



# The State Bar of California

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## OPEN SESSION

### AGENDA ITEM O-200

MARCH 2023

### COMMITTEE OF BAR EXAMINERS

**DATE:** March 24, 2023

**TO:** Members, Committee of Bar Examiners

**FROM:** Judge Robert Brody, Member, Committee of Bar Examiners  
Dr. Michael Cao, Member, Committee of Bar Examiners  
Christina Doell, Program Manager

**SUBJECT:** Action on Revisions to the Testing Accommodation Rules: Recommendation to Circulate for a Second Public Comment Period

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## EXECUTIVE SUMMARY

At its October 2022 meeting, the Committee of Bar Examiners (committee) reviewed proposed changes to the testing accommodations rules meant to clarify and streamline both the application and file review process. These proposed revisions were guided heavily by the Consent Decree arising out of *The Department of Fair Employment and Housing v. Law School Admission Council* litigation ([LSAC Consent Decree](#)), and the guidelines for testing accommodations issued by the United States Department of Justice. At the recommendation of the Committee, the Board of Trustees (Board) circulated the revisions to the testing accommodations rules for a 60-day public comment period which closed January 31, 2023.

The committee received 109 comments, 78 disagreeing with the proposal or parts of it, 15 in agreement, 14 in agreement if modified, and 2 which expressed concerns but did not identify a position.

After evaluating the comments, the working group recommends significant modifications to the proposed rules, including, among other things:

- Broadening the scope of automatic approvals by eliminating the five-year time frame and automatically approving the same testing accommodations received on other high stakes exams – regardless of the date of approval – upon proof of the testing accommodations

received and certification that the applicant is experiencing the same functional limitations.

- Eliminating the framework and folding the relevant contents into the rules.
- Returning the review/appeal process to the Committee of Bar Examiners.
- Clarifying that the State Bar will render a determination on any complete request received by the final filing deadline and will endeavor to complete the evaluation as far in advance of the exam as practicable.
- Clarifying the limitation to a single request for review is per exam cycle.
- Extending from 10 to 14 days the timeline for submitting a request for review.

Due to the significant substantive changes proposed, working group recommends the committee request the Board circulate these modified rule changes for another public comment period. Since this will be the second public comment period, staff is recommending a 45-day comment period.

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## **BACKGROUND**

After receiving feedback from applicants and members of the public during two stakeholder input forums held last year, the State Bar developed a framework aimed at streamlining the process for requesting testing accommodations. The framework sought to limit applicants' need to secure additional documentation or testing, relying heavily on proof of past testing accommodations on high stakes exams, and limited the need to secure additional documentation to that which is reasonable and narrowly tailored to determine the applicant's need for the requested testing accommodations.

In addition to developing the framework, the rules governing the testing accommodations process were revised and reorganized to improve the flow and make conforming changes based on the framework. Terminology within the rules was simplified. Definitions for "qualified professional" and "disability accommodations expert" were added for clarity. Reference to the framework was added in the form of guidelines for requesting the same or equivalent testing accommodations as those granted by other testing entities. The number of required forms was reduced to minimize the time spent by applicants collecting documentation from different sources. The process for reviewing a partial or full denial of testing accommodations was changed from review by the Committee to review by a disability accommodations expert to ensure consistency in application. The timelines for requesting accommodations were left unchanged in the rules until the new process had the opportunity to be fully implemented and it would be possible to assess how the approach would affect the length of time needed to process requests for testing accommodations.

In October 2022, the committee adopted a motion recommending the Board circulate the rule changes for public comment. Following the recommendation of the Committee of Bar Examiners, the Board circulated the proposed rule changes for a 60-day public comment period.

As part of the process of developing the initial proposal, two members of the committee – Dr. Michael Cao and Judge Robert Brody – volunteered to assist and provide guidance and direction

to staff. Reference to the working group throughout this agenda item refers to these two committee members and the staff assigned to this proposal.

A total of 109 comments were received: 78 expressed disagreement with the proposal, 14 agree if modified, 15 agree with the proposal, and 2 expressed concerns, but did not state a specific position. The working group reviewed the comments and identified improvements to the rules in light of these comments. (See Attachment A, Public Comment Chart).

## **DISCUSSION**

The working group truly appreciates the many commenters who shared their personal experiences or information about the experiences of others. Due to the number of commenters who expressed significant concern about the proposal as circulated, the working group thought it important to include an extensive level of detail in the comment chart and respond as best as possible to the many comments received.

The comment chart as set forth as Attachment A identifies each commenter, their position on the proposal (as set forth by the commenter), a summary of key issues addressing the proposal, and the working group's recommendation as to whether the comment identifies the need for a change to the proposal. To make the comment chart manageable, and because many of the comments reflected the same essential recommendations for how to improve the proposal, the working group has endeavored to distill the key issues raised in each letter/comment and include that summary in the comment chart. This was intended to enable the committee to best get a handle on the recommendations for how to improve the proposal. Staff apologizes if any commenter feels that the summary does not properly reflect the views expressed in their letter/comment. The comments provided by all commenters are included verbatim in Attachment B and the committee is encouraged to read each of the comments to provide the necessary context for each of the recommendations and the working group's proposed response to the recommendations.

Because the working group is proposing substantial amendments to the rules as circulated and because staff felt that a further re-ordering of the rules would be beneficial, the revised rules proposal does not reflect in redline the changes to the proposal circulated for public comment. Nor does it reflect in redline the changes to the existing rules. Staff felt either of those presentations would make it more difficult to understand the proposal currently put forward by the working group. In addition to the substantive changes, the working group notes that the Disability Rights Education and Defense Fund provided suggestions for improving definitions and for clarifying and simplifying the language of the current rules, many of which the working group adopted in this revision.

The modified rule revisions can be categorized at a high level as encompassing the following areas:

- Eliminating the framework and folding the relevant contents into the rules.
- Broadening the scope of automatic approvals by eliminating the five-year time frame and automatically approving the same testing accommodations received on any high stakes exam, as defined, based upon a permanent physical or mental impairment – regardless of the date of approval – upon proof of the testing accommodations received and certification that the applicant is experiencing the same functional limitations.
- While continuing to exclude certain accommodations from the automatic approval process, such as a private room, better aligning the proposal with paragraph 5(a) of the LSAC consent decree, by providing that testing accommodations will only be provided in accordance with this automatic approval process if the testing can be administered in three (3) days and does not require a private room. If the requested testing accommodations cannot be administered in three (3) days or require a private room, the request will be evaluated in the same manner as other accommodation requests that are not based on an automatic approval.
- Moving from the framework to the rules language which provides, for those who do not use the automatic approval process, documentation required is that which is reasonable, limited, and narrowly tailored to the support information required.
- Moving from the framework to the rules language which provides that the State Bar will defer to documentation from a qualified professional who has made an individualized assessment of the applicants as compared to opinions of those who have not assessed the applicant for diagnosis or treatment.
- Clarifying that the State Bar will render a determination on any complete request received by the final filing deadline and will endeavor to complete the evaluation as far in advance of the exam as practicable.
- Extending from 10 to 14 days the timeline for submitting a request for review. In addition to this change in the rules, the working group recommends that this timeline as well as the time for staff to process initial requests, be examined after the new process has been in place for two exam cycles.
- Returning the review/appeal back to the committee and clarifying that the committee's decision is not subject to further review during the *same* exam cycle.

As discussed in more detail below, there is difference of opinion between the committee and staff members of the working group as to whether accommodations approved in college or law school for timed exams should be included in the automatic approval process, with the two groups recommending different changes to the proposal that was circulated for public comment.

The most significant changes included in the modified rules proposal are described below.

## **REQUESTS FOR SAME OR EQUIVALENT TESTING ACCOMMODATIONS**

A substantial amount of comment was directed at the provisions for an automatic approval process for testing accommodations provided on other high stakes exams. As circulated for public comment, the proposal limited this automatic approval process to those accommodations received within the five years immediately preceding the request to the State Bar for testing accommodations. The proposal also imposed a sort of hierarchy, disallowing an automatic approval based on what was granted for the LSAT or other exam if the applicant was

subsequently denied accommodations on the MPRE or sat for the MPRE without accommodations. The working group agrees that the LSAC consent decree did not limit its automatic approval process to accommodations approved within the prior five-years. Although the working group believes there was a rational basis behind its initial approach, the working group now believes it more appropriate to align this provision with the approach in the LSAC consent decree, and seeks to eliminate the five-year limitation for those with a permanent physical or mental impairment. The working group also proposes that the automatic grant process apply whether or not an applicant subsequently sat for the MPRE without accommodations. The working group understands that there may be a variety of factors explaining such a circumstance, and feels that the requirement that the applicant certify under penalty of perjury that they continue to experience the same functional limitations and need the same accommodations is sufficient.

The working group continues to recommend the need for documentation to support a request for a private room or a request that would lead to an extension of the two-day exam to more than three-days. The proposal was modified to mirror the language of paragraph 5(a) of the LSAC consent decree more closely, by providing that testing accommodations will only be provided in accordance with the automatic approval process if the testing can be administered in three (3) days and does not require a private room. If the requested testing accommodations cannot be administered in three (3) days or require a private room, the request will be evaluated in the same manner as other accommodation requests that are not subject to the automatic approval process, and qualified professional certification shall include an explanation of why accommodations that allow for testing in three (3) days or fewer, or in a semi-private room, are insufficient.

### **Same or Equivalent Testing Accommodations Approved in Law School**

The working group had a robust discussion in response to comments proposing that the same test accommodations granted in college or law school should also be automatically approved for the bar exam. The committee members of the working group, convinced by the communication from several law school deans, recommend folding into the automatic approval process prior accommodations granted in law school for timed exams. The working group notes that to the extent the State Bar is unsure of the rigor used by all law schools in evaluating requests for testing accommodations, the committee can exercise greater oversight of this issues – at least with California Accredited Law Schools and California registered law schools – in its capacity as accreditor / regulator. Staff who participated with the working group, on the other hand, argued that the State Bar simply cannot be sure of the consistency and rigor with which every college, university, or law school evaluates testing accommodation requests, nor the extent to which accommodations are approved only to the extent required by the law. Staff do however feel that greater deference than the proposal currently calls for is appropriate. The rule proposal contains two options for the committee’s consideration, one that includes in the automatic approval process testing accommodations approved in law school for timed exams, and one that adopts language from paragraph 5(d)(ii) of the LSAC Consent Decree that considerable weight will be given to documentation of past testing accommodations approved for college or law school exams.

## **DOCUMENTATION REQUIREMENTS**

Moved from the framework to the rules is language which provides that applicants not subject to the automatic approval process are required to submit documentation that is reasonable, limited, and narrowly tailored to the information needed to determine the applicant's disability-related functional limitations, their specific access needs, and how those needs relate to the testing accommodations requested.<sup>1</sup>

The rules also now incorporate the concept previously in the framework to limit documentation required for an applicant requesting greater testing accommodations than previously approved for a high stakes exam. In such a case, the applicant need submit documentation that encompasses the need for all accommodations. Instead, the State Bar shall, using the automatic approval process, approve the same accommodations as previously granted, and shall only require submission of certification by a qualified professional and supplemental documents necessary to support the greater accommodations requested.

## **TIMELINES**

### **Submission of Request**

Many commenters suggested that the rules should require the State Bar to review and act on a request for testing accommodations within two weeks of receipt. The working group continues to believe it is premature to commit to a two-week review timeframe at this time. According to State Bar staff, the concept of automatic approvals was rolled into consideration of requests for the February 2023 bar exam, enabling more rapid processing of requests for testing accommodations. With the expansion of this process (as described above), and rolling out the new forms and the rest of the process, staff believe that determinations will be able to be processed more expeditiously. As a result, although not recommending adopting a two-week time frame at this time, the working group recommends revisiting the timeline after the process has been fully implemented for two exam cycles.

The working group does believe that the amendments that were circulated for public comment inadvertently removed some language about timely processing of requests for testing accommodations. The working group therefore proposes to amend the rule to clarify that the State Bar will render a determination on any complete request received by the final filing deadline, and will endeavor to complete the evaluation as far in advance of the exam as practicable.

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<sup>1</sup> The rules language posted on Friday, March 17, 2023, inadvertently omitted a specific reference to the documentation being reasonable, limited, and narrowly tailored. That language has been incorporated as the last sentence in subsection (B) of rule 4.85.

## **Timeline for Requests for Review**

Although the working group disagrees with the timeframe many commenters suggest for applicants to submit a request for review, the working group does recommend a small increase to the current time, extending it from 10 to 14 days.

## **HANDLING OF REQUESTS FOR REVIEW**

The proposal as circulated for public comment moved the review (referred to as an appeal in the current rules) from the Committee of Bar Examiners, to review by an independent disability accommodations expert. The intent was to ensure that requests for testing accommodations are handled consistently, in accordance with the governing law, and not based on personal experiences or biases. This change was also expected to shorten the timeline for applicants to receive decisions.

The working group believes there was a lack of clarity in the rule proposal that was circulated. For example, the rules should have expressly stated that when the Director of Admissions reviews the report of the independent testing accommodations expert, the review is for the limited purposes of ensuring consistent application of the rules, that the expert provided a comprehensive response and considered all supplemental material, used appropriate language, etc. The Director would not have the authority to deny a request for which the testing accommodations expert recommends approving, or to otherwise lessen or eliminate recommendations made by the testing accommodations expert.

Nonetheless, in response to the public comment, the working group proposes to revert the review process back to review by the committee. However, to increase the speed of consideration and decision making and to ensure consistency, the working group recommends amending the rule to delegate the decision making solely to a subcommittee to consider these requests, and that the independent testing accommodations expert provide a recommendation to the subcommittee for its consideration.

The working group also recommends fixing an error in the rules circulated for public comment by specifying that requests for review was limited to once *per exam cycle*. Due to the volume of requests received, and the short time frame in which to process them, the working group believes that allowing multiple opportunities to request review creates an unfair situation for all applicants. If applicants have multiple requests, it could result in limited resources being assigned disproportionately to one applicant while another has not had the opportunity to receive a timely decision. However, the rules were not intended to suggest that an applicant denied testing accommodations for one administration of an exam is prohibited from seeking those or other accommodations in the future.

Committee oversight remains essential to ensure that staff is carrying out the process consistent with the rules and framework, that the goals of the revised process are achieved, and that focused attention is given to the impact of the changes in the process. The working group recommends that State Bar staff incorporate quality control measures to ensure that the

rules and framework are applied both to the letter and consistent with the spirit in which they are adopted – to improve disability access.

### **ELIMINATE THE FRAMEWORK; INCORPORATE LANGUAGE INTO THE RULES**

The framework was originally drafted to capture the key elements of how the State Bar proposed to handle requests for testing accommodations. It was a way to highlight the new proposal without conducting a word-by-word comparison to the rules. Once the framework was completed, staff realized that much of the process improvements are not changes to things already set forth in the rules, but rather the process used to implement the rules. With that in mind, staff did not feel it necessary to incorporate much of the language in the rules. A substantial number of commenters argued that important concepts that govern the process of handling testing accommodations should be memorialized in the rules, including the automatic approval process, the deference to be given to a qualified professional who had conducted an individualized assessment of the applicant, and the limitation on supplemental document required to that which is reasonable, limited, and tailored to the information needed. This recommendation stemmed from concern that if not included in the rules, staff could change the framework without input to the detriment of applicants. Although the working group believes there are many ways to ensure accountability and transparency and to ensure that changes made in the future are appropriately vetted, the working group is recommending that the framework be eliminated. The proposed rules now include the concepts previously set forth in the framework.

### **AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA**

Repeal Title 4, Division 1, Chapter 7 (commencing with Rule 4.80), and add new Title 4, Division 1, Chapter 7 (commencing with Rule 4.80).

### **FISCAL/PERSONNEL IMPACT**

As noted in the Discussion section, staff believe that the adoption of the automatic approval process, in conjunction with the new forms and updated information to applicants and qualified professionals will result in the ability to process requests more expeditiously. Having final determinations in place with more time before the administration of the exam should result in fewer instances of confusion at the exam site as to the accommodations for which applicants have been improved. If the reliance on prior testing accommodations is significant, there could be a reduction in staff needed to process these requests.

We are unable to estimate at this time the impact these changes will have on number of accommodations provided and the resources needed to implement those accommodations. Staff will keep the committee informed as to these issues as experience is gained with handling testing accommodation requests consistent with these rules.



## RECOMMENDATIONS

It is recommended that the Committee of Bar Examiners request the Board of Trustees circulate the modified rule revisions for a 45-day public comment period. The working group recommends circulation of the rule proposal that incorporates into the automatic approval process those testing accommodations approved by law schools for timed exams. Staff recommend circulation of the rule proposal without including law school testing accommodations in the automatic approval process. It is further recommended that the committee act on the recommendation described in the Discussion section above to revisit the timelines after the new process has been in place for two (2) full exam cycles. By acting now, the committee is unlikely to inadvertently lose track of this amendment.

## PROPOSED MOTION

Should the Committee of Bar Examiners agree with the staff recommendation, the following motion would be appropriate:

- A. MOVE** that the Committee of Bar Examiners recommends to the Board of Trustees to circulate for a 45-day public comment period, the revisions to the Chapter 7 Rules of the State Bar set forth in Attachment F which incorporate into the automatic approval process those testing accommodations approved by law schools for timed exams.

OR

- B. MOVE** that the Committee of Bar Examiners recommends to the Board of Trustees to circulate for a 45-day public comment period, the revisions to the Chapter 7 Rules of the State Bar set forth in Attachment F which give considerable weight to testing accommodations approved by law schools for timed exams, but do not incorporate them in the automatic approval process.

AND

- C. MOVE** that the committee directs, should these rules be enacted, that staff return to the committee after the rules have been implemented for two (2) full exam cycles to explore adjusting the timelines in the rule.

