicant Portal.

The draft framework attached is guided heavily by the Consent Decree arising out of *The Department of Fair Employment and Housing v. Law School Admission Council*, and the guidelines for testing accommodations issued by the United States Department of Justice.

The framework seeks to limit applicants' need to secure additional documentation or testing, relying heavily on proof of past testing accommodations on high stakes exams, and, where additional documentation is necessary, limiting it to that which is reasonable and narrowly tailored to determine the applicant's need for the requested testing accommodations.

Testing Accommodations – High Level Framework

State Bar of California Working Proposal

I. Requests for Approval of Prior Testing Accommodations

A. Prior Testing Accommodations Approved for: First Year Law Students' Exam (FYLX), California Bar Exam (CBX), or Multistate Professional Responsibility Exam (MPRE)

1. Except as specified in I.A.2, the requested accommodations, or the equivalent accommodations offered by the State Bar¹, shall **be granted if**:
 - a. The accommodation(s) were approved **within the past five years**; and
 - b. The request is for **the same** (or lesser) accommodation(s) approved for the MPRE **or** for the most recent FYLSX or CBX; and
 - c. The applicant **provides proof of the prior approval** of accommodations (for the MPRE only); and
 - d. The prior approval was **not for a limited period of time** (based on a temporary disability) which will have passed by the time of the examination for which they are requesting an accommodation; and
 - e. The **applicant certifies** that they are **still experiencing the same functional limitation(s)** caused by the disability(-ies) for which the accommodation(s) were approved.
2. Notwithstanding I.A.1, applicants will be required to provide documentation to demonstrate exceptional need (as described below), if:
 - a. The prior accommodation was for more than 50 percent additional testing time (i.e., time and one-half) and/or a private room; and
 - b. The applicant's disability is something other than a severe visual impairment.

B. Prior Testing Accommodations Approved for: A bar exam in another U.S. jurisdiction, LSAT, GRE, GMAT, MCAT, DAT, SAT I, SAT II, ACT, or GED

1. Except as specified in I.B.2, the requested accommodations, or the equivalent accommodations offered by the State Bar², shall be granted if:
 - a. The accommodation(s) were approved **within the past five years**; and

¹ The State Bar does not offer certain types of accommodations provided by other testing entities, such as stop the clock breaks. If the applicant was allowed stop the clock breaks on the MPRE, but no extra time, the State Bar shall provide extra time in a manner that roughly equates with the extra time provided by stop the clock breaks.

² See, fn 1, *supra*.

- b. The applicant has **not** taken the FYLSX, CBX, or MPRE, or has **not been approved** for, **nor denied**, accommodations for the FYLSX, CBX, and/or MPRE³; and
 - c. The request is for the **same (or lesser) accommodation(s)** approved for the most recent **bar exam in another U.S. jurisdiction, LSAT, GRE, GMAT, MCAT, DAT, SAT I, SAT II, ACT, or GED**; and
 - d. The applicant **provides proof of the prior approval** of accommodations; and
 - e. The prior approval was **not for a limited period of time** (based on a temporary disability) which will have passed by the time of the examination for which they are requesting an accommodation; and
 - f. The **applicant certifies** that they are **still experiencing the same functional limitation(s)** caused by the disability(-ies) for which the accommodation(s) were approved.
2. Notwithstanding I.B.1, applicants will be required to provide documentation to demonstrate exceptional need (as described below), if:
- a. The prior accommodation(s) was for more than 50 percent additional testing time (i.e., time and one-half) and/or a private room; and
 - b. The applicant's disability is something other than a severe visual impairment

C. Greater, Different, Additional, or Exceptional Testing Accommodations

- 1. If an applicant requests **greater accommodation(s)** than previously approved for an exam specified in I.A or I.B (**e.g., more testing time or breaks**):
 - a. The applicant must submit documentation **tailored** to support the greater accommodation(s).
 - b. The State Bar shall approve the remainder of the request, if any, for the same (or lesser) accommodation(s) previously approved.
 - c. The State Bar **shall not reevaluate whether the applicant has a covered disability** within the meaning of the ADA.
- 2. If an applicant requests **additional, different accommodation(s)** than previously approved for an exam specified in I.A or I.B (**e.g., requesting a semi-private room when the prior grant of accommodation(s) was for additional testing time only**):
 - a. The applicant must submit documentation **tailored** to support the additional, different accommodation(s).
 - b. The State Bar shall approve the remainder of the request, if any, for the same (or lesser) accommodation(s) previously approved
 - c. The State Bar **shall not reevaluate whether the applicant has a covered disability** within the meaning of the ADA.
- 3. If an applicant is requesting the same or equivalent accommodation(s) on any exam specified above except for the FYLSX or CBX, and the request is for **more than 50%**