## ATTACHMENTS LIST

- A. Public Comment Summary Chart
- B. Public Comments
- C. Rules Proposal as Circulated for Public Comment
- D. Framework as Circulated for Public Comment
- E. Forms as Circulated for Public Comment
- F. Revised Rules Proposal following Public Comment

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
1	Heather Borlase	DISAGREE with the proposed recommendations	<ol style="list-style-type: none"><li>1. Require the State Bar to respond to a request for accommodations within two weeks of receipt. The proposed rules eliminate or extend existing deadlines.</li><li>2. Retain the Committee of Bar Examiners as the reviewer/appellate body.</li><li>3. Extend from 10 to 30 days the time frame for an applicant to request a review/appeal of a denial or approval with modifications.</li><li>4. Allow multiple reviews/appeals within the same exam cycle and be clear that a new request can be made in subsequent exam cycles.</li><li>5. Commit the State Bar to increasing the number and diversify the expertise of expert consultants.</li><li>6. Commit the State Bar to training of staff and consultant reviewers including on the need to approach the process with the presumption that the testing accommodation request is justified.</li><li>7. Eliminate the 5-year threshold for automatic grants of the same testing accommodations previously approved for prior standardized tests, and include this in the rules rather than the framework</li><li>8. Eliminate language that would prevent the automatic grant of prior testing accommodations if, despite these prior accommodations, no accommodations were subsequently requested or approved for the MPRE</li><li>9. Eliminate the exception to the automatic grants that would require information/documentation from a qualified professional to support a request for a private room or more than 50% extra time.</li><li>10. Automatically grant the same testing accommodations the candidate received in college or law school.</li><li>11. Require in the rules, not the framework, that deference, or more weight be given to documentation provided by a qualified</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. The working group agrees on the importance of timely evaluating requests for testing accommodations and <b>proposes to amend the rules</b> to clarify that the State Bar will render a determination on any complete request received by the final filing deadline, and will endeavor to complete the evaluation as far in advance of the exam as practicable. The working group does not believe it is appropriate to commit to a two-week review at this time while we are rolling out this revised process, however recent experience suggests that the use of the automatic approvals for accommodations approved on previous exams will result in considerably more expedited determinations. The recommended expansion of that approach, as described in paragraph 7, below, will further streamline the process. <b>The working group recommends</b> that the identification in the rules of a time frame for completion of the evaluation be revisited after the new process (including forms) are fully implemented for two exam cycles).</li><li>2. The working group believes that lack of clarity in the rule proposal may have contributed to this recommendation, as this comment seems to suggest there is not an independent review/appeal in the current proposal. The proposal does call for a review by a disability accommodations expert not previously involved in evaluating the request for testing accommodations. The working group acknowledges that if the review process were to remain as set forth in the current proposal, Rule 4.90 would need to be amended to clarify that the Director of Admissions shall not have the authority to deny a request for which the testing accommodations expert recommends approval, or to otherwise lessen or eliminate recommendations made by the testing accommodations expert. These staff reviews are to ensure consistent application of the rules, that the expert provided a comprehensive response and considered all supplemental material, used appropriate language, etc. This review could result in increasing, not decreasing, the accommodations recommended by the testing accommodations expert. The working group also believes that the review process set forth in the proposal will do more to streamline the</li></ol>

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
			<p>professional who has conducted an individualized assessment of the applicant as opposed to the State Bar consultant.</p> <p>12. Include in the rules the language from the framework that limits supporting documentation to that which is reasonable, limited and narrowly tailed to the information needed.</p> <p>13. Include an assessment of leadership and chain of command for reviewing and evaluating requests for testing accommodations to ensure they are wholeheartedly committed to disability equality and embrace testing accommodations as a core component of equal opportunity.</p>	<p>processing of appeals than reverting to review/appeal by the Committee. Nonetheless, in response to the public comment, <b>the working group proposes to amend the rules</b> to return the review / appeal back to the Committee of Bar Examiners. However, to increase the speed of decision making, the working group recommends the rule require the Committee to delegate the decision making solely to a subcommittee to consider these requests to ensure consistency, and that the independent testing accommodations expert provide a recommendation to the subcommittee for its consideration (in other words, decisions on these matters will not come before the full committee).</p> <p>3. The working group disagrees with this recommendation as 30 days is not feasible in the limited time there is between the application deadline and the bar exam, even if the State Bar committed to issuing the initial determination in the two-week timeframe recommended by the commenter. For the July 2023 bar exam, for example, those dates would play out as follows:</p> <ul style="list-style-type: none"><li>• If application were received on the last day to apply: June 1</li><li>• Initial determination: June 15</li><li>• 30 days to request review/appeal: July 17 (the 30<sup>th</sup> day falls on a Saturday, so extended to Monday, July 17)</li><li>• Bar Exam begins: the following Tuesday.</li></ul> <p>Under that scenario, there would be insufficient time to get all supplemental materials to the testing accommodations expert, have the expert conduct the review and write a report, present the appeal to the Committee of Bar Examiners, notify applicants, and make arrangements for space at the appropriate test centers, or secure equipment required.</p> <p>The working group understands and is sensitive to the fact that applicants may sometimes not be in a position to apply for testing accommodations earlier than the last day of the application period; the intent of the revised process is to streamline and truncate the process as much as possible to enable much quicker processing of requests.</p>

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
				<p>Additionally, the working group notes that the forms and process identified in the framework are intended to significantly reduce the burden on applicants, requiring much less documentation than has been required or was perceived to be required in the past. The qualified professional form sets forth the road map for issues that need to be addressed for the consideration of the request. This should reduce the amount of time necessary to secure the required information. <b>The working group does recommend amending the rules</b> to extend the 10-day time frame to submit a request for review/appeal to two weeks (14 calendar days). The working group recommends that this timeline also be examined after the new process has been in place (with all the forms, etc.) for two exam cycles.</p> <p>4. The working group disagrees that multiple reviews should be made available during the same exam cycle. The working group apologizes for the lack of clarity in rule 4.90 that has been read to suggest there may be no ability to challenge that finding in a second or subsequent exam cycle. <b>The working group proposes to amend the rules</b> to clarify that the decision is not subject to further review by the State Bar during the <i>same</i> exam cycle.</p> <p>5. <b>The working group disagrees</b> that a change to the rules is required. The revised process represents a significant change in the approach currently undertaken. Currently, State Bar staff review the request and typically refer the matters to medical professionals for recommendation. Under the revised process, the State Bar will largely be relying on a disability accommodations expert – someone with education and experience in disability accommodations and the ADA. This expert will refer matters when needed to medical professionals, although this is envisioned as being required in only a small percentage of matters. The disability accommodations expert will ensure that any medical professionals with whom the State Bar contracts are appropriately trained in the process being employed.</p> <p>With the new approach, which includes automatic grants of many past</p>

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
				<p>accommodations, and the specific roadmap of information needed to make a decision, we anticipate that the State Bar’s need to consult with medical professionals will be significantly reduced.</p> <p>6. The working group agrees that training and quality control measures are necessary tools to ensure that requests for testing accommodations and requests for review are handled timely, properly, and without bias; and that the rules established to ensure equal access to the exam, and to limit the need for documentation to that which is reasonable, limited, and narrowly tailored to the information needed, are complied with. <b>The working group disagrees that a commitment to accomplish this should be included in the rules.</b> The oversight process described in Rule 4.93 will provide the Committee insight into how these matters are being handled.</p> <p>7. The 5-year time limit was derived from the LSAC consent decree’s timing for the recency of testing used in support of a request for testing accommodations based on a mental or cognitive impairment. The consent decree provided that candidates may submit documentation of testing conducting with five years of the date of the request for accommodations. Although the working group believes this was a legitimate basis on which to select the 5-year timeline, the working group has determined it is appropriate that this provision be more aligned with the approach adopted by the LSAC consent decree. The working group is further convinced by the arguments that a 5-year timeline would increase the burden on applicants who have previously demonstrated the need for testing accommodations in similar high-stakes testing conditions. <b>The working group therefore recommends amending the proposal</b> to eliminate the 5-year limitation.</p> <p>8. For the same reasons articulated in response to number 7, above, <b>the working group recommends amending the proposal</b> to eliminate the distinction between the MPRE and other standardized tests and clarify that the applicant is eligible – through this automatic approval process - for the same or equivalent testing accommodations as those granted on any of the</p>

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
				<p>standardized tests identified so long as the applicant submits proof of the approval of those accommodations and certifies that they are still experiencing the same functional limitations, except as specified.</p> <p>9. <b>The working group disagrees with eliminating this provision, however, the working group recommends amending the proposal</b> to more closely mirror the language of paragraph 5(a) of the LSAC consent decree, by providing that testing accommodations will only be provided in accordance with this automatic approval process if the testing can be administered in 3 days and does not require a private room. If the requested testing accommodations cannot be administered in 3 days or requires a private room, the request will be evaluated in the same manner as other accommodation requests that are not based on an automatic grant. (Under the LSAC consent decree, if the accommodations result in the test not being able to be administered in one-day, the request is evaluated in the same manner as other requests.) In this case, the documentation is only required to support that part of the request that would require the testing be administered in more than 3 days or require a private room.</p> <p>10. The working group is convinced by this comment and the communication from several law school deans in particular (see comment 5, below) that greater deference be granted to accommodations granted by U.S. law schools for timed exams. <b>The working group recommends</b> that deference be demonstrated by providing for the same automatic grant process as is proposed for high stakes exams.</p> <p>Staff has also been convinced that greater deference than the proposal currently calls for is appropriate, but alternatively <b>recommends amending the proposal</b> to adopt language from paragraph 5(d)(ii) of the LSAC Consent Decree that <b>considerable weight</b> be given to documentations of past testing accommodations approved for college or law school exams.</p>

Public Comment Chart

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				<p>The State Bar is unable to guarantee the consistency and rigor with which every college, university, or law school evaluates testing accommodation requests. Thus, staff does not believe an automatic grant of the same testing accommodations is appropriate. The Committee will need to determine which alternative to move forward.</p> <p>11. The working group appreciates the support for the language currently in the framework that the “State Bar shall defer to documentation from a qualified professional who has made an individualized assessment of the candidate that supports the need for the requested testing accommodation(s).”</p> <p>As to the vehicle of the framework, the working group believes there are many ways to ensure accountability and transparency and to ensure that changes made in the future are appropriately vetted, however, in response to the public comment, <b>the working group recommends</b> eliminating the framework and incorporating the key elements in the rules proposal.</p> <p>12. Consistent with the response to number 11, above, the working group agrees with this comment and <b>recommends amending the rules</b> to include this language.</p> <p>13. The working group thanks the commenter for this suggestion. Although <b>the working group disagrees</b> that this should be included in the rules, <b>the working group recommends</b> that State Bar staff incorporate this important issue as part of regular quality control measures to ensure that the rules and framework are applied both to the letter and consistent with the spirit in which they are adopted – to improve disability access.</p>

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
2	C. Leah Kennedy	DISAGREE with the proposed recommendations	1.	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. The proposal under consideration reduces the number of forms and is intended to significantly reduce the amount of documentation required.</li><li>2. The State Bar apologizes that the applicant did not receive the level of customer service to which we aspire. The proposed forms and process are intended to provide a road map to assist applicants and qualified professionals, where applicable, to understand what information the State Bar requires to determine that an accommodations request should be approved.</li><li>3. The proposal is intended to streamline the process and reduce the documentation that is required to establish the need for testing accommodations.</li></ol>
3	Brandy Price	DISAGREE with the proposed recommendations	<ol style="list-style-type: none"><li>1. A legal profession that includes, welcomes, and licenses lawyers with disabilities is better equipped to serve Californians.</li><li>2. Testing accommodations provide an equal opportunity by allowing people with disabilities to demonstrate the knowledge and abilities tested on the exam, rather than leading to results which reflect the disabilities themselves.</li><li>3. Same as Comment 1, line 11</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. The working group agrees with the commenter. The State Bar is committed to enhancing diversity, equity, and inclusion in the profession as evidenced by the 2022-2027 Strategic Plan which emphasizes DEI. The working group values diversity of the profession in general and agrees that the public benefits from a profession that welcomes licenses lawyers with disabilities.</li><li>2. Agree.</li><li>3. See response to Comment 1, line 11.</li></ol>
	Leonor Vanik / National Coalition for Latinxs with Disabilities (CNLD)	DISAGREE with the proposed recommendations	Same as Comment 1	See response to Comment 1.
5	Deans Caron, Chemerinsky, Cianciarulo, Crawford, Dickerson, Easley, Faigman, Freiwald, Guzman, Hunter Schwartz, Johnson, Kaufman, Korobkin, Martinez, Schapiro, Scott, and Waterstone /	DISAGREE with the proposed recommendations	<ol style="list-style-type: none"><li>1. Accommodations law school provide are designed to create equity; to give students with disabilities an equal opportunity to demonstrate their knowledge and aptitude. These accommodations do “nothing to disadvantage our students without disabilities.”</li><li>2. Current process too restrictive</li><li>3. Same as Comment 1, line 7, 8, 10, 11</li><li>4. Timeline to respond to a request for accommodations (“within 60 days of a request) is too long, effectively denying the ability to seek review or take steps to make up for the denial.</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. See response to Comment 1, line 10.</li><li>2. The proposal is intended to streamline the process, clarify what information needs to be provided to establish the need for testing accommodations, and give deference to findings of a qualified professional who conducted an assessment of the applicant.</li><li>3. See response to Comment 1, lines 7, 8, 10, and 11.</li><li>4. See response to Comment 1, line 1.</li><li>5. See response to Comment 1, line 11.</li><li>6. See response to Comment 1, line 11.</li></ol>



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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
	Deans of 16 California Law Schools		<div>5. The State Bar should give significant deference to qualified professional’s individualized assessment of a person with disabilities, and that standard should be incorporated in the rules, not the framework.</div> <div>6. The changes to the process should be reflected in the rules, not the framework which could be amended by staff at any point without public comment.</div>	
6	Emily Alpert / Disability and Mental Health Network, Stanford Law; Disabled Students Association, Berkeley Law; Law Students for Accessibility, Duke Univ Law School; Disabled Law Students Assoc., Harvard Law School; Disability Law Society, Northwestern Pritzker School of Law; Disable Law Students Assoc, Santa Clara Law; Disability Justice Coalition, Vanderbilt Law School; Disability Law Society, ULCA Law; Disability Rights, Advocacy, Community, Univ of Chicago Law School; Advocates for Disability Rights, UVA Law; Disabled Law	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.

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	Students Assoc, Yale Law School			
7	Anonymous	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
8	Jordan Berger / National Disabled Legal Professionals Association	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
9	Linnea Nelson / Impact Fund and ACLU Foundations of Northern California, Southern California, and San Diego and Imperial Counties, and ACLU California Action	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
10	Anonymous	DISAGREE with the proposed recommendations	Same as Comment 1. The State Bar has effectively ensured that those who are wealthy will be able to receive accommodations,” while others who are not do not.	The working group thanks the commenter for their input. See response to Comment 1.
11	Chelsea Yuan / UC Berkeley School of Law	DISAGREE with the proposed recommendations	1. Appreciate the effort to streamline the process for applicants who are seeking accommodations consistent with those received on standardized tests in the past 5 years. The same consideration should be given to timed law school final exams.  Unlike the MPRE which is a single subject, wholly multiple choice exam, accommodations received for lengthy exams in law school is far more indicative of whether they need accommodations for the exam.	The working group thanks the commenter for their input 1. See response to Comment 1, line 10. 2. The State Bar’s use of the terms “general population” and “unable to access” is consistent with how those terms are used in the Americans with Disabilities Act (ADA) and its implementing regulations. 3. See response to Comment 1, line 3.

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
			<div>2. Definitions are needed for “general population” and “unable to access” – terms used in defining individuals with disabilities who may qualify for testing accommodations</div> <div>3. Same as Comment 1, line 3 re: timeline for requesting review/appeal, or in the alternative, make it 10 business days.</div>	
12	Areta Guthrey	DISAGREE with the proposed recommendations	The current system violates the ADA, due process and equal protection clauses of the federal Constitution and California law.	The working group thanks the commenter for their input. The intent of the proposal that was circulated for comment is to improve the current process, and to do so in accordance with any legal requirements
13	Claudia Center / Disability Rights Education and Defense Fund, Legal Aid at Work, and Disability Rights Advocates	DISAGREE with the proposed recommendations	Same as Comment 1; with Attachments proposing specific language for rule amendments.	The working group thanks the commenter for their input. See response to Comment 1. The working group appreciates the commenters’ helpful suggestion for alternative rule language, much of which the working group is recommending adoption, see Attachment F.
14	Chris Vu / The Coelho Center for Disability Law, Policy & Innovation	DISAGREE with the proposed recommendations	Same as Comment 1, absent the recommendation to restore the right to request review to the Committee of Bar Exams, but noting the rule burdens candidates who still seek requested accommodations to make an appeal to the Supreme Court.	<div>The working group thanks the commenter for their input. See response to Comment 1, with the exception of line 2.</div> <div>The working group believes that lack of clarity in the rule proposal may have contributed to this comment about the request for review having to go to the Supreme Court. This comment seems to suggest there is not an independent review/appeal in the current proposal. The proposal in fact calls for a review by a disability accommodations expert not previously involved in evaluating the request for testing accommodations. The proposal simply substituted the review by the Committee for a review by the independent disability accommodations expert. The next steps after such review remain unchanged. Nonetheless, as noted in response to Comment 1, line 2, the working group recommends returning the review by the Committee.</div>
15	Robin Miller	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
16	Kendra J. Muller / Disability Rights California	DISAGREE with the proposed recommendations	<div><div>1. High stakes, standardized tests are insufficient indicators of intelligence or merit or employment success.</div><div>2. The State Bar must analyze the assumptions and process of current employees who review requests for accommodations. Language of the current application suggests the reviewers have a negative view of those who request accommodations and assume individuals are ‘posing’ as a person with a disability.</div><div>3. Same as Comment 1, line 10</div><div>4. Rules should ensure an interactive process between the applicant and the State Bar, providing for effective opportunities for communications.</div><div>5. Processing of requests must be more timely, and the timelines specified must be less vague.</div><div>6. Exam policies, bulletins, and materials describing things such as the logistics of the exam and items allowed during the exam must be communicated in tandem with the accommodations timeline.</div><div>7. Policy and procedures to implement the accommodation on the day of the exam must be in place to give all students notice and an equal opportunity to take the Bar exam without additional stress. This includes training of staff and proctors as to the accommodation process and how the specific accommodations of applicants will be implemented.</div><div>8. Current process has overinclusive and invasive questions. The State Bar should be focusing on analyzing the disability’s nexus to the accommodation.</div><div>9. Greater clarity is needed as to the qualifications of the disability accommodations expert who will be evaluating many of the requests and the appeals.</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. This comment is beyond the scope of the rules revision.</div><div>2. The working group agrees that training and other measures are necessary to ensure that requests for testing accommodations and requests for review are handled appropriately and without bias; and that the rules established to ensure equal access to the exam, and to limit the need for documentation to that which is reasonable, limited, and narrowly tailored to the information needed, are complied with. The working group believes the proposed rules and forms are a better indication of the intent of the State Bar than the current application that is being eliminated with this new process.</div><div>3. See response to Comment 1, line 10.</div><div>4. As required by the ADA, the State Bar provides an individualized assessment for all applicants submitting a request for testing accommodations or request for review. Communications between the applicant and State Bar staff are an important part of that individualized assessment process. The State Bar believes that the changes to the rules proposed in response to the comments will significantly streamline the process for all applicants requesting testing accommodations so that more resources can be allocated to communicating with applicants whose requests are more complex.</div><div>5. The working group agrees on the importance of timely evaluating requests for testing accommodations and <b>proposes to amend the rules</b> to clarify that the State Bar will render a determination on any complete request received by the final filing deadline, and will endeavor to complete the evaluation as far in advance of the exam as practicable. The working group does not believe it is appropriate to commit to a more specific timeline for a response at this time while we are rolling out this revised process, although experience is demonstrating that use of even a narrower automatic approval process for some requests granted for high stakes exams will make the processing more timely. <b>The working group recommends</b> that the identification in the rules of a time frame for completion of the evaluation be revisited after the new process (including forms) are fully implemented for two exam cycles).</div></div>

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				<div>6. Agree. The State Bar intends to include along with the instructions to complete the new forms (which entirely replace the current forms) information which provides provide greater details about the conditions during the bar exam, such as those things noted by the commenter. The working group notes that the list of allowable items specifically raised by the commenter, is currently posted online when the bar exam application opens. However, staff can duplicate this information specifically to the TA webpage for applicant convenience.</div> <div>7. The working group agrees that every effort must be made to ensure the approved accommodations are delivered without incident and all proctors are properly trained.</div> <div>8. The revised forms ask very specific questions, that are designed to understand that nexus. The proposal specifies that documentation required shall be reasonable, limited, and narrowly tailored.</div> <div>9. The working group agrees more clarity should be provided as to the qualifications to serve as the disability accommodations expert. The <b>working group recommends amending the rules</b> to strengthen the definition of this term, and specifying that a “disability accommodations expert” is a qualified professional with a doctoral degree or Ph.D who possesses knowledge of testing accommodations practices and procedures in exam settings, the Americans with Disabilities Act requirements relating to testing accommodations, and a minimum of five years’ experience in reviewing requests for testing accommodations for certification or licensure.</div>
17	Jack Londen / California Access to Justice Commission	Concerns	<div>1. Revise the current process so that accommodation requests can be addressed in a more timely manner; proposed rule extends or eliminates existing deadlines.</div> <div>2. Same as Comment 1, lines 3, 7-11</div>	<div>The working group thanks the commenter for their input.</div> <div>1. See response to Comment 1, line 1.</div> <div>2. See response to Comment 1, line3, 7-11.</div>
18	Brandie Solovay / Independent Living Resource Center San Francisco	DISAGREE with the proposed recommendations	Same as Comment 1.	<div>The working group thanks the commenter for their input.</div> <div>See response to Comment 1.</div>

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
19	Taylor Miller	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
20	Carol A. Wilson / University of San Francisco School of Law	DISAGREE with the proposed recommendations	Same as Comment 1, absent line 4.	The working group thanks the commenter for their input. See response to Comment 1, line 1-3, 5-13.
21	Katelyn French	DISAGREE with the proposed recommendations	Same as Comment 1, lines 7-13	The working group thanks the commenter for their input. See response to Comment 1, lines 7-13.
22	Evan Mantler	DISAGREE with the proposed recommendations	<div><div>1. The rules should streamline how people with disabilities can secure accommodations.</div><div>2. The rules should enable review of accommodations in a neutral, fair, and timely way.</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. This proposal seeks to accomplish precisely what the commenter is recommending.</div><div>2. This proposal seeks to accomplish precisely what the commenter is recommending.</div></div>
23	Christina Barretti-Sigal	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
24	Thomas Walker	DISAGREE with the proposed recommendations	<div><div>1. Should not require updates to documentation reflecting a permanent disability.</div><div>2. The proposal does not address the physical impairment of Macular Degeneration.</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. The working group agrees that the documentation requirements should be reasonable and limited. The automatic approval process as proposed and as further proposed to be expanded as described in response to Comment 1, lines 7 and 8, are just one way in which this will be accomplished. However, to ensure timely processing of complaints, in those situations in which documentation is required, the working group believes that a qualified professional needs to specifically address the questions that are set forth in the framework that was posted and in the qualified professional form. Currently some applicants submit voluminous medical records in support of their applications and the State Bar is required to review those documents to determine whether they contain the relevant information. The purpose of the qualified professional form is to limit the scope of information an applicant</div></div>

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				<p>needs to provide and to facilitate timely and fair review by the State Bar. Additionally, the working group notes that questions 2 and 4 of Section 2 on the Qualified Professional Certification Form to ask if the applicant was examined by a qualified professional within the past 5 years or after the age of 13 for the disability for which the applicant is seeking testing accommodations. Although answering no to these questions is not automatically disqualifying, the State Bar is proposing to amend the draft form to eliminate the references to “within the past five years” or “after you turned 13 years old.”</p> <p>2. The proposal not intended to be disability-specific, but broad enough to allow it to apply to any functional limitations which impact an applicant’s ability to access the exam on an equal basis.</p>
25	Kathleen J Becket	DISAGREE with the proposed recommendations	<p>1. Reduce the exam fee for low income applicants who are required by the Bar to produce the results of specialized testing to demonstrate the need for an accommodation, otherwise applicants are being excluded from the exam based on disability and socio-economic status</p> <p>2. Same as Comment 1, lines 5, 7-10 (for individuals with permanent disabilities), 11, 13</p> <p>3. Rules should give weight to accommodations received in law school, which is an acknowledgment that law schools are equally invested in fairness and have engaged in their own diligence in assessing the need for accommodations.</p> <p>4. The review and appeals process should be more timely.</p> <p>5. The proposal should include a voluntary peer review committee composed primarily of attorneys previously granted testing accommodations</p>	<p>The working group thanks the commenter for their input.</p> <p>1. Unfortunately, the State Bar is not in a position to reduce exam fees for applicants. However, the new process is intended to limit the need for new testing. The amendments recommended in response to Comment 1, line 7-10 would increase the ability to get approved for accommodations without current documentation. Additionally, as described in response to Comment 24, line 1, there is no requirement for specific testing outside the automatic grant process, but rather that a qualified professional be able to complete the form and respond to the specific questions asked.</p> <p>2. See response to Comment 1, lines 5, 7-10, 11, and 13.</p> <p>3. See response to Comment 1, line 10.</p> <p>4. The working group agrees on the importance of timely evaluating requests for testing accommodations, and recent experience suggests that the use of the automatic approvals for accommodations approved on previous exams will result in considerably more expedited determinations. The working group also believes that the review process set forth in the proposal will do more to streamline the processing of appeals than reverting to review/appeal by the Committee. Nonetheless, in response to the public comment, <b>the working group proposes to amend rule the rules</b> to return the review / appeal back to the Committee of Bar Examiners.</p>

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				5. It is unclear how the commenter believes this committee would be utilized. It would not be appropriate to include such a committee in the review of requests for accommodations.
26	Reem Yassin	DISAGREE with the proposed recommendations	<div><div>1. Should not give greater weight to proof of past testing accommodations on high stakes exams than weight afforded to recommendations of professional examiners</div><div>2. Same as Comment 1, line 11.</div><div>3. The proposal should not make it more difficult to get accommodations.</div><div>4. State Bar staff should all be psychiatrists, psychologists, and medical doctors.</div><div>5. Appeals of denials should allow for a meeting of the applicant’s qualified professional and the reviewer/reviewing entity.</div><div>6. Must allow for an appeal.</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. The proposal does not give greater weight to accommodations received on standardized tests than to recommendations of qualified professionals. Rather, the proposal simplifies the process for those who are seeking the same accommodations as those received on a prior exam to eliminate the need to secure additional documentation from qualified professionals.</div><div>2. See response to Comment 1, line 11.</div><div>3. The working group notes that the intent of the proposal is to streamline and simplify the process for requesting testing accommodations.</div><div>4. Disagree. As described above in response to Comment 1, the process directs requests that require expert review to a disability accommodations expert.</div><div>5. Disagree. The volume of requests received requires that we establish a process that provides fair and timely processing for all applicants within the parameters of the law and to the greatest extent possible. Including the additional layer of review would hinder the timely processing of all applications.</div><div>6. The proposal does allow for an independent appeal. Nonetheless, as explained in the Response to Comment 1, line 2, the working group proposes to amend the provision to restore the review / appeal by the Committee of Bar Examiners.</div></div>
27	Shawn Musgrave	DISAGREE with the proposed recommendations	<div><div>1. The current process is a bureaucratic gauntlet designed to impose unnecessary barriers.</div><div>2. Time to process requests under the current process is too long and denies applicants a meaningful opportunity to appeal.</div><div>3. Same as Comment 1, lines 6-10</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. The proposed rules are intended to streamline the current process, forms, and requirements.</div><div>2. See response to Comment 1, line 13.</div><div>3. See response to Comment 1, lines 6-10.</div></div>
28	Rafail Veli, Esq.	AGREE ONLY if Modified	People with visual challenges should be afforded extra time and the ability to bring in LED lighting.	The working group thanks the commenter for their input.



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				Upon the same showing as requested of all applicants with disabilities, a person with a visual disability can be approved for extra time and to bring an LED floor or desk light. This accommodation is permissible for both the written portion of the exam and the multiple choice portion of the exam.
29	Anonymous	DISAGREE with the proposed recommendations	<ol style="list-style-type: none"><li>1. Same as Comment 1, lines 5, 6, and 11.</li><li>2. State Bar should implement policies to improve the tone of the reports provided by consultants, ensure that recommendations are consistent with legal requirements, and that staff and consultants are appropriately trained.</li><li>3. The rules should expressly provide that comprehensive evaluation reports are not required for individuals that have provided documentation from a medical professional and who have identified cost as an obstacle in obtaining such testing / reports.</li><li>4. The proposal should be explicit that LSAT scores and academic achievement will not be used as a basis for denial.</li><li>5. The rules should embody congressional intent under federal disability rights legislation, including that the ADA Amendments adopted in 2009 are intended to reduce the depth of analysis related to the severity of the limitation of the impairment and return the focus to the question of discrimination and allow students and licensure candidates with documented disabilities to more readily access appropriate accommodations.</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. See response to Comment 1, lines 5, 6, and 11.</li><li>2. The rules contemplate a change from past practice by providing the entire report, rather than excerpts when a request is denied or approved, but with modification. Staff will be reviewing the reports to ensure appropriate tone, consistency in how applications are handled (as appropriate), accurate interpretation of the rules and spirit behind the rules.</li><li>3. The revised form makes clear that comprehensive evaluation reports are not required. An applicant may submit a comprehensive evaluation report if they have one and choose to do so.</li><li>4. The State Bar agrees that a history of academic success or success on standardized tests does not mean that a person does not have a disability that requires testing accommodations. However, in light of the individualized nature of the testing accommodation review process, the State Bar disagrees with this commenter’s proposal to include specific language about whether and how past performance is relevant to an applicant’s request for testing accommodations. <b>The working group recommends</b>, however, that language from the framework addressing this matter be incorporated into the rules.</li><li>5. The proposed rules comply with all applicable laws and regulations.</li></ol>
30	Anonymous	AGREE ONLY if Modified	There should be no time limit if the applicant’s record demonstrates the need and granting of accommodations during their academic life.	<p>The working group thanks the commenter for their input.</p> <p>See response to Comment 24, line 1.</p>
31	Kristin Power / Alliance for Children's Rights	DISAGREE with the proposed recommendations	Same as Comment 1, lines 1-12	<p>The working group thanks the commenter for their input.</p> <p>See response to Comment 1, lines 1-12.</p>

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32	Ilana Grunberg Weiss	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
33	Julian Sarkar / SarkarLaw	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
34	Deborah Meyer-Morris	DISAGREE with the proposed recommendations	<div>1. The five-year rule being proposed is discriminatory, arbitrary, ageist and ableist as they deny people who did not have a history of prior accommodations the ability to get accommodations on the Bar Exam. Same as Comment 1, lines 7-10</div> <div>2. Same as Comment 1, line 11</div> <div>3. The proposal should clarify that the State Bar is no longer requiring “comprehensive evaluation reports” as it does now for certain disabilities. The qualified professional form states that documentation may consist of, where appropriate, a comprehensive evaluation.</div> <div>4. Core principles regarding required documentation and the standards for reviewing requests should be contained in formal rules adopted by the State Bar.</div> <div>5. The proposal “requires inclusion of the Blue Ribbon Commission which includes multiple stakeholders and educators who are also wholeheartedly committed to disability equality not just racial equity and socio-economic equity of bar applicants, and who also embrace accessibility and inclusion of historically marginalized disabled and non-traditional students.”</div>	<div>The working group thanks the commenter for their input.</div> <div>1. This comment may reflect a misunderstanding of the proposal; nonetheless, the working group is recommending amendments to this part of the proposal. See response to Comment 1, lines 7-10.</div> <div>2. See response to Comment 1, line 11.</div> <div>3. The revised form makes clear that comprehensive evaluation reports are not required. An applicant may submit a comprehensive evaluation report if they have one and choose to do so.</div> <div>4. See response to Comment 1, line 11.</div> <div>5. This comment is beyond the scope of the rules revision.</div>
35	Ruth Colker, Nancy Mather, Nicole Ofiesh	AGREE ONLY if Modified	<div>1. State Bar should consider the structure of the exam from a universal design perspective, including the time limits for essays, the amount of testing time with no breaks.</div> <div>2. The recommendation is inconsistent with the Best Practice Report re: LSAC consent decree which recommends LSAC accept documentation from age 13.</div> <div>3. Same as Comment 1, line 7, 11</div>	<div>The working group thanks the commenter for their input.</div> <div>1. This comment goes beyond the scope of the rules revision</div> <div>2. See response to Comment 24, line 1.</div> <div>3. See response to Comment 1, lines 7, and 11.</div>

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36	Sharon Baumgold	DISAGREE with the proposed recommendations	Same as Comment 1, lines 7-13	The working group thanks the commenter for their input. See response to Comment 1, lines 7-13.
37	Lindsey McLean	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
38	Sreeja Kodali	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
39	Hannah Trillo	DISAGREE	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
40	Suzanne T. Dombkowski	DISAGREE	Same as Comment 1, line 1, except recommend three, instead of 2 week timeline Same as Comment 1, lines 7-9	The working group thanks the commenter for their input. See response to Comment 1, lines 1, 7-9.
41	Victoria Kintner-Duffy, Ph.D	DISAGREE with the proposed recommendations	Same as Comment 1.	The working group thanks the commenter for their input. See response to Comment 1.
42	Sophia Mangasarian	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
43	Melanie Simms	DISAGREE with the proposed recommendations	Testing accommodations are necessary and appropriate to allow individuals with disabilities to demonstrate knowledge and abilities measured by the exam, and to ensure that test results are not simply a reflection of the effects of the disability.	The working group thanks the commenter for their input and agrees with this sentiment.
44	Zach Newman / Legal Aid Association of California	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
45	Elizabeth Ward	DISAGREE with the proposed recommendations	Urging not to make the process for requesting testing accommodations even harder.	The working group thanks the commenter for their input, and agrees that this is an important goal.

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
46	Lorraine Thomas	DISAGREE with the proposed recommendations	No rationale provided	The working group thanks the commenter for their input.
47	Alison West	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
48	Anonymous	DISAGREE with the proposed recommendations	This proposal makes it harder for people with disabilities to access accommodations	The working group thanks the commenter for their input, but respectfully disagrees.
49	Darcy Kramer	DISAGREE with the proposed recommendations	<ol style="list-style-type: none"><li>1. Same as Comment 1, lines 1-5, 7-10, 12, 13</li><li>2. The rules should include the opportunity for an interactive communication between the applicant and the individual evaluating the request.</li><li>3. More weight should be given to the candidate’s narrative of their experience than any documentation or assessment from a professional.</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. See response to Comment 1, line 1-5, 7-10, 12, and 13.</li><li>2. As required by the ADA, the State Bar provides an individualized assessment for all applicants submitting a request for testing accommodations or a request for review. Communications between the applicant and State Bar staff are an important part of that individualized assessment process. The State Bar believes that the changes to the rules proposed in response to the comments will significantly streamline the process for all applicants requesting testing accommodations so that more resources can be allocated to communicating with applicants whose requests are more complex.</li><li>3. While the applicant’s narrative is an important component of a request for testing accommodations, qualified professionals are uniquely well-situated to assess an applicant’s disability-related need for testing accommodations based on their relevant experience and expertise.</li></ol>
50	Dylan Quigley	AGREE ONLY if Modified	<ol style="list-style-type: none"><li>1. Same as Comment 1, lines 7-10</li><li>2. The proposal should include a strong presumption in favor of approval of the request if minimum evidence standards are met.</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. See response to Comment 1.</li><li>2. The State Bar disagrees that inclusion of such a presumption in the proposed rules is necessary or appropriate. Review of testing accommodations requests requires an individualized assessment.</li></ol>

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51	Tabby Evans	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
52	Ann Collins	AGREE ONLY if Modified	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
53	Ingria Jones	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
54	Isabella Reyes-De Pillo	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
55	Janine Hunt-Jackson	DISAGREE with the proposed recommendations	The proposal would deny testing accommodations to individuals with disabilities.	The working group thanks the commenter for their input.
56	Christa Lindsey	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
57	Brittany Zazueta / Dayle McIntosh Center for the Disabled	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
58	Mara Santilli	AGREE ONLY if Modified	Same as Comment 1, lines 7-9	The working group thanks the commenter for their input. See response to Comment 1, lines 7-9.
59	Anonymous	AGREE ONLY if Modified	Same as Comment 1, line 1	The working group thanks the commenter for their input. See response to Comment 1, line 1.
60	Emily Pollen	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
61	Rev. Jennifer Garcia	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
62	Elisha Gillette	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
63	Christin Spencer	DISAGREE with the proposed recommendations	Same as Comment 1, lines 1,3-10	The working group thanks the commenter for their input. See response to Comment 1, lines 1, 3-10.
64	Juliana Calhoun	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
65	Crystal Snar	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
66	Anne Wolf	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
67	Dr. Ben Schwartz	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
68	Anonymous	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
69	Leigh Schlecht	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
70	Erika Fontana	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
71	Anonymous	DISAGREE with the proposed recommendations	Should not overly rely on past accommodations because conditions change. 5 years for the automatic approval of accommodations previously approved should be the maximum.	The working group thanks the commenter for their input. As explained in response to comment 1, line 7, the working group has determined it is appropriate to eliminate the 5-year limitation and to better align this provision with the approach adopted by the LSAC consent decree. The working group was convinced by the arguments that a 5-year timeline would increase the burden on

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
			Streamlining must be “counterbalanced by the integrity of the process.”	applicants who have previously demonstrated the need for testing accommodations in similar high-stakes testing conditions. However, the working group notes that past accommodations alone are not sufficient. Applicants are required to certify that they have the same disability-related functional limitations that qualified them for the accommodations in the first instance.
72	Brittany Ann Porter	DISAGREE with the proposed recommendations	Testing accommodations are necessary. The proposal is “trying to eugenically ‘cleanse’ the legal profession” by making accommodation harder to access.	The working group thanks the commenter for their input. The working group agrees that testing accommodations are important, but objects to characterization of the intent of the proposal.
73	Arti Denterlein	AGREE ONLY if Modified	Extended time accommodations should be provided to elderly test takers without the need to show a disability.	The working group thanks the commenter for their input. The comment goes beyond the scope of the rules proposal.
74	Tom Merrell	AGREE ONLY if Modified	The State Bar should accept verified documentation not only from other high-stakes testing entities, but also the applicant’s previous academic institutions. Accepting documentation from academic institutions will provide a comprehensive picture of the applicant’s history and current needs.	The working group thanks the commenter for their input. See response to Comment 1, line 10.
75	Jessica Kench	AGREE with the proposed recommendations	Support any amendment that does not put up a barrier to students getting accommodations on the bar exam.	The working group thanks the commenter for their input.
76	Carabeth Mckernan / Service Center for Independent Life	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
77	Anonymous	AGREE ONLY if Modified	<ol style="list-style-type: none"><li>1. Same as Comment 1, lines 3, 7-11</li><li>2. The State Bar needs to provide better information to applicants about how the accommodations will be implemented (e.g., the need to wipe your laptop if the applicant is using Dragon Speak or similar software) and to better train staff and proctors on how to implement the accommodations.</li></ol>	The working group thanks the commenter for their input.  <ol style="list-style-type: none"><li>1. See response to Comment 1, lines 3, 7-11.</li><li>2. The working group agrees and appreciates that the State Bar, in addition to proposing changes to the rules, is examining all other communication vehicles and making needed revisions.</li></ol>
78	Laila Dadabhoy	AGREE with the proposed recommendations	Current process includes an invasive request for medical documentation.	The working group thanks the commenter for their input. The proposal seeks to limit the documentation requirements to documentation that is reasonable, limited, and narrowly tailored to the information needed to determine an applicant’s disability-related functional limitation(s), their specific

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
				access needs, and how those needs relate to the testing accommodation(s) requested.
79	Paul D Grossman	DISAGREE with the proposed recommendations	<div><div>1. Rules proposal deprives applicants of with disabilities of the equal opportunity, more so than the current process.</div><div>2. Objects to litigation positions taken by the State Bar regarding the ADA; the State Bar is advocating “for positions that would create broadly-applicable precent contrary to not only my own personal interests as an attorney with multiple disabilities . . . but also to the public policy interest of the State of California and the statutory ‘public protection’ mission of the State Bar. ....”</div><div>3. Recommend a proposal in line with that submitted by Commenter 101.</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. Disagree</div><div>2. The comment goes beyond the scope of this rules proposal.</div><div>3. See response to Comment 101.</div></div>
80	Ervina Dianna Wentworth	AGREE with the proposed recommendations	No rationale provided.	The working group thanks the commenter for their response
81	Dr. Peter Maduro	DISAGREE with the proposed recommendations	Endorse, support, and incorporate the comments of commenter 101.	<div>The working group thanks the commenter for their input.</div> <div>See response to Comment 101.</div>
82	Anonymous	DISAGREE with the proposed recommendations	Same as Comment 1, line 2	<div>The working group thanks the commenter for their input.</div> <div>See response to Comment 1, line 2.</div>
83	Christian Park	AGREE with the proposed recommendations	<div>Current process required more documentation than I had ever been asked for in the past.</div> <div>This proposal will help others get the accommodations they need.</div>	<div>The working group thanks the commenter for their input.</div> <div>The proposal seeks to limit the documentation requirements to 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.</div>
84	Luis Lozada	AGREE ONLY if Modified	<div>State Bar’s current process is burdensome; documentation requirements are excessive</div> <div>Support the changes that move toward the use of experts, streamlined process, and less documentation.</div>	<div>The working group thanks the commenter for their input.</div> <div>The proposal seeks to limit the documentation requirements to documentation that is reasonable, limited, and narrowly tailored to the information needed to determine an applicant’s disability-related functional limitation(s), their specific</div>



Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
				access needs, and how those needs relate to the testing accommodation(s) requested.
85	Anna Han	AGREE ONLY if Modified	Modify 5-year limit for automatic approval of accommodations granted on prior standardized tests to 10 years.	The working group thanks the commenter for their input. See response to Comment 1, line 7.
86	Michael Hunter Schwartz / University of the Pacific McGeorge School of Law	AGREE with the proposed recommendations	This approach seems like the best one possible under the circumstances.	The working group thanks the commenter for their input.
87	William M. Paoli	AGREE with the proposed recommendations	Same as Comment 1, line 10, 11	The working group thanks the commenter for their input. See response to Comment 1, lines 10, 11.
88	Caroline Knadler	AGREE with the proposed recommendations	No rationale provided.	The working group thanks the commenter for their input.
89	Omar Karmalawy / Santa Clara University	AGREE with the proposed recommendations	Support the automatic approval of testing accommodations granted on the LSAT.  Same as Comment 1, line 10	The working group thanks the commenter for their input  See response to Comment 1, line 10.
90	Mathieu Cunha	AGREE with the proposed recommendations	If this makes the process more swift, I applaud it.  Notes issues with the current process including documentation required, failure to defer to treating doctor, treatment received from State Bar staff.	The working group thanks the commenter for their input. This process is intended to streamline to the process and reduce the time from submission to determination. Applicants shall be required to only 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. See responses to Comment 1, lines 6, and 11.
91	Temilola Akinsilo	AGREE with the proposed recommendations	No rationale provided.	The working group thanks the commenter for their input.
92	James Poarch	AGREE with the proposed recommendations	No rationale provided.	The working group thanks the commenter for their input.