³ An exception will be made if accommodation(s) were denied for the FYLSX or CBX in the 5 years immediately preceding the adoption of this framework.

additional testing time and/or a private room, and the applicant does not have a severe visual impairment:

- a. The applicant must submit documentation **tailored** to support the request as to their exceptional need for accommodation(s) above and beyond 50% additional testing time and/or a semiprivate room.
 - b. The State Bar shall approve the remainder of the request, if any, for the same (or lesser) accommodation(s) previously approved.
 - c. The State Bar **shall not reevaluate whether the applicant has a covered disability** within the meaning of the ADA.
4. If an applicant is requesting accommodation(s) previously approved for an exam specified in Sections I.A or I.B, but the **same or equivalent accommodation(s) are not offered by the State Bar**, the applicant must submit the documentation required under II.A, below.

II. Documentation Requirements

- A. For requests for testing accommodation(s) that do not meet the conditions specified in I.A and I.B:
1. Applicants shall be required to provide documentation that is reasonable, limited, and narrowly tailored to the information needed to determine an applicant's disability-related functional limitation(s), their specific access needs, and how those needs relate to the testing accommodation(s) requested.
 2. The documentation must establish the applicant is a person with a disability (that is, the applicant has a physical or mental impairment that causes functional limitation(s) in a major life activity as compared to most people in the general population), and as a result of that disability, the applicant does not have equal access to the FYLSX, CBX, and/or Legal Specialization Exam (LSX) under standard test conditions.
 3. Applicants and their qualified professional(s) shall have flexibility in the type and source of supporting documentation that may be provided to demonstrate their disability-related functional limitation(s), their specific access needs, and how those needs relate to the testing accommodation(s) requested.
 4. A statement of need shall be provided by the applicant and the applicant's qualified professional(s).
 5. The State Bar shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.
 6. The State Bar shall give consideration to documentation of past testing accommodation(s) received in testing situations not covered by Sections I.A and I.B.

7. The State Bar shall not reject or deny an applicant's request for testing accommodation(s) based solely on the applicant's average or above average IQ score and/or history of academic success.
8. The State Bar shall not reject or deny an applicant's request for a particular testing accommodation (including a request for a greater, additional, or different testing accommodation(s) than previously approved) solely because the applicant has no formal history of receiving that testing accommodation.
9. If the applicant is requesting more than 50% additional testing time and/or a private room, and the applicant does not have a severe visual impairment:
 - a. The applicant and the applicant's qualified professional(s) must provide a reasonable explanation of the applicant's exceptional need.
 - b. The explanation from the applicant and qualified professional(s) must include an explanation of why 50% additional testing time and/or a semi-private room are insufficient to provide the applicant with equal access to the FYLSX, CBX, and/or LSX.
 - c. All relevant data and information will be considered in determining whether the applicant has established an exceptional need.

III. Denials

- A. No denial shall be issued without elevation to the State Bar's ADA expert.
- B. Recommended denials by the State Bar's ADA expert shall be reviewed by the head of the Testing Accommodations Program or their designee before being issued.
- C. Any denials or partial approvals shall be accompanied by a report from the ADA expert explaining the reason for the denial or partial approval.

IV. Request for Review

- A. An applicant may request review of a denial or partial approval one time in advance of the exam for which they plan to sit if time permits.
- B. The review shall be conducted by a different ADA expert than the ADA expert who recommended the initial denial or partial approval.
 1. The matter shall be reviewed de novo.
 2. The applicant shall be permitted, but not required, to submit additional documentation in support of the request for review.
- C. Recommendations of the reviewing ADA expert shall be reviewed by the Director of Admissions before becoming final.
- D. There is no further right of appeal to the State Bar following this request for review.
- E. Applicants may appeal to the Supreme Court after exhausting the State Bar review process.

Note: Arrangements for Other Health-Related Conditions

The State Bar will identify a standard set of accommodations for those with certain temporary health-related conditions for which the individual is unlikely to have a prior recent history of accommodations, and for which accommodation requests tend to be fairly standard. At this time, the State Bar intends to limit this list of other health-related conditions to the following:

- Pregnancy
- Lactation / having to express milk.

Any individual with these health-related conditions, upon submission of a note from a qualified professional confirming that condition will exist at the time of the exam will be able to receive the standard set of accommodations. If the individual requires different or greater accommodations, only then will the individual be required to follow the process for requesting testing accommodations outlined herein.