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
93	Anonymous	AGREE with the proposed recommendations	Same as Comment 1, lines 7, 11  Comment related to the passing score for the MPRE	The working group thanks the commenter for their input.  1. See response to Comment 1, lines 7 and 11. 2. This comment is beyond the scope of this proposal.
94	Kamari A Muhammad	AGREE with the proposed recommendations	Agree with automatic approval of accommodations previously approved within a certain time period.	The working group thanks the commenter for their input.
95	Keith Page	AGREE ONLY if Modified	State Bar should approve testing accommodations received in law school.  State Bar should approve testing accommodations approved for the MPRE.	The working group thanks the commenter for their input. See response to Comment 1, line 10. The proposal currently includes an automatic approval of testing accommodations previously approved on the MPRE. For more on the proposal to further expand this provision, see response to Comment 1, lines 7 and 8.
96	Devin Kinyon	AGREE ONLY if Modified	Same as Comment 1, line 7	The working group thanks the commenter for their input. See response to Comment 1, line 7
97	Sayde Leos	DISAGREE with the proposed recommendations	Describes problems encountered with the current process, which resulted in receiving no accommodations despite a mental disability and having suffered severe trauma.	The working group thanks the commenter for their input.
98	Matthew Hyman	AGREE with the proposed recommendations	The current process required me to repeat extensive and costly tests to allow me to receive necessary and reasonable accommodations. Supports allowing approval of testing accommodations approved for other standardized tests within the past 5 years.	The working group thanks the commenter for their input. See response to Comment 1, line 10. For those not subject to the automatic grant of approval, the revised process does not require repeat testing, but rather the completion of the qualified professional form in a way that is fully responsive to the questions asked.
99	Freddie Alikhani	DISAGREE with the proposed recommendations	No rationale provided.	The working group thanks the commenter for their input.
100	Anonymous	AGREE with the proposed recommendations	The Bar Exam should change to provide extra time for all test takers and to allow test takers to retake only those portions of the exam they do not pass.	The working group thanks the commenter for their input. This comment goes beyond the scope of the rules proposal.
101	Benjamin Kohn	DISAGREE with the proposed recommendations	1. The State Bar conveys the appearance of lacking commitment to California’s public interest in meaningful access to public programs, activities, and services for disability person or disability diversity in the legal profession by several of its legal	The working group thanks the commenter for their input.  1. The working group declines to comment on legal positions asserted in litigation. The working group however objects to the implication that these

Public Comment Chart

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			<p>arguments in currently pending litigation in the Ninth Circuit, thus calling into question the sincerity of the purported reforms advanced in this proposal.</p> <p>2. Timelines: Applicants will no longer be able to expect even an initial decision by the next exam administration. the College Board, LSAC, GMAC, ETS, NCBE, FINRA, and other States’ bar examiners (and other licensing agencies) typically have review times of two weeks or less, and live on-demand collaborative phone support with the decision-makers. By extension, the State Bar of California’s choice to conserve resources for other priorities by understaffing its testing accommodations program amounts to a willful disregard to both its legal obligations under Federal and California nondiscrimination laws to provide disabled applicants with equal opportunity to nondisabled applicants.</p> <p>3. Number of appeals: The rules seemingly impose a lifetime cap of 1 appeal of denials per applicant.</p> <p>4. Appellate body: The review of denials would stop with a review by a medical expert and no longer be reviewed by the Committee of Bar Examiners. This is stripping away a level of review currently in place.</p> <p>5. The rules and framework impose a 5-year age limit to the admissibility of prior approvals and medical reports.</p> <p>6. The automatic grant process applies only to those requesting accommodations if prior testing agencies have unanimously and recently granted those accommodations, and its limited to accommodations for 50% extra time or less and/or a semiprivate room.</p> <p>7. The proposed amendments to Rule 4.85(B) allow staff to summarily deny requests they perceive to have a clerical defect or omission; this is for bureaucratic convenience only and not permitted by the ADA.</p>	<p>efforts at reforms are anything less than a genuine effort to improve its processes.</p> <p>2. See response to Comment 1, line 1. The working group apologizes if the rule proposal that was circulated for public comment inadvertently gave the impression that the timeline was in any way being relaxed or eliminated. As required by the ADA, the State Bar provides an individualized assessment for all applicants submitting a request for testing accommodations or request for review.</p> <p>3. The working group agrees that applicants should be permitted to request further appeals in future exam cycles. The working group thanks the commenter for raising this issue and <b>recommends amending the proposal</b> to clarify that the limit to one appeal is per exam cycle. The working group disagrees, however, that multiple appeals should be permitted in the same exam cycle. Due to the volume of requests received, and the often short time frame in which to process them, the working group believes that allowing multiple opportunities to appeal creates an unfair situation for all applicants. If applicants have multiple appeals, it could result in a disproportionate amount of limited resources being assigned to one person while another has not had the opportunity to receive a response on their first appeal.</p> <p>4. See response to Comment 1, line 2.</p> <p>5. The commenter may misunderstand the proposal. The proposal had included a 5-year time limit for automatic grants of testing accommodations approved for other high stakes testing (but see proposed change set forth in response to Comment 1, line 7). There was no limit on the admissibility of prior medical reports. Note, however, the change referenced in response to Comment 24, line 1.</p> <p>6. The commenter may misunderstand the proposal. The automatic grant process was not limited in this manner. See responses to Comment 1, lines 8 and 9.</p> <p>7. The proposal creates a roadmap for the documentation that is required. The proposal is intended to streamline the process, clarify what information needs to be provided to establish the need for testing accommodation. However, the State Bar cannot effectively process the applications received if applicants fail to submit what is required. The working group believes that because the</p>

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
			<div>8. The documentation requirements in the framework contains an improper substitution of the ADA legal standard of what “best ensures a level playing field to the nondisabled,” seemingly for absolute necessity. The “statement of need” requirement implies a medical necessity standard of defining “reasonable” instead of the correct legal standard.</div> <div>9. The framework only propose to give “great weight” to the treating expert recommendations. This is too vague and leaves too much room for arbitrary rejections of the medical judgment of treating health care providers.</div> <div>10. The identification of certain accommodations as “exceptional” is not appropriate. Absent them constituting a fundamental alteration or undue burden, there is no ability to require a higher showing to approve such accommodations.</div> <div>11. There is no plausible argument for fundamental alteration or undue burden for “stop the clock” breaks, nor for remote testing.</div>	<div>documentation / responses needed are so clearly set forth, it is appropriate to require the applicant to provide complete forms in order to have the State Bar deem the application complete and review the request.</div> <div>8. The proposal complies with all applicable laws and regulations.</div> <div>9. The working group notes that the commenter is not referencing the latest version of the framework circulated with the proposal. In direct response to public comment presented, and borrowing language from the DOJ guidelines, staff revised the framework to specify that “[t]he State Bar shall defer to documentation from a qualified professional who has made an individualized assessment of the candidate that supports the need for the requested testing accommodation(s).” See also response to Comment 1, line 11.</div> <div>10. See response to Comment 1, line 9.</div> <div>11. While the State Bar does not offer ‘stop the clock’ breaks, the State Bar offers the equivalent by granting additional time but the clock continues to run. Additionally, the multiple-choice exam (MBE) owned and scored by the National Conference of Bar Examiners is not offered as a remote exam.</div>
102	Anonymous	DISAGREE with the proposed recommendations	“It is time to comply with the court order fully. But it is time to stop placing obstacles in front of disenfranchised students.”	The working group thanks the commenter for their input.
103	Melanie Proctor	DISAGREE with the proposed recommendations	Same as Comment 1, lines 7, 10	The working group thanks the commenter for their input. See response to Comment 1, lines 7 and 10.
104	Sandra Stanek / Autism Movement, Inc	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.
105	Jennifer Liu	DISAGREE with the proposed recommendations	The public would be better served by measures that protect the public from actual harm, and not by erected unnecessary roadblocks to law graduates with documented disabilities.	The working group thanks the commenter for their input. This proposal is intended to improve the process of requests for testing accommodation.
106	Brandie Solovay, The FLARE Project	DISAGREE with the proposed recommendations	Same as Comment 1	The working group thanks the commenter for their input. See response to Comment 1.

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No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
107	Olympia Duhart / Society of American Law Teachers (SALT)	Concerns	<ol style="list-style-type: none"><li>1. All accredited law schools comply with ABA Standard 504 which requires experts in disability accommodations and/or psychoeducational evaluations to review all law student requests for accommodations. The decisions of law schools should be given deference by the State Bar. To presumptively disregard the evidence provided by an accredited institution documenting the previous accommodations is unfair and potentially discriminatory.</li><li>2. Testing accommodations previously approved for more than 50% extra time or private room should not be treated differently than other accommodations; they are not exceptional or extraordinary.</li><li>3. The process for reviewing requests for accommodations should be “mechanical,” and timely.</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. See response to Comment 1, line 10.</li><li>2. See response to Comment 1, line 9.</li><li>3. The working group agrees on the importance of timely evaluating requests for testing accommodations and <b>proposes to amend the rules</b> to clarify that the State Bar will render a determination on any complete request received by the final filing deadline, and will endeavor to complete the evaluation as far in advance of the exam as practicable. The working group does not believe it is appropriate to commit to a more specific timeline for a response at this time while we are rolling out this revised process, although experience is demonstrating that use of even a narrower automatic approval process for some requests granted for high stakes exams will make the processing more timely. <b>The working group recommends</b> that the identification in the rules of a time frame for completion of the evaluation be revisited after the new process (including forms) are fully implemented for two exam cycles.</li></ol>
108	Melissa Gant	DISAGREE with the proposed recommendations	<ol style="list-style-type: none"><li>1. Same as Comment 1, lines 7-10</li><li>2. Applicants who had prior accommodations on standardized tests or in college or law school should (in addition to the automatic approval) also be permitted to petition to modify those automatically granted accommodations with supporting documentation from a qualified medical professional.</li><li>3. Although the proposal provides for deference to documentation from a qualified professional who has made an individualized assessment, it still reserves the right to find that the documentation presented does not support the need for the requested accommodation so long as they provide an explanation. The rules should require giving “the utmost deference” to the qualified professional.</li><li>4. The rules don’t ensure that the testing accommodations experts possess specific qualifications that make them the appropriate fair and unbiased individuals to evaluate testing accommodations requests.</li></ol>	<p>The working group thanks the commenter for their input.</p> <ol style="list-style-type: none"><li>1. See response to Comment 1, lines 7-10.</li><li>2. The proposal does not limit the applicants to the same accommodations granted on prior standardized tests. If the applicant seeks greater accommodations, the applicant needs to provide documentation to establish the need for only those additional accommodations.</li><li>3. See response to Comment 1, line 11.</li><li>4. See response to Comment 16, line 9.</li></ol>

Public Comment Chart

No.	Name / Organization	Position	Summary of Key Issues Addressing the Proposal	Working Group Response
109	Shirleen Claiche		<div><div>1. Request for Testing Accommodation applications must be made available in advance of the exam.</div><div>2. Requests for Testing Accommodations must be processed timely. Rule 4.85 (D) should not be used for applicants with permanent disabilities.</div><div>3. If the State Bar granted accommodations including more than 50% time or a private room, applicants are being required to engage in repeat extensive medical tests to secure these accommodations.</div><div>4. Repeat testing should not be required of those with permanent physical and/or learning disabilities if the accommodation was based on professional testing and medical documentation completed with 5 years of the date of the requests as long as the applicant attests they are still disabled and the accommodations are still necessary.</div><div>5. Guidelines need to be put in place to ensure an application is not marked incomplete due to minor defects, thus preventing a request for testing accommodations to proceed.</div><div>6. Rule 4.88 needs to provide a time frame when an applicant will be notified that their request is denied.</div></div>	<div>The working group thanks the commenter for their input.</div> <div><div>1. The State Bar apologizes that the applicant did not receive responses to inquiries about how to access the TA application prior to the bar exam. However, the application is accessible, and the new request for testing accommodations will similarly be accessible in the Applicant Portal (or in hardcopy by request) at any time. Concurrently with the work on the rules and forms, staff is working on making changes to the public website and the applicant portal to better meet the needs of applicants</div><div>2. See response to Comment 1, line 1. See also response to Comment 34, line 1.</div><div>3. The working group disagrees that the proposal requires this. In the scenario described, the applicant will be required to submit the qualified professional form and will have the opportunity as part of that form to provide prior testing, but will not be required to do so.</div><div>4. The proposed process is not designed to require repeat testing. If the applicant is eligible for an automatic approval, no additional documentation besides proof of the past accommodations will be required. If the applicant is seeking testing accommodations for the first time on the bar exam, or seeking greater accommodations than previously approved, the applicant will have the opportunity to provide prior testing but will not be required to do so. They will be required to submit a completed qualified professional form.</div><div>5. The proposed process is intended to be very clear regarding the documentation and information that is required to complete the request. We think the proposed process will lead to far fewer applications being marked as incomplete, so long as applicants carefully review and complete the forms.</div><div>6. See response to Comment 1, line 1.</div></div>

Attachment B  
Commenter 1

January 31, 2023

Via Portal and Staff Email

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
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RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing to **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein. I express the views herein in my capacity as a private citizen, and not on behalf of San Francisco State University.

A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.



According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is

appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, I **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

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Heather Borlase  
Executive Director, Equity Programs and Compliance  
Title IX Coordinator/Discrimination, Harassment and Retaliation Administrator  
San Francisco State University

January 31, 2023

Via Portal and Staff Email

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, **Ph.D.**  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, with "High-Level Framework," Pertaining to Testing Accommodations on the State Bar-  
**OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am a new member of the State Bar of California, having been sworn in last December. As a lawyer with disabilities who wrestled against an unfair accommodation process for the July 2022 bar exam, I am OPPOSED to the proposed amendments to the rules of the State Bar, with the "high level framework," for the reasons stated herein.

I urge the Board of Trustees to adopt an alternative proposal that includes the principles advocated by the Disability Rights Education & Defense Fund.<sup>1</sup> Furthermore, I urge the Board of Trustees to heed the advice of Professor Ruth Colker, Professor Nancy Mather, and Dr. Nicole Ofiesh, who have articulated better than I can the many reasons why the proposed rules fall short and why an approach based on the principles of universal design would better further disability justice.<sup>2</sup> Out of respect for my time and yours, I will not reiterate the points made by those experts in this letter but will instead focus on two issues that I find particularly troubling about the proposed amendments.

**1. Studies show that the law school experience itself results in the development and exacerbation of disabilities, yet the proposed rules do not address this reality and instead emphasize previous accommodations.**

It should not be surprising to the State Bar that law students are at high risk for developing mental health conditions such as anxiety and depression. Studies have long shown that although law students enter law school life with normal psychological markers, many experience significant increase in anxiety and depression during the first year, which often continues into their careers.<sup>3</sup>

I was one such student. Although I had some history of mental health concerns when I began law school, I began my studies without requiring medication. Within the first few months, however, I suffered a severe episode and began to require treatment because of the exacerbation of my anxiety and depression. I sought accommodations on exams, and my school granted them without issue.

Unfortunately, my mental health deteriorated further during my third year of law school when a close friend and classmate died by suicide at the start of 2022, yet another casualty of the law school experience.<sup>4</sup> As one of the last people he had been in contact with, I was (and continue to be) deeply distraught by this event. The remainder of my 3L year was a haze as I stumbled toward graduation and onward to the bar exam. I was initially hesitant to apply for

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<sup>1</sup> DISABILITY RIGHTS EDUCATION & DEFENSE FUND, *Action Alert! Oppose California State Bar Proposal on Testing Accommodations* (Jan. 12, 2023), <https://dredf.org/2023/01/12/action-alert-oppose-california-state-bar-proposal-on-testing-11-accommodations/>.

<sup>2</sup> Ruth Colker, Nancy Mather & Nicole Ofiesh, *Re: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar - Oppose Unless Amended* (Jan. 23, 2023), <https://bpb-us-w2.wpmucdn.com/u.osu.edu/dist/3/106474/files/2023/01/Colker-Mather-Ofiesh-letter.pdf>.

<sup>3</sup> *National Task Force on Lawyer Well-Being: Creating a Movement to Improve Well-Being in the Legal Profession*, A.B.A. at 35 (Aug. 14, 2017), <https://www.americanbar.org/content/dam/aba/ima/res/abanews/ThePathToLawyerWellBeingReportFJNAL.pdf>;

Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113-15 (2002).

<sup>4</sup> Janet Thompson Jackson, *Legal Education Needs a Wellness Reckoning*, BLOOMBERG L. (Apr. 7, 2021, 1:01 AM), <https://news.bloomberglaw.com/us-law-week/legal-education-needs-a-wellness-reckoning> ("Tragically, a study of 3,000 law students found that 21% reported serious thoughts of suicide in their lifetimes and 6% had seriously considered suicide in the 12 months before the survey. And, while anxiety and depression may manifest in law school, it does not end there.")

accommodations on the exam, given the horrible stories I had heard from previous applicants, but the recent trauma of losing my friend led me to file a petition.

The accommodation application process was nightmare, and my time would have been better spent studying for the bar exam. I worked closely with my psychiatrist to send as much documentation as I could, but it was never enough. I received an email stating that my documents were insufficient and asking for a range of other documentation that would have cost me thousands of dollars to acquire. The email contained no contact information, and I struggled in vain to speak to someone who could advise me. Ultimately, my application was deemed "incomplete," and I received no accommodations for the exam. I was not surprised by the result, but I seriously considered withdrawing from the exam. I was riddled with grief, on top of an already heightened sense of depression and anxiety, and I did not trust myself to function on such a high stakes exam. I am still surprised that I managed to push through and pass under those circumstances.

My story is not unique. Many students will experience severe mental health issues for the first time in law school, and many will find those problems compounded by traumatic events. Yet the proposed amendments make no effort to help those students. Instead, they emphasize accommodations that have been granted to applicants within the past five years, and even then only in certain limited situations. The State Bar needs to focus on the needs of all people with disabilities and think critically about how to address the reality of how law school itself is the catalyst for many accommodation needs.

**2. The proposed rules (and the bar exam itself) do not protect the public but instead serve as a means of inhibiting the desperately needed diversification of the legal profession.**

I would be remiss not to remark that the proposed amendments reflect the troubling history of the bar exam and further its original disreputable purposes. I trust the recipients of this letter are aware of the bar exam's history and how the exam was created with the purpose of keeping minorities out of the legal profession.<sup>5</sup> Although the exam itself no longer professes these goals outright and instead aims to protect the public, it unfortunately continues to function as originally intended, with bar passage rates for minority test-takers lagging behind those of white test-takers.<sup>6</sup> The legal profession is disturbingly nondiverse, with only minor improvements in diversity over the last decade.<sup>7</sup>

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<sup>5</sup> See generally Scott Devito, Kelsey Hamble & Erin Lain, *Examining the Bar Exam: An Empirical Analysis of Racial Bias in the Uniform Bar Examination*, 55 U. OF MICH. J. L. REFORM 597, 600-05 (discussing the bar's history of racial gatekeeping, including the anti-immigrant and racist sentiments that shaped the bar in its early formation and the origins of the ABA as an all-white organization).

<sup>6</sup> *Summary Bar Pass Data: Race, Ethnicity, and Gender: 2021 and 2022 Bar Passage Questionnaire*, A.B.A. (2022), [https://www.americanbar.org/files/col11tent/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2022/2022-bpg-national-summary-data-race-ethnicity-gender-fin.pdf](https://www.americanbar.org/files/col11tent/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2022/2022-bpg-national-summary-data-race-ethnicity-gender-fin.pdf) (indicating that in 2021, the national pass rate for white J.D. graduates who took the bar exam for the first time was higher than the rates for all other races studied).

<sup>7</sup> John Harberty & Samantha Sullivan, *How to Improve Diversity in the Legal Profession*, A.B.A. (July 18, 2022), [https://www.americanbar.org/files/foups/law\\_practice/publications/law\\_practice\\_magazine/2022/july-august/how-to-improve-diversity-in-the-legal-profession/](https://www.americanbar.org/files/foups/law_practice/publications/law_practice_magazine/2022/july-august/how-to-improve-diversity-in-the-legal-profession/) ("Women make up 37% of practicing attorneys, even though they account for 50.8% of the U.S. population. Men still outnumber women in equity partner positions nearly 5 to 1. Only 4.7% of

Although data on pass rates for test-takers with disabilities is not readily available, it can be deduced from the dearth of lawyers with disabilities that the bar exam similarly poses a barrier to their entry into the profession.<sup>8</sup> The bar's strenuous accommodation process, through which few students actually receive accommodations, creates an even higher bar for students with disabilities on an already-formidable exam.<sup>9</sup> Furthermore, the high cost involved in acquiring the necessary documentation to attain accommodations adds a layer of discrimination against low-income applicants.

It cannot be overemphasized that none of this protects the public. I have yet to hear a legal professional state that the bar exam equipped them for the practice of law. In fact, by requiring test takers to memorize unrealistic amounts of information and make legal arguments based on recollection rather than legal research under extreme time constraints, the exam encourages a form of practice that would constitute malpractice in most circumstances. While I gladly await the day when the bar exam is abolished in its entirety, in the interim, the State Bar of California must take harm reduction measures to help diversify our profession. If it cannot implement a more equitable accommodations process, it should look to the principles of universal design to create an exam that is accessible to everyone.

In short, the proposed rules are a substantial step backwards. They fail to address the reality facing many law students with disabilities, and they further hinder the diversification that our profession desperately needs. For those reasons, and for all the reasons stated by the many disability advocates who similarly oppose the amendments, I OPPOSE the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion.

Sincerely,



C. Leah Kennedy, Esq.

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practicing attorneys are Black, with about 10% of attorneys falling into other racial minority groups. Within the legal profession since 2010, representation of individuals in minority racial and ethnic groups combined has grown just 6%, the percentage of practicing Black attorneys has increased by less than 1%, and the percentage of women attorneys has only increased 4.6%."

<sup>8</sup> *2021 Report on Diversity in US Law Firms*, NATIONAL ASSOCIATION FOR LAW PLACEMENT (Jan. 2022) at 35 <https://www.nalp.org/uploads/2021NALPReportonDiversity.pdf> (indicating that less than 2% of lawyers identify as disabled).

<sup>9</sup> See Stephanie Francis Ward, *Bar Examinees Have Little Success with Accommodation Requests and Say the Process Is Stressful*, A.B.A. (June 30, 2022, 9:52 AM), <https://www.abajournal.com/web/article/bar-examinees-have-little-success-with-accommodation-requests-and-say-the-process-is-stressful>.



### Commenter 3

I am a faculty member at an accredited local California law school. I am writing in my individual capacity as a long-time advocate for equity in education.

I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

A diverse bar and bench with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence.

A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the diverse individuals and communities who live and work in California, including indigent people.

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession.

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant employed by the State Bar.

For the reasons stated in this letter, I OPPOSE the changes to the rules and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.



## National Coalition for Latinxs with Disabilities (CNLD)

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January 31, 2023

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Chicago, Illinois

Ruben Duran  
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**Luis Plascencia, AICPA**  
Westchester, Illinois

RE: Proposed Amendments to the Rules of the State Bar,  
with "High-Level Framework," Pertaining to Testing  
Accommodations on the State Bar- **OPPOSE**

**Jonathan Alvarez Vega**  
Bayamon, Puerto Rico

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen,  
Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing on behalf of the National Coalition for Latinxs with Disabilities / *La Coalici6n Nacional para Latinxs con Discapacidades* (CNLD). We are a volunteer national non-profit organization made up of disabled Latina/o/xs and allies who work towards a seamless society in which the human rights of Latina/o/xs with disabilities are upheld and all their intersecting identities are embraced across the lifespan. CNLD works in solidarity to affirm, celebrate,

*We imagine a society in which the human rights of latinxs with disabilities are upheld  
and all their intersecting identities are embraced.*

Website: [www.latinxdisabilitycoalition.com](http://www.latinxdisabilitycoalition.com)  
Email: [CNLDorg@gmail.com](mailto:CNLDorg@gmail.com)



## National Coalition for Latinxs with Disabilities (CNLD)

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and collectively uplift Latina/o/xs with disabilities through community building, advocacy, protection of rights, resources, and education around all issues disabled Latina/o/xs experience. This includes lawyers with disabilities, including those who identify as Latino/a/x, who deserve to have equitable access to testing accommodations. We **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

CNLD is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities, including disabled Latino/a/xs, is better equipped to serve the varied people and communities who live and work in California, including those with the greatest need.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent (5%) of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent (2%) of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equitable opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH V. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities, including disabled Latino/a/xs, in the legal

profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals, but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice. The proposal is a step backwards.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff,

Page 3 of 8

*We imagine a society in which the human rights of Latinxs with disabilities are upheld  
and all their intersecting identities are embraced.*

collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).



## National Coalition for Latinxs with Disabilities (CNLD)

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The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH V. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH V. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). The law profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

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The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and, thus, subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent (50%) extra time (unless severe visual impairment);
- no grant of a private room;

- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests, such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014),



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[https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, CNLD **OPPOSES** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sinceramente,

A handwritten signature in black ink, appearing to read "Leonor Vanik", written over a circular stamp or seal.

**Dra. Leonor Vanik**  
Board President and CEO  
On behalf of the  
Coalición Nacional con Personas con Discapacidades (CNLD)

Page 7 of 8

*We imagine a society in which the human rights of Latinxs with disabilities are upheld  
and all their intersecting identities are embraced.*

Website: [www.latinxdisabilitycoalit.org](http://www.latinxdisabilitycoalit.org)  
Email: [CNLDorg@grr.org](mailto:CNLDorg@grr.org)





## National Coalition for Latinxs with Disabilities (CNLD)

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CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
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January 31, 2023

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Proposed Amendments to the Rules of the State Bar Pertaining to Testing  
Accommodations and "Testing Accommodations - High Level Framework" - **Oppose** Unless  
Amended

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De la Cruz,  
Knoll, Shelby, Sowell, and Toney:

We, the undersigned, are deans of California law schools. We write on behalf of our graduates, current students, and our future students with disabilities to **oppose** the current proposed amendments to the rules of the State Bar, as well as the "High Level Framework," and to ask the Board of Trustees to adopt rules that properly lower the burden for those seeking reasonable testing accommodations.

As deans of educational institutions, we embrace the values of diversity, equity, and inclusion. Our educational institutions are committed to creating a more diverse legal field and eliminating structural barriers facing our students and graduates. We believe that a diverse

State Bar is a critical component for justice and that the Bar should be welcoming to all qualified individuals, including those with disabilities who need accommodations during test taking.

The institutions we represent have a firm understanding, as recognized by federal law, that many people with disabilities require reasonable accommodations for high-stakes standardized exams - including extended time or private rooms - as well as testing during their undergraduate, graduate, and law school careers. The reasonable accommodations that we provide for our students with disabilities are designed to give those students an equal opportunity to demonstrate to faculty their knowledge and aptitude. The provision of these accommodations creates equity for those students - allowing their exam answers to reflect their true understanding and qualifications, rather than be hindered by their disabilities - and does nothing to disadvantage our students without disabilities. Because of the passage of the Americans with Disabilities Act and the Individuals with Disabilities Education Act, testing accommodations have become a recognized - and federally protected - part of our educational system, mandated for many students through IEPs and Section 504 plans in K-12 education, and provided during college and law school exams, as well as standardized tests like the LSAT.

### **California Bar Too Restrictive on Accommodations**

Even though testing accommodations are now a well-established and necessary practice in higher education, many of our graduates with disabilities have reported to us that the State Bar denied them testing accommodations that they have otherwise received for years. For too many students with disabilities, once they are denied accommodations by the State Bar, they **have** insufficient time to appeal that decision, lack the funds to engage in the testing that the State Bar might require, and, often, are forced to take the Bar without the accommodations that medical and educational professionals have repeatedly determined they are entitled to receive. Qualified candidates are being denied the opportunity to serve as lawyers in this state due to documented disabilities that the State Bar is refusing to accommodate. This is a clear hindrance to an equitable and inclusive State Bar and should be remedied.

### **Current Proposal Fails to Remedy the Harm**

In the notice for proposed comments on these amendments, the State Bar acknowledged the need for change and the hope that the rule amendments would "ensure equal access to the exams." Regrettably, the proposed amendments fall far short of this goal.

### **Concerns with Limited Reciprocity**

One concern to us as educators is the extremely limited reciprocity for accommodations provided to students in prior academic and testing settings.

The "High Level Framework" purports to provide some level of reciprocity if a student had previously received testing accommodations for the LSAT, GRE, SAT, ACT, other bar examination, or other similar standardized test. **However**, this reciprocity would *only* be applied if this accommodation had been requested and approved within the past five years. In effect, this means that accommodations received on the SAT or ACT, for example, would almost certainly never receive reciprocity. In addition, reasonable accommodations received on the LSAT will often be denied reciprocity because of this unnecessary five-year time limit. Students often take the LSAT a year or more before even *applying* for law school. Given that law school is a minimum of three years - and can often take several more years for students in joint degree or part-time programs - the likelihood of a student being able to receive reciprocity for their LSAT accommodations because of this five-year restriction is already narrowed.

Even *further* restricting, if a student has either "taken" the MPRE without accommodations (*whether or not* they passed) - or applied for and been denied accommodations for the MPRE - then they are not eligible to receive reciprocity from the State Bar for their prior accommodations on the LSAT (or any other standardized exam). The State Bar's decision to outsource these updated accommodations assessments to the NCBE - but *only* for the candidates who decide to take the MPRE prior to taking the Bar exam - has no basis in research around the need for accommodations and will create inequity even among Bar candidates *with* disabilities.

Moreover, the "High Level Framework" provides *no* reciprocity for candidates who received accommodations in college or in law school. Many students are diagnosed with disabilities much later in life, but our institutions have processes to assess those students, determine what, if any, accommodations are appropriate, and to provide those students with accommodations based on the best clinical advice given to us by health care providers and mental health professionals and in accordance with our obligations under relevant laws. The State Bar's proposed "High Level Framework" fails to provide reciprocity to those accommodations, noting only that if a candidate is unable to use the five-year reciprocity provision - which, as discussed above, will be most candidates - then the State Bar shall "give consideration" to other accommodations received (including those granted during law school), with no guidance regarding the weight that should be provided.

### ***Concerns with Timing***

The current accommodations process - which the State Bar acknowledges, in its request for comment, needs to be "streamlined" - takes an inordinate amount of time, causing Bar candidates with disabilities intense stress as they must begin preparations for taking the Bar without knowing whether they will be provided with their medically supported and reasonable accommodations. Many of these candidates have had accommodations throughout their higher education career, only to be told weeks before they take the Bar that they will not receive those accommodations for the Bar exam. The candidates are then left with the choice - take the Bar without the accommodations that qualified professionals have determined that they need, or postpone taking the Bar so that they can fight this determination - a decision that could have career consequences either way.

The proposed amendments to the rules do nothing to effectively remedy this harm, requiring only that a determination be made "[w]ithin 60 days" of a request for accommodations. Given the timeline for applying to take the Bar exam, for many candidates, this could mean that they do not receive a determination denying them accommodations until late June or early July, which provides insufficient time either to properly seek review, or to take steps in their preparation to make up for the denial of the accommodations that qualified professionals have determined they need.

Notably, if the State Bar were to lower the restrictions in the current "High Level Framework" and adopt rules that allow the State Bar to accept and implement prior accommodations that candidates received for standardized testing and in academic settings, it would significantly lower the burden on the State Bar and permit the Bar to respond to these requests more expeditiously.

### ***Concerns on Lack of Deference to Qualified Professional in Rules***

Students receiving accommodations at our institutions have been individually assessed by qualified professionals who have determined that reasonable accommodations are necessary for those students. The State Bar has made it a practice to independently review candidates' files (but not individually assess those candidates) and, based solely on the review of a paper file, to overrule the individual assessment of a qualified professional.

The "High Level Framework" takes a small step away from this practice by noting that "[t]he State Bar shall give great weight" to the individualized assessment of a candidate by a qualified professional. However, this provision is in the uncodified "High Level Framework," not the proposed amendments to the rules themselves. Further, the individual assessment by

a qualified professional should be given significant deference - or even a rebuttable presumption. Much like how an appellate court would grant deference to fact-finder's determinations of fact at trial, the State Bar should grant deference to a qualified professional's individual assessment of a person with disabilities, as that professional is in the best position to observe the candidate, assess the full range of disabilities affecting the candidate, and determine the accommodations that are clinically appropriate.

### ***Concerns with "High Level Framework"***

Finally, many of the proposed changes in how accommodations are assessed by the State Bar are included solely in the "High Level Framework," which is not part of the formal rules proposal and could, therefore, be amended by the staff of the State Bar at any point without public comment.

### **Conclusion**

The changes in the proposed amendments are half-measures at best, unlikely to create the intended streamlining, nor to create a more equitable and inclusive State Bar. The proposed changes are the appearance of process, but without the outcome of justice and equity for candidates with disabilities. For all of the above reasons, we **OPPOSE** the current proposed amendments to the rules, as well as the "High Level Framework," and **URGE** the State Bar to adopt an amendment to the rules that:

- accord a presumption in favor of granting any accommodation that was deemed necessary for the student for prior standardized testing, including, but not limited to, the SAT, ACT, LSAT, GRE, MPRE, and other states' bar exams, with no limit on how far in the past those accommodations were provided as long as candidates certify that they still have the disabilities that required those prior accommodations and that those accommodations are still necessary, and deny the accommodation only if it is unreasonable in light of the fundamental nature of the Bar exam;
- accord a presumption in favor of granting any accommodation for the student that was deemed reasonably necessary by their undergraduate schools, graduate schools, or law schools, with no limit on how far in the past those accommodations were provided, as long as candidates certify that they still have the disabilities that required those prior accommodations and that those accommodations are still necessary, and deny the accommodation only if it is unreasonable in light of the fundamental nature of the Bar exam;
- applies this reciprocity without deferring to whether the NCBE, with its restrictive accommodations practices, has denied an accommodations request to the candidate;

- provides a timely response to candidates who request reasonable accommodations that allows them to engage in their eight-to-ten week endeavor of studying for the Bar, knowing whether they will have the accommodations that are clinically advised; and
- gives significant deference or a rebuttable presumption to the qualified professional who individually assessed the candidates' capabilities, examined their capacity, and determined what reasonable accommodations should be provided to a candidate with disabilities, and deny the accommodation only if it is unreasonable in light of the fundamental nature of the Bar exam.

Sincerely,

Paul L. Caron  
Duane and Kelly Roberts Dean and Professor of Law  
Pepperdine Caruso School of Law

Erwin Chemerinsky  
Dean and Jesse H. Choper Distinguished Professor of Law  
University of California, Berkeley School of Law

Marisa S. Cianciarulo  
Interim Dean  
Chapman University Dale E. Fowler School of Law

Colin Crawford  
Dean and Professor of Law  
Golden Gate University School of Law

Darby Dickerson  
President & Dean  
Southwestern Law School

Allen K. Easley  
Dean & Professor of Law  
Western State College of Law at Westcliff University

David L. Faigman  
Chancellor & Dean and the John F. Digardi Distinguished Professor of Law

University of California College of the Law, San Francisco

Susan Freiwald

Dean and Professor of Law

University of San Francisco School of Law

Andrew T. Guzman

Dean and Carl Mason Franklin Chair in Law, and Professor of Law and Political Science

University of Southern California, Gould School of Law

Michael Hunter Schwartz

Dean and Professor of Law

University of the Pacific, McGeorge School of Law

Kevin R. Johnson

Dean, Mabie-Apallas Professor of Public Interest Law, and Professor of Chicana/o Studies

University of California, Davis, School of Law

Michael J. Kaufman

Dean and Professor of Law

Santa Clara University School of Law

Russell Korobkin

Interim Dean & Richard C. Maxwell Distinguished Professor of Law

University of California, Los Angeles School of Law

Jenny S. Martinez

Dean and Richard E. Lang Professor of Law

Stanford Law School

Robert A. Schapiro

Dean and C. Hugh Friedman Professor of Law

University of San Diego School of Law

Sean M. Scott

President and Dean

California Western School of Law



January 31, 2023<sup>1</sup>

*Via Portal and Staff Email*

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
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CC: Louisa Ayrapetyan  
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Louisa.Ayrapetyan@calbar.ca.gov

Devan McFarland  
Committee of Bar Examiners Staff Contact  
Devan.McFarland@calbar.ca.gov

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar-  
**OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

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<sup>1</sup> Wondering why this letter is written using Calibri instead of Times New Roman? See Daniel Victor, *Citing Accessibility, State Department Ditches Times New Roman for Calibri*, N.Y. TIMES (Jan. 19, 2023), <https://www.nytimes.com/2023/01/19/us/politics/state-department-times-new-roman-calibri.html>.

We are writing on behalf of the the Disability and Mental Health Network at Stanford Law School; Disabled Students Association at Berkeley Law; Law Students for Accessibility at Duke University Law School; the Disabled Law Students Association at Harvard Law School; the Disability Law Society at Northwestern Pritzker School of Law; Disabled Law Students Association at Santa Clara Law; Disability Justice Coalition at Vanderbilt Law School; the Disability Law Society at UCLA Law; Disability Rights, Advocacy, Community at the University of Chicago Law School; Advocates for Disability Rights at UVA Law; and the Disabled Law Students Association at Yale Law School. As the primary student organizations that advocate for law students with disabilities at our respective law schools, we **OPPOSE** the proposed amendments to the rules of the State Bar, with the "High-Level Framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

The Disability and Mental Health Network at Stanford Law School; the Disabled Students Association at Berkeley Law; Law Students for Accessibility at Duke University Law School; the Disabled Law Students Association at Harvard Law School; the Disability Law Society at Northwestern Pritzker School of Law; Disabled Law Students Association at Santa Clara Law; Disability Justice Coalition at Vanderbilt Law School; the Disability Law Society at UCLA Law; Disability Rights, Advocacy, Community at the University of Chicago Law School; Advocates for Disability Rights at UVA Law; and the Disabled Law Students Association at Yale Law School are committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities-including people of color with disabilities-is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of people with disabilities in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation,

systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for people with disabilities. Testing accommodations are an effective and necessary means for embracing people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment documentation required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

- **Commit the State Bar to respond to requests for testing accommodations in a timely manner**

Test takers can then register with their non-accommodated fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations before embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

- **Retain the option for candidates to seek an independent review of denials of accommodations requests with the Committee of Bar Examiners**

This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

- **Allow the candidate up to 30 days to seek an independent review of the denial of testing accommodations**

The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

- **Make clear that any candidate may seek more than one review of the denial of a request for testing accommodations**

Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation; there is a back and forth with State Bar staff that results in a partial grant of accommodations; or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

- **Commit the State Bar to increasing the number and diversifying the expertise of its pool of expert consultants that review and evaluate requests for testing accommodations**

Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH V. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH V. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (**N.D.** Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

- **Automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams**

The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (*i.e.*, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(I)(a), (b), (d), (2), (B)(I)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

- **Automatically grant candidates the same testing accommodations that they previously received in college or law school**

*DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "High-Level Framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(G). This is inadequate.

- **Give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review**

The proposed rules include no provision on the weight to be given such documentation. The "High-Level Framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

- **Limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed"**

The "High-Level Framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(I), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by

insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

- **Assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations**

Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, the Disability and Mental Health Network at Stanford Law School, the Disabled Students Association at Berkeley Law; Law Students for Accessibility at Duke University Law School; the Disabled Law Students Association at Harvard Law School; the Disability Law Society at Northwestern Pritzker School of Law; Disabled Law Students Association at Santa Clara Law; Disability Justice Coalition at Vanderbilt Law School; the Disability Law Society at UCLA Law; Disability Rights, Advocacy, Community at the University of Chicago Law School; Advocates for Disability Rights at UVA Law; and the Disabled Law Students Association at Yale Law School **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backward.

Sincerely,

1. Emily Alpert, Disability and Mental Health Network at Stanford Law Co-President
2. Liza Tarbell, Disability and Mental Health Network at Stanford Law Co-President
3. Rosie La Puma Lebel, Disability and Mental Health Network at Stanford Law Treasurer
4. Gaelyn Walche, Disabled Students Association at Berkeley Law Co-President
5. Seth Tuthall, Disabled Students Association at Berkeley Law Co-President
6. Gabrielle Hartman, Law Students for Accessibility at Duke University Law School President
7. Ali Gentry, Disabled Law Students Association at Harvard Law Co-President
8. Marty Strauss, Disabled Law Students Association at Harvard Law Co-President
9. Kameelah Pointer, Disability Law Society at Northwestern Pritzker School of Law President
10. Taylor LaFrancis, Disabled Law Students Association at Santa Clara Law President
11. Madeline Knight, Disability Justice Coalition at Vanderbilt Law School President
12. Caitlyn Walker, Disability Law Society at UCLA Law Co-Chair

13. Angelica Felix-D'Egidio, Disability Law Society at UCLA Law Co-Chair
14. Maya Lorey, Disability Rights, Advocacy, and Community at the University of Chicago Law School President
15. Erica Tietz, Disability Rights, Advocacy, and Community at the University of Chicago Law School Vice-President
16. Sabrina Surgil, Advocates for Disability Rights at UVA Law President
17. Hannah Eichner, Disabled Law Students Association at Yale Law School Co-President
18. Rebecca Harris, Disabled Law Students Association at Yale Law School Co-President



January 31, 2023

Via Portal

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar-**OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

As a fellow lawyer with disabilities, I **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

The State Bar's mission states that it is to support "efforts for greater access to, and inclusion in, the legal system." This "access" and "inclusion" encompasses eliminating access barriers to those with disabilities who want to become lawyers. The proposed changes to rules only supports greater barriers to, and exclusion in, the legal system.

With the State Bar's mission in mind, the State Bar should be committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans,

college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH V. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations.

***Check your privilege.*** Those without disabilities do not know the true ramifications of a denial of accommodations-nor the burden or debilitating blockade a denial of accommodations creates for an aspiring law school graduate. The State Bar should not be preventing law school graduates from becoming attorneys based on their disabilities, but with the current proposed rules changes, the State Bar is set to do exactly that.

The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, **the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates.** If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a **timely manner**, such that test takers can register with their

nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, **a response from State Bar staff within two weeks of receipt is necessary.** A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (8) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to **30 days to seek an independent review of denial** of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that **any candidate may seek more than one review of the denial** of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should **commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations.** Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. **The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.**

Staff and consultant reviewers should be trained and directed to **approach the process with the presumption that the testing accommodation request is justified.** *DFEH V. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. **Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful.** The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied

- accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. **The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.**

The rules should also **require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.** *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that **the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review.** The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should **limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed."** The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all

clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations **requires leaders who are wholeheartedly committed to disability equality**, and who **embrace testing accommodations as a core component of equal opportunity**. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

The State Bar must practice what it preaches. According to the State Bar website "Our Mission: What We Do", the State Bar "Promotes diversity and inclusion in the legal system":

 TheStateBarofCalifornia



The State Bar:

- Licenses attorneys and regulates the profession and practice of law in California
- Enforces Rules of Professional Conduct for attorneys
- Disciplines attorneys who violate rules and laws
- Administers the California Bar Exam
- Advances access to justice
- Promotes diversity and inclusion in the legal system

The proposed rules changes, however, only promote barriers to, and exclusion in, the legal system. **The State Bar should actually implement its mission statement to promote diversity and inclusion, and to do so the State Bar must REJECT the proposed rules changes and associated "high-level framework".**

\*\*\*\*\*

For the reasons stated in this letter, I, a fellow lawyer with disabilities, **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

A Fellow Lawyer With Disabilities

## Commenter 8

January 31, 2023

*Via Portal and Staff Email*

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

We are writing on behalf of the National Disabled Legal Professionals Association (**NDLPA**).

NDLPA was founded in 2022 to organize and unify disabled attorneys, judges, and legal professionals into a force for change in the legal profession. NDLPA aims to advocate for and empower disabled legal professionals. NDLPA strives to promote professional

growth and opportunity for attorneys and legal professionals; to provide community service; to improve access and inclusion in the profession; and to ensure access to justice for all.

NDLPA is active across the country. NDLPA's leadership regularly assists bar examinees with their applications and appeals of accommodation requests, including in the State of California.

We **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

The National Disabled Legal Professionals Association is committed to promoting diversity in the legal profession and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities, including disabled people of color, is better equipped to serve all people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH V. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.



Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. As leaders of NDLP, we have worked with candidates struggling to access bar exam accommodations in states across the country, including California. The burden on disabled test takers is substantial. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur due to the reviewers' misunderstanding of an individual's disability and/or life circumstances or documentation mistakes made by medical practitioners. Denials also often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The inability to take a scheduled bar exam can have a detrimental impact on an individual's ability to support themselves and their families. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a prompt response from State Bar staff is necessary. Candidates need sufficient time to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A prompt response from the State Bar also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams. It is impossible to prepare for an exam if you do not know under what conditions the exam will be administered. It might also allow test takers to determine whether they can, in fact, take the exam at that time given a denial and address any issues for a future testing period.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the

substantial reforms needed here. The Consent Decree in the *DFEH V. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH V. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers, including lawyers with disabilities. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately

characterize double time as "exceptional" and improperly presume that people grow out of their disabilities. Additionally, these rules provide more deference to other testing organizations with restrictive barriers to test taking and accessing accommodations than medical professionals familiar with a disabled candidate. We are aware of a pattern of test takers who have struggled to secure specific accommodations for the MPRE, but who have had those accommodations in and/or prior to law school.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, the National Disabled Legal Professionals Association **OPPOSES** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards. The Board of Trustees should prioritize changes that move us towards a more accessible, inclusive, and diverse legal profession.

Sincerely,

Jordan Berger  
Organizer  
National Disabled Legal Professionals Association

Marissa Ditkowsky  
Organizer  
National Disabled Legal Professionals Association

Tara Roslin  
Organizer  
National Disabled Legal Professionals Association

AJ Link  
Organizer  
National Disabled Legal Professionals Association

Ann Motl  
Organizer  
National Disabled Legal Professionals Association

**DISCLAIMER:** National Disabled Legal Professionals Association (NDLPA) organizer Ashley Silva-Guzman, a member of the State Bar of California Committee of Bar

Examiners, has recused herself from participation in NDLP's decision to write this letter or the process of drafting and submitting this letter.



January 31, 2023

Via Online Portal at <https://fs22.formsite.com/sbcta/luesi3zlk9/index.html>

Ruben Duran, Chair  
Brandon N. Stallings, Vice-Chair  
Mark Broughton, Trustee  
Hailyn Chen, Trustee  
Jose Cisneros, Trustee  
Juan De La Cruz, Trustee  
Gregory E. Knoll, Trustee  
Melanie M. Shelby, Trustee  
Arnold Sowell Jr., Trustee  
Mark W. Toney, Ph.D., Trustee  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: **Opposition** to Proposed Amendments to the Rules of the State Bar, with "High-Level Framework," Pertaining to Testing Accommodations on the State Bar

Dear Board of Trustees:

We write on behalf of the Impact Fund and all four California affiliates of the American Civil Liberties Union ("ACLU") to oppose the proposed amendments to the rules of the State Bar pertaining to testing accommodations.

The Impact Fund is a nonprofit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. As a State Bar-funded Support Center, we are well aware of the justice gap that the State Bar identified in our state and struggle to understand why it would adopt new barriers to the admission of qualified attorneys.

The ACLU of Northern California, the ACLU of Southern California, the ACLU of San Diego and Imperial Counties, and ACLU California Action are regional affiliates of the ACLU, a national nonprofit, nonpartisan organization dedicated to furthering the principles of liberty and

equality embodied in the United States Constitution and this Nation's civil rights laws. The ACLU works to advance the civil rights and civil liberties of Californians in the courts, in legislative and policy arenas, and in the community. We strive for a society free of discrimination against people with disabilities, where they are valued, integrated members of society with full access to education, homes, health care, jobs, voting and beyond. The contributions of our legal colleagues who are disabled, both within our organization and in the broader civil rights community, are invaluable to our fight for equity and justice.

With that in mind, the Impact Fund and ACLU adamantly **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

**I. Diversity in the Legal Profession is Essential But Significant Unnecessary Barriers to Entry for Lawyers with Disabilities Continue to Exist.**

The California affiliates of the ACLU are committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that welcomes and licenses qualified lawyers with disabilities, including disabled people of color, is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only 5% of California attorneys report having a disability. This is a fraction of the 20% of disabled people in the state population. This disproportionality ultimately leads to disparities in the California judiciary: only 18 state court judges (2% of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through Individualized Education Programs ("IEPs") and Section 504 plans, college, the Law School Admission Test ("LSAT"), and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEHv. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.



Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the Scholastic Aptitude Test ("SAT"), in college, on the LSAT, in law school, on the Multistate Professional Responsibility Examination ("MPRE"), and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

## **II. The State Bar's Current Proposal for Testing Accommodations Is a Step Backward and Should be Significantly Revised.**

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

### **A. The rules should require timely responses to accommodation requests.**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation

which is typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

**B. The rules should retain an option for an independent review of accommodation denials.**

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

**C. The rules should allow a candidate an appropriate period of time to seek review of denial of testing accommodations.**

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

**D. The rules should make clear that candidates may seek more than one review.**

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. *See* Proposed Rule 4.90(C).

**E. The proposal should commit the State Bar to use more diverse consultants.**

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated

to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

**F. The proposal should commit the State Bar to appropriate training.**

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified.<sup>1</sup> Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

**G. The rules should require the State Bar to automatically grant the same testing accommodations that candidates received on previous standardized tests and the same testing accommodations they received in college or law school.**

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received, or were approved for, on prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied

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<sup>1</sup> Best Practices Panel Report in *DFEH v. LSAC*, 941 F. Supp. 2d 1159 (N.D. Cal. 2013), available at: <https://calcivilrights.ca.gov/Le11.alRecords/final-report-of-the-best-practices-panel/>.

- accommodations on the First-Year law students' Exam, the Legal Specialization Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.<sup>2</sup>

These convoluted exclusions do not match the standards of either the U.S. Department of Justice or the Law School Admission Council and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.<sup>3</sup> This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," which is not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so.<sup>4</sup> This is inadequate.

#### **H. The rules should require the State Bar to give deference to documentation from a qualified professional who has individually assessed the candidate.**

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant.<sup>5</sup>

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<sup>2</sup> The State Bar of California, Attachment C: Testing Accommodations -- High-Level Framework § I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D), available at: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029889.pdf>

<sup>3</sup> Best Practices Panel Report in *DFEHv. LSAC*, 941 F. Supp. At \*53.

<sup>4</sup> The State Bar of California, Attachment C: Testing Accommodations -- High-Level Framework § II(A)(6).

<sup>5</sup> U.S. DOJ, ADA Requirements: Testing Accommodations (2014), available at: [https://www.ada.fgov/ref/s2014/testing\\_accommodations.html](https://www.ada.fgov/ref/s2014/testing_accommodations.html); Best Practices *DFEHv. LSAC*, 941 F. Supp. At \*46.

### **I. The rules should limit required supporting documentation**

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needs." The high-level framework appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

### **J. The proposed rules should require an assessment of the State Bar's leadership on testing accommodations.**

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

## **III. CONCLUSION**

For the reasons stated in this letter, we **OPPOSE** the rule changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Shilpi Agarwal, Legal-Policy Co-Director (Legal Director)  
ACLU Foundation of Northern California

Melissa Goodman, Director of Advocacy / Legal Director  
ACLU Foundation of Southern California

David Trujillo, Chief Programs & Strategy Officer  
ACLU Foundation of San Diego and Imperial Counties

Carlos Marquez III, Executive Director  
ACLU California Action

Lindsay Nako, Director of Litigation & Training  
Impact Fund

January 31, 2023

*Via Portal and Staff Email*

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

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Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing on behalf of myself. I am second-year law student with a covered disability, that has been subject to the onerous restrictions imposed on those seeking accommodations, most recently with the NCBE in seeking MPRE accommodations (similarly onerous to the California Bar requirements). I **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." I urge the

Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

**Commitment to diversity in legal profession and eliminating access barriers** . A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

**Barriers continue to exclude disabled people from the legal profession** Despite the critical importance of a diverse and inclusive legal profession, **unnecessary barriers continue to exclude disabled people** from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: **only 18 state court judges (two percent of all California judges) identify as having a disability.**

**Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession** Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. **Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities.** Testing accommodations **do not confer an unfair advantage but instead provide an equal opportunity.** Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, **testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school.** The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession. It is unduly burdensome for someone like me with a disability to have to repeatedly acquire new paperwork, new medical consultations (often costly), every few years to satisfy first the LSAC, then my law school, then the NCBE, and finally the California State bar.

**The State Bar regularly denies requests for testing accommodations on the bar exam** Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the

LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. **Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation.** These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

**The current proposal is a step backward.** According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

### **The rules should require timely responses to accommodation requests**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal. Notably, scheduling time with a physician who is covered by your insurance, should the already lengthy examinations previously received fail, takes time. This an experience I am currently going through with the MPRE, despite having a diagnosis, prior accommodations and paperwork from two physicians that have previously treated me.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to



embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (8) (eliminating timing commitment for six-month ahead candidates).

**The rules should retain an option for an independent review of accommodation denials** The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

**The rules should allow a candidate an appropriate period of time to seek review** The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

**The rules should make clear that candidates may seek more than one review** The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

**The proposal should commit the State Bar to more and more diverse consultants** The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

**The proposal should commit the State Bar to training and retraining** Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

**The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests**

This is the MOST important modification that should be made. As stated above, it is unduly burdensome to have to secure new paperwork for the same disability again and again. Also, based on conversations I have had recently with "experts" in neurological reports, the California Bar has effectively created a cottage industry of professionals who prey on anxious law students and charge exorbitant fees beyond what a regular physician charges (all out of pocket), and one who actually routinely treats a student for the diagnosed disability. The State Bar has effectively ensured that those who are wealthy will be able to receive accommodations, while those who like me, already have close to \$200K in debt, must decide whether a third physician's costly, labor-intensive diagnosis is in my student-loan budget, despite the fact I was diagnosed and have been receiving treatment for my disability for years prior to taking the LSAT or attending law school. The rules should require that the State Bar **automatically grant candidates the same testing accommodations that they have previously received** on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);

- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.
- This list is ABSURD. You are clearly creating perverse incentives for the creation of a corrupt, cottage industry of medical "professionals" to prey on law students. Shame on you!

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

**The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.** The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate. If an accredited law school approves accommodations, who is the California Bar to deny them on the same basis?

**The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant.** The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does

not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

**The rules should limit required supporting documentation to that which is "reasonable, limited, and narrowly tailored to the information needed"** The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

**[The proposal should include an assessment of leadership.]** The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, I **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Anonymous  
UCLA Law  
Second-Year

# Berkeley Law

Chelsea D. Yuan  
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Accessible Education  
cdyuan@berkeley.edu

The State Bar of California  
Committee of Bar Examiners  
180 Howard Street  
San Francisco, CA 94105  
*Submitted via online Public Comment Form*

January 31, 2023

Dear State Bar of California,

I am writing on behalf of the UC Berkeley School of Law to share comments on the Proposed Amendments to the Rules of the State Bar pertaining to testing accommodations for the California Bar Exam. We appreciate the efforts to streamline the process for applicants who are seeking accommodations for the California Bar exam consistent with those they have received on standardized tests within the last five years.

## High stakes tests should include timed law school exams

The background materials for the Proposed Amendments reference the Department of Justice guidelines, specifically the following statement: "If a candidate requests the same testing accommodations he or she previously received on a similar standardized exam or high-stakes test, provides proof of having received the previous testing accommodations, and certifies his or her current need for the testing accommodations due to disability, then a testing entity should generally grant the same testing accommodations for the current standardized exam or high-stakes test without requesting further documentation from the candidate."

When evaluating a request for exam accommodations, prior high-stakes tests that are currently considered include the LSAT, GRE, and MPRE. That list should be expanded to include timed law school final exams. Many law students receive exam accommodations for the first time while in law school. There are myriad reasons why students do not receive accommodations before law school, including access to resources and stigma.

Limiting review of prior accommodations to standardized tests is detrimental to the bar exam applicants. Looking at the MPRE specifically, it is significantly shorter than the Bar, based on only one subject, and is only multiple choice. For applicants whose accommodations are needed specifically for essay exams over two hours long, the question of whether they received

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accommodations on the MPRE is irrelevant. Whether those students received accommodations for lengthy essay exams in law school is far more indicative of whether they need accommodations for the Bar exam.

## Further transparency needed

The background materials for the proposed amendments state that one goal of the revisions is transparency. We request that more details be provided for the criteria listed in the application for accommodations. Specifically, the criteria states:

Testing accommodations are available to applicants:

- Who have one or more functional limitation(s);
- As compared to most people in the general population;
- As the result of one or more disabilities; and
- Who are unable to access a State Bar-administered exam under standard test conditions

"General population" needs to be defined and applied reasonably. It is unclear how an applicant would successfully meet the stated criteria. In addition, "unable to access" needs to be defined. The language is vague, ambiguous, and overbroad. It also needs to be made clear how this will be applied reasonably.

## Ten (10) days is not enough time to respond to denial of accommodations

Revised Rule 4.89(A) states, "An applicant notified that a request for testing accommodations has been denied or approved with modifications may request a review. The request must be submitted no more than ten days after the date of the notice of denial or modified grant. The applicant may submit supporting documentation with the request for review."

Ten (10) days is not enough time to respond to a partial or complete denial of accommodations. Denial of accommodations typically cites insufficient evidence as the basis for the denial. Obtaining additional supporting documentation needs to come from a qualified professional. The ten day window is never truly ten days because it will always include weekends and sometimes holidays during which the applicant cannot communicate with their qualified professional. The rule as stated is misleading and unfair.

We suggest extending the time window to at least thirty (30) days. It is unrealistic to expect a qualified professional to meet with the applicant to discuss the additional supporting

documentation and produce thoughtful and cohesive documentation t within ten days. Under the current practice, the ten day deadline in the denial letter reads as a scare tactic which discourages applicants from providing additional supporting documentation because it is not long enough for them to receive such documentation from the necessary qualified professional.

If the bar examiners choose not to extend the time to thirty days, we suggest using "business days" instead of "calendar days" as most courts do when dealing with short windows of time. We also suggest transparency that the rules allow an extension to be requested from the bar examiners. Extensions are granted in practice, but not all applicants know that they can be requested.

Sincerely,



Chelsea D. Yuan  
Director of Student Services, Accessible Education

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The State Bar of California must stop violating the rights of people with disabilities.

I am a Disability Attorney Advocate in Sacramento, California, and a member of the California Bar for 37 years. Part of my work includes monitoring the activities of the Bar with respect to inclusivity, diversity, and access to justice for people with disabilities. The bar is failing miserably in all of these areas.

For several years, the Bar has faced criticism and lawsuits over discriminatory practices with respect to the Bar exam. People with disabilities argue that the Bar Examiners are in violation of the Americans with Disabilities Act due to the burdensome process and improper guidelines which are used to deny accommodations for test takers.

The Bar has also been accused of violating the ADA with respect to job postings, and failing to provide captioning during public Zoom meetings. My recent article on the job posting issue is "Inclusive and Unbiased Job Postings." *Daily Journal*, October 26, 2022, #369673.

**<https://www.dailyjournal.com/articles/369673-inclusive-and-unbiased-job-postings>**.

The California Bar is also currently facing \$163 million in lawsuits due to charges of corruption and a blatant disregard for the public good. Failure to design lawful policies and procedures for bar exam testing accommodations is just another example of the inability of Bar administrators to understand disability issues and conform their actions to state and federal law. It is also a potential source of millions of dollars in attorney's fees and judgments against the bar for violating the rights of bar exam candidates.

Many advocates and legal experts have provided detailed arguments about the ways in which the new rules proposals do not go far enough toward a fair system of accommodations.



My comment is this: ***The current system violates the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Due Process and Equal Protection Clauses of the federal Constitution and California law. The new rules make those violations worse, exposing the bar to completely avoidable litigation and costs.***

It isn't enough that the committee staff counts up the number of comments in favor and opposed. The ADA is not subject to a majority vote. Our rights are protected whether others support us or not. The bar does not have the option of creating a system that may or may not be good enough for most people. If you violate the rights of even one person with a disability, your policies are unlawful.

As you know, the dispute over the exam rules is fully outlined in *Kohn v. The State Bar of California*, which is currently pending in the 9<sup>th</sup> Circuit Court of Appeals. The appellate justices have asked the federal Department of Justice to weigh in because the bar is using my money to argue that it can't be held responsible for mistreating people with disabilities. I am appalled and outraged that my dues would be used to fight against the fair treatment of members of my community.

There are many other examples of systemic discrimination against people with disabilities by the bar association, supported by emails, letters, and recordings. Advocates have been testifying during public comment, sending letters to the trustees and bar committees, and meeting behind the scenes demanding change, but their efforts have been ignored.

I am in favor of a proposal by some disability attorney advocates who are calling for a boycott of the bar by refusing to pay bar dues until the bar complies with state and federal disability civil rights laws. I am also in favor of calls for investigation by the federal Department of Justice.

The bar is not above the law. At some point, the bar and its committees need to listen, or face the consequences.

Michael E. Waterstone

Fritz B. Burns Dean, Loyola Law School

Senior Vice President, Loyola Marymount University

**DREDF: LEGAL  
RIGHTS  
WORK**

**DISABILITY RIGHTS  
ADVOCATES**

January 31, 2023

*Via Portal and Staff Email*

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Chair

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Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar-

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

Disability Rights Education and Defense Fund (DREDF), Legal Aid at Work (LAAW), and Disability Rights Advocates (ORA) write to \_\_\_\_\_ the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein, and which is attached hereto as Exhibits A (track changes) and B (clean).

DREDF, LAAW, and ORA are nonprofit law and public policy organizations committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. We collectively have

extensive experience representing disabled individuals who need accommodations to access the legal profession, including disabled law graduates who need testing accommodations to take the California bar exam on an equal basis as nondisabled graduates.

The minimum standards for a fair, effective, and lawful approach to testing accommodations have been developed and articulated by the U.S. Department of Justice (DOJ) and by the judicial process through litigation against the Law School Admissions Council (LSAC).<sup>1</sup> The outcome in the LSAC litigation systemically altered the pipeline for the legal profession nationwide and opened the doors to law school for candidates who now need accommodations to take the California Bar Exam on an equal playing field.

Despite these developments, law graduates with disabilities routinely report that their requests for testing accommodations on the California bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as on the LSAT, in college, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar.<sup>2</sup> Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

The proposal before the Board of Trustees is described as "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice and the LSAC litigation.<sup>3</sup> While we welcome this stated intent, the proposal fails to meet the minimum DOJ and LSAC standards in numerous respects and will not effectively further

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<sup>1</sup> See U.S. Dep't of Justice, ADA Requirements: Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); Consent Decree in *Dep't of Fair Emp't & Hous. v. Law Sch. Admission Council Inc.*, No. 12-CV-01830-JCS (N.D. Cal., May 29, 2014); <https://calcivilrights.ca.gov/legalrecords/consent-decree-in-dfeh-v-lsac/>, and <https://clearinghouse.net/doc/69024/>; Best Practices Panel Report. <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; *DFEH v. LSAC*, 2015 U.S. Dist. LEXIS 104751 (N.D. Cal. Aug. 7, 2015) (deciding challenges to Best Practices Report); see also 42 U.S.C. § 12189; 28 C.F.R. § 36.309; *Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1162 (9th Cir. 2011); 28 C.F.R. Part 35, App. A. Other Issues (section 36.309 "is useful as a guide for determining what constitutes discriminatory conduct by a public entity in testing situations").

<sup>2</sup> These assessment are almost never covered by insurance and require that test takers spend thousands of dollars.

<sup>3</sup> See Oct. 14, 2022, Memorandum of Christina Doell, Program Manager to Committee of Bar Examiners (referencing U.S. Department of Justice guidance and LSAC litigation outcomes as guide for proposal). Attached to Agenda Item III(C), at <https://board.calbar.ca.gov/Agenda.aspx?id=16831&tid=O&show=100034380>.

the goals of elimination of bias and professional diversity. The proposal further eliminates a longstanding procedural right for test takers denied accommodations and weakens State Bar response deadlines.

DREDF, LAAW, and DRA, together with their constituents and clients, are considering all avenues for bringing the State Bar into compliance with applicable standards for testing accommodations. Avenues include this comment opportunity, class action litigation, and federal agency action. These options have differences in cost and disruption to the State Bar.

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A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only six percent of California attorneys report having a disability,<sup>4</sup> a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.<sup>5</sup>

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school.

The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal

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<sup>4</sup> State Bar of California, 2022 Report Card on the Diversity of California's Legal Profession, Diversity of 2022 California Licensed Attorneys, Fig. 7, <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>.

<sup>5</sup> Demographic data on gender, race/ethnicity, sexual orientation, gender identity, and veteran and disability status of California State Justices and Judges (2022) at 14-18, <https://www.courts.ca.gov/documents/2022-JO-Demographic-Data.pdf>.

profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities, including disabled people of color, in the legal profession.

Despite this accepted understanding of the role of testing accommodations, law graduates with disabilities routinely report that their requests for testing accommodations on the California bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam (sometimes after the deadline to appeal the denial has passed), with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

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The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner (within two weeks), such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. See 2014 U.S. DOJ Guidance. Instead, the existing and proposed rules make no such commitment,<sup>6</sup> and the proposed rules

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<sup>6</sup> See Rule 4.84 & Proposed Rule 4.84 (recommending that test takers submit requests six months before exam); Rule 4.88(A) & Proposed Rule 4.88(8) (promising State Bar response

eliminate and extend existing deadlines for State Bar responses.<sup>7</sup> Timely responses will be much more feasible for State Bar staff and reviewers with the other changes discussed herein.

With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

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The State Bar should increase in number and diversify in expertise its pool of expert consultants that it uses to review and evaluate requests for testing accommodations. See *DFEH v. LSAC Consent Decree*, at Injunctive Relief, ¶ 6. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a stringent, stingy, and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. There is no such provision in the proposal.

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The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the GRE, ACT, SAT, LSAT, GMAT, DAT, MCAT, or MPRE. See LSAC Consent Decree, at Injunctive Relief, ¶ 5(a); LSAC Policy on Prior Testing Accommodations, <https://www.lsac.org/lsat/lsac-policy-accommodations-test->

within 60 days, which is longer than the length of time between the registration deadline and the exam).

<sup>7</sup> See Proposed Rule 4.88(A) (changing start of 60-day response deadline to when State Bar deems the request "complete" rather than to when the request is submitted), (B) (deleting State Bar promise to provide final determination at least one month before exam if test taker submits requests six months before exam).

takers-disabilities/policy-prior-testing-accommodations. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but instead subjects this simple concept to a byzantine set of extensive exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should similarly require that the State Bar automatically grant candidates the same testing accommodations that they previously received on prior high-stakes test in college or law school, such as on timed in-class exams in college or law school. See 2014 U.S. DOJ Guidance; *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*\*45, 53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework" states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.



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The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities.<sup>8</sup> These comprehensive reports cost thousands of dollars and are not covered by insurance. The State Bar should clarify that it is no longer requiring comprehensive evaluation reports with underlying test results.

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The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

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#### *Option for Independent Review.*

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is

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<sup>8</sup> Compare Form C re Specific Learning Disorder, Form D re ADHD, and Form E re Psychological Disabilities, all requiring "comprehensive evaluation report" and all underlying "records and test results," <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>, with proposed draft Qualified Professional Certification, Section 5, stating that documentation "may consist of, where appropriate, a comprehensive evaluation" and "standardized test data from appropriate evaluation instruments."

critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

*Adequate Time to Seek Review.*

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

*No "Cap" on Reviews with Additional Information.*

Any candidate may seek or have need to seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C). This language should be excluded.

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Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

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The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the

Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, DREDF, LAAW, and DRA the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Claudia Center

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

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## CHAPTER 7. TESTING ACCOMMODATIONS

### Rule 4.80 Eligibility for testing accommodations

Applicants with disabilities are granted reasonable testing accommodations if provided ~~that they~~ are capable of demonstrating that they are otherwise eligible to take an examination and, in accordance with these rules, they

- (A) have submitted an approved Application for Registration for the examination for which testing accommodations are requested, which has been approved; and
- (B) have submitted a Request petition for testing Accommodations on the State Bar's forms with the required documentation, which has been approved.
- (C) establish to the satisfaction of the State Bar the existence of a disability that prevents them from taking an examination under standard testing conditions; that testing accommodations are necessary to address the functional limitations related to their disabilities; and the testing accommodations sought are reasonable and appropriate for their disabilities; and,
- (D) separately apply for the examination for which testing accommodations are requested.

### Rule 4.81 Testing accommodations in general

- (A) Requests/Petitions for testing Accommodations are processed on a case-by-case basis consistent with these rules.
- (B) The State Bar responds to Requests makes its best effort to process petitions for testing Accommodations consistent with the timelines set out in these rules; however, Requests for Testing Accommodations that do not include the required documentation may be denied expeditiously but does not process petitions that are incomplete.
- (C) Timelines ~~for~~ in testing accommodations these rules are solely to expedite the processing of petitions Requests for Testing Accommodations and are not jurisdictional. The State Bar may extend the timeline for good cause, so long as the extension does not interfere with the applicant's ability to seek review in time for the exam or to equally prepare for and access the exam.
- (D) An examination application fee is not refunded if a Request for testing Accommodations is denied.

### Rule 4.82 Definitions and standards

These definitions and standards apply to the rules on and petitions 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, and activities limits an applicant's ability to

- demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination.
- (B) A "physical impairment" is a physiological disorder or condition or an anatomical loss affecting one or more of the body's systems.
- (C) A "mental impairment" is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.
- (D) Disabilities include, but are not limited to, deafness, blindness, paralysis, missing limbs, diabetes, seizure disorders, learning disabilities, ADD, ADHD, autism, developmental disabilities, anxiety disorders, and mood disorders. These disabilities and other conditions are "non-temporary" for purposes of these rules.
- (E) To receive testing accommodations, a qualified applicant must demonstrate a disability that limits the applicant's ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination. An applicant is entitled to an accommodation that best ensures that the results of the examination will accurately reflect the applicant's knowledge, skills, and abilities tested on an examination and not the applicant's disability.
- (F) 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.:
- (G) The State Bar may deny an , provided that the adjustment or modification would:
- (1) compromise the security or validity of an examination or the integrity or 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.

**Rule 4.83 Guidelines for testing accommodations**

- (A) The State Bar publishes guidelines for documenting the need for testing accommodations based on learning disabilities and attention deficit/hyperactivity disorder, including testing required to establish the existence of the disability and the reasonableness of the accommodations requested.
- (B) The State Bar may publish guidelines for other disabilities accommodated on past examinations.

**Rule 4.84 When to file a petition request for testing accommodations**

- (A) A RequestPetition For Testing Accommodations is not an application for a bar examination. Filing one does not constitute filing the other or initiate its processing. An applicant must separately apply for an examination.
- (B) An applicant is encouraged to file a Petition Request For Testing Accommodations as far in advance as practicable. To allow sufficient processing time, general applicants are encouraged to submit their petitions at least by the beginning of their last year of lmv study and attorney applicants no later than six months prior to the examination they wish to take. If an applicant waits until the final examination application deadline for a particular examination to petition for testing accommodations, it is possible that processing will not be completed or the applicant will not be able to complete all required or available procedures prior to administration of the examination.
- (C) A Petition Request For Testing Accommodations must be complete and receipt must be 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.

- (D) If a disability is temporary. Depending on the nature of a disability and the date on which a petition is filed, the State Bar may determine that the changing nature of a disability requires that the applicant file a new petition request nearer the examination date or that a decision regarding the petition request be deferred.

**Rule 4.85 Initial Petition Request For Testing Accommodations**

- (A) An applicant with a qualified disability seeking testing accommodations must file a Petition Request for Testing Accommodations on the State Bar's form.

## Exhibit A

- (B) In addition to the Petition Request for Testing Accommodations, a qualified applicant seeking testing accommodations must also provide with the petition request the documentation required for specific specialist verification forms the State Bar determines are appropriate to verify the applicant(s) disability or disabilities and the applicant's need for the requested testing accommodations to demonstrate the knowledge, skills, and abilities tested on an examination. The State Bar will only require documentation that is reasonable, limited, and narrowly tailored to verify disability and the need for the requested accommodations.
- (C) If a law school has provided testing accommodations, a qualified applicant must submit the petition Request with the designated State Bar form, completed by a law school official or legal education supervisor.
- (D) If another state has provided approved accommodations for the qualified applicant for its bar examination, a qualified applicant must submit the petition Request with the designated State Bar form, completed by an official responsible for testing accommodations.
- (E) If another testing agency has provided approved accommodations for its examination, and the qualified applicant seeks to rely on this prior approval, a-the qualified applicant may be required to must submit the petition Request with documentation demonstrating a copy of the prior approval of accommodations notice.
- (F) If the qualified applicant seeks to rely upon the documentation of a qualified professional who has made an individualized assessment of the applicant, the qualified applicant must submit the Request with this documentation.
  - (1) Qualified professionals have flexibility in the type and source of the supporting documentation they submit to support testing accommodations.
  - (2) The State Bar will not require comprehensive evaluation reports.
- (G) Requests for Testing Accommodations that do not include the required forms and documentation may be denied. A Petition for Testing Accommodations is considered complete only upon receipt of all required forms that have been completed according to instructions. A petition that is incomplete by a final examination application deadline is not processed for that examination.

### **Rule 4.86 Subsequent petitions requests for testing accommodations**

- (A) Testing accommodations are not automatically extended upon failure of an examination to subsequent exams. The qualified applicant must submit a new Request for Testing Accommodations but must be requested for a subsequent examination any time before the subsequent examination application deadline.

However, the State Bar will automatically grant at least the same testing accommodations that it has previously granted a qualified applicant with a non-temporary disability.

- (8) An applicant with a who is non-temporary permanently disability-lee may petition for the same accommodations may incorporate prior supporting documentation into a new Request, rather than submit an entirely new petition. A, subsequent petition must be made in accordance with State Bar's requirements.
- (C) An applicant 1.-,ho has with a temporary disability or who seeks different accommodations than those previously granted must file a new Request Petition for Testing Acaommodations with all supporting documentation before by-the examination application final filing deadline if filed in connection with a particular administration of an mmination.

#### **Rule 4.87 Emergency requests for testing accommodations**

An applicant who becomes disabled after a final examination application filing deadline may file a Petition Request for Testing Accommodations, which must include the forms required by Rule 4.85, with a request that it be considered as an emergency petitionrequest. Documentation explaining the nature, date, and circumstances of the emergency must be filed with the petitionrequest. Receipt of the petition request and supporting documentation must be at least ten days before the first day of the examination. This rule does not apply to disabilities that existed before the final deadline for an examination apploiation, whether or not they were diagnosed or a visit to a treating professional could be arranged.

#### **Rule 4.88 State Bar response to Petition Request For Testing Accommodations**

- (A) The State Bar will respond within two weeks to aAn applicant who has fUeG submitted a Request Petition For Testing Accommodations in accordance with these rules is notified in i.vriting within thirty days of receipt. when additional information is required, and within sixty days when the petition is granted, granted V.ith modifications, denied, or action is pending.
- (8) The State Bar will automatically grant testing accommodations as follows:
  - (1) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations it has previously approved for the applicant on any exam administered by the State Bar.
  - (2) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another testing agency for a standardized test such as the GRE, ACT, SAT, LSAT, GMAT, DAT, MCAT, or MPRE.
  - (3) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another state bar.



(4) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by the applicant's college or law school for timed, in-class, closed-book exams.

An applicant relying on this subsection who submits documentation demonstrating previously approved testing accommodations together with coupled with a self-certification of continued need need not submit the report of a qualified professional who has made an individualized assessment of the applicant.

Previously approved testing accommodations that fall under this subsection are reasonable and will not be denied based on Rule 4.85(G).

(C) In reviewing and responding to a Request for Testing Accommodations, the State Bar will give more weight to the report of qualified professional who has made an individualized assessment of the candidate as compared to the opinions of a consultant who has not assessed the candidate.

If a complete petition is filed at least six months before the examination for v. high testing accommodations are sought, the applicant may expect a final determination at least a month before the examination.

(DG) With the consent of the petitionerqualified applicant, the State Bar or a consultant may confer with a specialist who has treated the petitionerapplicant.

(EG) If the State Bar denies A notice of denial of a Petition Request For Testing Accommodations or makes a modified grant, the State Bar response will state the basis or bases the reasons for the denial or modifications, and advises the petitioner of any right to appeal. If the State Bar finds that the requested accommodation is not required to be provided under 4.82(G), the response will include the State Bar's basis or bases for this finding. The notice response will be sufficiently detailed to provide the applicant fair notice of the State Bar's legal and/or factual analysis and findings, including the weight provided to the documentation of the applicant's qualified professional, and may include an excerpt of a consultant's evaluation. The response will advise the applicant of rights to appeal.

#### **Rule 4.89 Applicant response to proposed modification or request for information**

An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request will be -is-processed on the basis of information submitted.

#### **Rule 4.90 Committee review of denied or modified petitionrequest**

## Exhibit A

- (A) An applicant notified that a Petition Request For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within ~~teA--~~30 days of the date of the denial or modified grant unless an examination schedule requires a shorter time for or some other reasonable period established by the Committee review.
- (B) 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 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 two weeks 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 must be based on the original petition request and supporting documentation provided by the applicant and the Director of Admissions. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

### **Rule 4.91 Confidentiality of Petitions Requests for Testing Accommodations**

Petitions Requests for Testing Accommodations, documentation submitted in support and evaluations of requests are confidential.

### **Rule 4.92 False or misleading information in Petition Request For Testing Accommodations**

False or misleading information in a Petition Request For Testing Accommodations is considered in determining an applicant's moral character and may result in a negative determination of moral character.

## Exhibit 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

- (A) have submitted an Application for Registration for the examination for which testing accommodations are requested, which has been approved; and
  - (B) have submitted a Request for Testing Accommodations with the required documentation, which has been approved.
- 
- (A) Requests for Testing Accommodations are processed on a case-by-case basis consistent with these rules.
  - (B) The State Bar responds to Requests for Testing Accommodations consistent with the timelines set out in these rules; however, Requests for Testing Accommodations that do not include the required documentation may be denied.
  - (C) Timelines in these rules are solely to expedite the processing of Requests for Testing Accommodations and are not jurisdictional. The State Bar may extend the timeline for good cause, so long as the extension does not interfere with the applicant's ability to seek review in time for the exam or to equally prepare for and access the exam.
  - (D) An examination application fee is not refunded if a Request for Testing Accommodations is denied.

These definitions and standards 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.
- (B) A "physical impairment" is a physiological disorder or condition or an anatomical loss affecting one or more of the body's systems.
- (C) A "mental impairment" is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.
- (D) Disabilities include, but are not limited to, deafness, blindness, paralysis, missing limbs, diabetes, seizure disorders, learning disabilities, ADD, ADHD, autism, developmental disabilities, anxiety disorders, and mood disorders. These disabilities and other conditions are "non-temporary" for purposes of these rules.

## Exhibit B

- (E) To receive testing accommodations, a qualified applicant must demonstrate a disability that limits the applicant's ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination. An applicant is entitled to an accommodation that best ensures that the results of the examination will accurately reflect the applicant's knowledge, skills, and abilities tested on an examination and not the applicant's disability.
- (F) 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.
- (G) The State Bar may deny an adjustment or modification if it finds that it would:
  - (1) compromise the security or validity of an examination or the integrity or 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.
- (A) A Request For Testing Accommodations is not an application for a bar examination. Filing one does not constitute filing the other or initiate its processing. An applicant must separately apply for an examination.
- (B) An applicant is encouraged to file a Request For Testing Accommodations as far in advance as practicable.
- (C) A Request For Testing Accommodations must be complete and receipt must be 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.

## Exhibit B

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.

- (D) If a disability is temporary, the State Bar may require that the applicant file a new request nearer the examination date or that a decision regarding the request be deferred.
- (A) An applicant with a disability seeking testing accommodations must file a Request for Testing Accommodations on the State Bar's form.
- (B) In addition to the Request for Testing Accommodations, a qualified applicant seeking testing accommodations must also provide with the request the documentation required for the State Bar to verify the applicant's disability or disabilities and the applicant's need for the requested testing accommodations to demonstrate the knowledge, skills, and abilities tested on an examination. The State Bar will only require documentation that is reasonable, limited, and narrowly tailored to verify disability and the need for the requested accommodations.
- (C) If a law school has provided testing accommodations, a qualified applicant must submit the Request with the designated State Bar form, completed by a law school official or legal education supervisor.
- (D) If another state has approved accommodations for the qualified applicant for its bar examination, a qualified applicant must submit the Request with the designated State Bar form, completed by an official responsible for testing accommodations.
- (E) If another testing agency has approved accommodations for its examination, and the qualified applicant seeks to rely on this prior approval, the qualified applicant must submit the Request with documentation demonstrating the prior approval of accommodations.
- (F) If the qualified applicant seeks to rely upon the documentation of a qualified professional who has made an individualized assessment of the applicant, the qualified applicant must submit the Request with this documentation.
  - (1) Qualified professionals have flexibility in the type and source of the supporting documentation they submit to support testing accommodations.
  - (2) The State Bar will not require comprehensive evaluation reports.
- (G) Requests for Testing Accommodations that do not include the required forms and documentation may be denied.

## Exhibit B

- (A) Testing accommodations are not automatically extended upon failure of an examination to subsequent exams. The qualified applicant must submit a new Request for Testing Accommodations before the subsequent examination application deadline. However, the State Bar will automatically grant at least the same testing accommodations that it has previously granted a qualified applicant with a non-temporary disability.
- (B) An applicant with a non-temporary disability may incorporate prior supporting documentation into a new Request.
- (C) An applicant with a temporary disability must file a new Request with all supporting documentation before the examination application deadline.

An applicant who becomes disabled after a final examination application filing deadline may file 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 filed with the request. Receipt of the request and supporting documentation must be at least ten days before the first day of the examination.

- (A) The State Bar will respond within two weeks to an applicant who has submitted a Request For Testing Accommodations in accordance with these rules.
- (B) The State Bar will automatically grant testing accommodations as follows:
  - (1) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations it has previously approved for the applicant on any exam administered by the State Bar.
  - (2) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another testing agency for a standardized test such as the GRE, ACT, SAT, LSAT, GMAT, DAT, MCAT, or MPRE.
  - (3) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by another state bar.
  - (4) The State Bar will grant an applicant with a non-temporary disability the same testing accommodations approved by the applicant's college or law school for timed, in-class, closed-book exams.

An applicant relying on this subsection who submits documentation demonstrating previously approved testing accommodations together with

## Exhibit B

coupled with a self-certification of continued need need not submit the report of a qualified professional who has made an individualized assessment of the applicant.

Previously approved testing accommodations that fall under this subsection are reasonable and will not be denied based on Rule 4.85(G).

- (C) In reviewing and responding to a Request for Testing Accommodations, the State Bar will give more weight to the report of qualified professional who has made an individualized assessment of the candidate as compared to the opinions of a consultant who has not assessed the candidate.
- (D) With the consent of the qualified applicant, the State Bar or a consultant may confer with a specialist who has treated the applicant.
- (E) If the State Bar denies a Request For Testing Accommodations or makes a modified grant, the State Bar response will state the basis or bases for the denial or modification. If the State Bar finds that the requested accommodation is not required to be provided under 4.82(G), the response will include the State Bar's basis or bases for this finding. The response will be sufficiently detailed to provide the applicant fair notice of the State Bar's legal and/or factual analysis and findings, including the weight provided to the documentation of the applicant's qualified professional, and may include an excerpt of a consultant's evaluation. The response will advise the applicant of rights to appeal.

An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request will be processed on the basis of information submitted.

- (A) An applicant notified that a Request For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within 30 days of the date of the denial or modified grant unless an examination schedule requires a shorter time for Committee review.
- (B) 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 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 two weeks unless an examination schedule requires a shorter time.

## Exhibit B

- (D) If the Director of Admissions does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original request and supporting documentation provided by the applicant and the Director of Admissions. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

Requests for Testing Accommodations, documentation submitted in support and evaluations of requests are confidential.

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.





Loyola Law School  
Loyola Marymount University  
The Coelho Center for  
Disability Law, Policy and Innovation

January 31, 2023

Via Portal and Staff Email

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
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RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

We are writing on behalf of The Coelho Center for Disability Law, Policy and Innovation ("The Coelho Center"). The Coelho Center was founded in 2018 by the Honorable Anthony "Tony" Coelho, primary author and sponsor of the Americans with Disabilities Act. Our mission is to collaborate with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. A primary goal of The Coelho Center is to increase representation of legal professionals with disabilities. Our cornerstone project is The Coelho Law Fellowship Program, which targets and supports college students and recent graduates with disabilities who have an interest in the law.<sup>1</sup> This pipeline project is necessary because too often, barriers exclude and discourage disabled people from pursuing a legal career. The current proposed amendments pertaining to Testing Accommodation raise serious concern **that** the process will impose even *greater* barriers to qualified applicants with disabilities. As such, we **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework."

The Coelho Center is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with

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<sup>1</sup> The Coelho Law Fellowship is a 10-month program in which fellows receive training, academic support and mentorship. For more information, visit <https://www.lls.edu/coelhocenter/lawfellowsprogram/>.



## Loyola Law School

Loyola Marymount University  
The Coelho Center for  
Disability Law, Policy and Innovation

disabilities. Specifically, we strive to center the voices and leadership of disabled people of color. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities, including disabled people of color, is better equipped to serve the varied people and communities who live and work in California, including indigent people.,.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only six percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (over one in five).<sup>2</sup> This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.<sup>3</sup>

**Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession.** Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities, including disabled people of color, in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on

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<sup>2</sup> State Bar of California, 2022 Report Card on the Diversity of California's Legal Profession, Diversity of 2022 California Licensed Attorneys, Fig. 7, <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>

<sup>3</sup> Judicial Council of California (2022), Demographic Data Provided by Responding Justices and Judges Relative to Veteran and Disability Status, P.15, <https://www.courts.ca.gov/documents/2022-JO-Demographic-Data.pdf>

the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

**The current proposal is a step backward.** According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

**The rules should require timely responses to accommodation requests.**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.



The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses.<sup>4</sup>

**The rules should allow a candidate an appropriate period of time to seek review.** The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days.<sup>5</sup> Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

**The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations.** Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed plainly states additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed.<sup>6</sup>

Furthermore, if this rule were to be adopted, it burdens candidates who still seek for requested accommodations to make an appeal to the California Supreme Court.<sup>7</sup> It is unlikely candidates with disabilities have the time or finances to ask the state's highest court to review their requests for testing accommodations. Candidates already will be juggling the final semester of law school. They already would have poured thousands of dollars getting newer medical evaluations. Furthermore, this assumes candidates will have the means to hire an attorney who can file a direct appeal to the California Supreme Court. There is no guarantee the court will hear the appeal on a timely manner, and thus candidates who are relying on testing accommodations will be placed in a difficult situation where they may delay sitting for the Bar Exam. Even though appealing to the highest court is optional, this proposed rule will have unintended consequences of *discouraging* qualified candidates from exhausting all of their possible options.

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<sup>4</sup> Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event, *while* eliminating timing commitment for six-month ahead candidates).

<sup>5</sup> Rule 4.90(A) & Proposed Rule 4.89(A)

<sup>6</sup> Proposed Rule 4.90(C) ("The Director of Admissions' decision on a request for review is final and shall not be subject to further **review** by the State Bar.")

<sup>7</sup> Proposed Rule 4.89(C) ("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.")

**The proposal should commit the State Bar to more and more diverse consultants.** The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

**The proposal should commit the State Bar to training and retraining.** Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified.<sup>8</sup> Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

**The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests.** The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago<sup>9</sup>;

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<sup>8</sup> *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015)

<sup>9</sup> "High-Level Framework" Section I(A)(1)(a)

- no grant if prior approval is within five years but based on an automatic grant outside the five years<sup>10</sup>;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room<sup>11</sup>;
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar<sup>12</sup>; and
- additional unnecessary and harmful exceptions.

These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.<sup>13</sup> This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so.<sup>14</sup> This is inadequate.

**The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant.** The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate."<sup>15</sup> This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should

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<sup>10</sup> Id. At I(A)(1)(b)

<sup>11</sup> Id. At Section I(A)(2)(a)

<sup>12</sup> Id. At Section I(B)(1)(b)

<sup>13</sup> DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53

<sup>14</sup> "High-Level Framework" at Section II(A)(6)

<sup>15</sup> Id. at Section II(A)(5)

commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant.<sup>16</sup>

**The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed."** The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation."<sup>17</sup> However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

**The proposal should include an assessment of leadership.** The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, The Coelho Center **OPPOSES** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

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<sup>16</sup> U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46

<sup>17</sup> "High-Level Framework" Section II(A)(1), (3)

Sincerely,

*Anthony "Tony" Coelho*

Founder

The Coelho Center for Disability Law, Policy and Innovation

*Katherine Perez*

Director

The Coelho Center for Disability Law, Policy and Innovation

*Kathleen Kim*

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Professor at Law

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January 31, 2023

*Via Portal and Staff (Email)*

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

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Devan McFarland  
Committee of Bar Examiners Staff Contact  
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RE:

Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar-

## **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am an attorney in California. I received a very simple but somewhat unconventional accommodation when I took the bar exam over 30 years ago, but from what I have heard about your current process and the "high-level framework" that accommodation might very well be denied for me if I were taking the bar exam today. I am writing to **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." I stand with all who urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

### **A Fair Accommodation Process Will Promote Diversity in the Legal Profession**

I am committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. Only a very few California lawyers identify as disabled - and even fewer California judges. A diverse bar and bench with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession. I have heard complaints that the State Bar regularly denies requests for testing accommodations on the bar exam. Meanwhile, the current proposal is a step backward. The State Bar rules should automatically grant candidates the same testing accommodations that candidates previously received on standardized tests or in college or law school - without unfair restrictions.

The process required to become a lawyer from LSAT through Bar Exam is highly stressful for even great law students who face no personal or cultural barriers. The State Bar should make every effort to avoid adding further stress to applicants who have disabilities by providing a fair accommodation determination process, and thereby fulfill its stated commitment to diversity of the bar.

### **Documentation from Qualified Professionals Personally Familiar With Applicant Should Receive Deference**

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant employed by the State Bar. I myself received accommodations when I took the bar exam back in 1989. I have hearing impairment. When I was getting ready to take the state bar, I heard that my location in Oakland convention center would be like sitting in a hangar with hundreds of test takers in the room. Based on past experience with testing in large venues that were nevertheless much smaller than Oakland Convention Center, I worried I would miss the

announcement ending test time and get in trouble for not putting down my pen fast enough. I asked for an accommodation to address this concern. I was asked to submit a doctor's note which I did and the accommodation was approved without any excess requirements. From what I hear about how the accommodations determination process is implemented currently, it seems like a bar consultant might well have denied my accommodation request were it made today.

### **State Bar Should Implement a Two Week Response Window to Accommodation Requests**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

While I cannot recall the exact time frame, when I applied for and received my bar exam accommodations, I do recall there was no time pressure. It was settled in plenty of time for me to make plans needed to prepare for the bar exam that followed after my law school graduation.

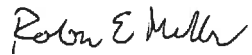
### **State Bar Should Assess and Diversity Consultants and Leadership**

The proposal should commit the State Bar to more diverse consultants since many following what is going with accommodations determination are find that existing longtime consultants approach testing accommodations requests with unfair skepticism and bias. Finally, the proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core

component of equal opportunity.

For the reasons stated in this letter, I **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Very truly yours,  
Law Office of Robin Miller

A handwritten signature in black ink that reads "Robin E. Miller". The signature is written in a cursive, flowing style.

Robin E. Miller, Attorney



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January 31, 2023

*Via Portal and Staff (Email)*

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**RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE****

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

**I. Empirical Data Shows Disabled Students Face Systemic Barriers to the Legal Field**

We write to you on behalf of the nation's largest disability law firm-Disability Rights California-to stress the obligation to ensure the legal profession creates solutions to the barriers faced throughout a disabled individual's journey to becoming an attorney.

Empirical data must be used to evaluate arguments that seek to maintain the status quo of reasonable accommodations that can be a barrier for people with disabilities to enter into the legal profession. The empirical evidence illustrates that the continued expansion of diversity, equity, inclusion is necessary for improving the legal field. In order to realize the "appropriate response to this history and pattern of unequal treatment," we must move past the stereotypes of accommodations viewed as an unfair advantage.<sup>1</sup> Such fixed biases are detrimental to the disability community's pursuit of being more represented within the legal profession.

The administration of bar examinations plays a key role in ensuring that people with disabilities are increasingly represented in the legal profession. Nationwide, only 1.2% of attorneys are disabled, while 18.7-26%<sup>2</sup> of the general U.S. population is estimated to have a disability. Large law firms have the most disparity in their office diversity.<sup>3</sup> Firms reported 0.6% of their attorneys in 2019 and 1.2% of their attorneys in 2021 were disabled.<sup>4</sup>

When looking at the microcosm of the California's legal profession, the newest reporting estimates only 6% of attorneys are disabled,<sup>5</sup> and the July 2022 bar reported 6.5% of total applicants

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<sup>1</sup> 42 U.S.C. §12102.

<sup>2</sup> Matthew W. Brault, *Americans with Disabilities: 2010--Household Economic Studies*, U.S. CENSUS BUREAU, July 2012, <https://www2.census.gov/library/publications/2012/demo/p70-131.pdf> [<https://perma.cc/2UZ4-DRC2>]; *United States, DC & Territories Disability Estimates*, CENTER FOR DISEASE CONTROL, 2019, <https://dhds.cdc.gov/SP?LocationId=59&CategoryId=DISEST&ShowFootnotes=true&showMode=&IndicatorIds=STATTYPE,AGEIND,SEXIND,RACEIND,VETIND&pnlO=Chart,false,YR4,CAT1,BOI,,,AGEADJPREV&pnl1=Chart,false,YR4,DISSTAT,,,PREV&pnl2=Chart,false,YR4,DISSTAT,,,AGEADJPREV&pnl3=Chart,false,YR4,DISSTAT,,,AGEADJPREV&pnl4=Chart,false,YR4,DISSTAT,,,AGEADJPREV> [<https://perma.cc/RC9G-K2DC>].

<sup>3</sup> *Employment Outcomes for Graduates with Disabilities, Research & Statistics*, NATIONAL ASSOCIATION FOR LAW PLACEMENT, <https://www.nalp.org/1222research>.

<sup>4</sup> *NALP Report on Diversity, Research & Statistics*, NATIONAL ASSOCIATION FOR LAW PLACEMENT, <https://www.nalp.org/reportondiversity>.

<sup>5</sup> *Diversity of 2022 California Licensed Attorneys*, THE STATE BAR OF CALIFORNIA, <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>.

receive an accommodation, displaying that licensing has a direct correlation to the number of disabled attorneys allowed.<sup>6</sup> However, it is estimated 24% of Californians are disabled.<sup>7</sup> But only 1.4% of California judges are disabled.<sup>8</sup> Yet another illustration of how this disparity can be shown through the words of Howard A. Rosenblum, CEO of the National Association of the Deaf, who stated that "there are approximately 400 deaf or hard of hearing lawyers in the country."<sup>9</sup> These current estimates are in stark contrast to statistics showing that there are 1.3 million lawyers in the United States.<sup>10</sup>

Prior comparative research has indicated this access gap contributes to restricted economic mobility, as only 19.1% of disabled individuals were employed, compared with 63.7% of non-disabled individuals.<sup>11</sup> However, the factors behind why this gap remains between disabled and non-disabled attorneys can also be found in the empirical data. For example, when disabled individuals achieve a J.D. or PhD, an strong indicator of readiness for the workforce, they are still hired at lower percentage than non-disabled individuals without any high school degree.<sup>12</sup> Disabled students and applicants are ready, willing, and able to engage in professional, ethical, and zealous advocacy. However stereotypes still exist causing employment barriers to the profession.

The State of California has the opportunity to improve the inequality employment gap by more closely following the standards promulgated by the U.S. Department of Justice in the *DFEH v. LSAC* litigation. By doing so, the State Bar will ensure that the increased access to accommodations at the beginning of one's legal career is met with similar standards when a law student applies for attorney licensing. We believe that the current proposed rules are insufficient to give equal opportunity to accommodation process in comparison to LSAT or law school processes. Unless this disparity is remedied, any improvements made under *DFEH v. LSAC* will be dramatically reduced while placing

<sup>6</sup> Report to the Supreme Court on the July 2022 California Bar Examination, Committee of Bar Examiners, THE STATE BAR OF CALIFORNIA (January 27, 2023), <https://board.calbar.ca.gov/Agenda.aspx?id=16728&tid=0&show=100033212>.

<sup>7</sup> *Disability and Health Data System (DHDS)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://dhds.cdc.gov/SP?LocationId=06&CategoryId=DISEST&ShowFootnotes=true&showMode=&IndicatorId=STATTYPEAGEIND.SEXIND.RACEIND.VETIND&pnlO=Chart.false.YR5.CAT1.BOL....AGEADJPREV&pnl1=Chart.false.YR5.DISSTAT....PREV&pnl2=Chart.false.YR5.DISSTAT....AGEADJPREV&pnl3=Chart.false.YR5.DISSTAT.....AGEADJPREV&pnl4=Chart.false.YR5.DISSTAT....AGEADJPREV>.

<sup>8</sup> *Commission on Judicial Nominees Evaluation, 2021 Statewide Demographics Report, Report in Compliance with Government Code Section 12011.5(n)(B)*, THE STATE BAR OF CALIFORNIA, (March 1, 2022), <https://www.calbar.ca.gov/Portals/Ofdocuments/reports/JNE-Demographics-Report-2021.pdf>.

<sup>9</sup> *Attorneys With Disabilities Claim Role in Big Law Diversity Push*, BLOOMBERG LAW, (Jan. 20, 2022), <https://news.bloomberglaw.com/social-justice/attorneys-with-disabilities-claim-role-in-big-law-diversity-push>.

<sup>10</sup> *ABA Profile of the Legal Profession 2022*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>.

<sup>11</sup> *Persons With a Disability: Labor Force Characteristics - 2021*, U.S. DEPARTMENT OF LABOR, (February 24, 2022), <https://www.bls.gov/news.release/pdf/disabl.pdf> [<https://perma.cc/5ATP-BBRM>] p. 4 Table A.

<sup>12</sup> *Id.*

disabled law students in a precarious situation when engaging in high stake examinations.

## **II. High Stakes Testing is Not The Best Indicator of Success**

Standardized testing has long been empirically proven to be an insufficient indicator of intelligence or merit, counteracting the argument that such tests are fair on their face.<sup>13</sup> Standardized exams, especially "high-stakes" exams are characterized by "conceptual incoherence." and are "surprisingly poorly written."<sup>14</sup> As one of the most influential civil rights legal scholars on this topic, Lani Guinier found time and time again that test scores were not predictors of employment success.<sup>15</sup>

It would be remiss to discuss high stakes testing without acknowledging its role as a prerequisite and indispensable barrier to degree and employment obtainment. Before post-secondary education, most students must take an entrance exam such as the ACT or SAT, during college years standardized exams are used as the nation's indicator of success, and after an individual graduates, the LSAT exam creates yet another entrance exam barrier.

Once finished with the above testing barriers, the legal profession requires additional high stakes testing for licensing. DRC recommends a closer analysis of the Bar's goal in ensuring California produces licensed attorneys that are competent, and whether this goal is currently being achieved with a standardized test such as the Bar Exam.

## **III. Historical Discrimination in the Legal Profession**

As the Bar strives for transparency, the California Bar Examination (CBX), The First-Year Law Students' Examination (FYLSE), and Legal Specialist Examination (LSX) must acknowledge its history to provide best practice for revisions to the current procedures.

When the history of the legal field's subjugation of marginalized populations is recognized, we can seek to bolster the presence of disabled people,<sup>16</sup> LGBTQ+ individuals,<sup>17</sup> people of color.<sup>18</sup>

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<sup>13</sup> Saul Geiser, *Norm-Referenced Tests and Race-Blind Admissions: The Case for Eliminating the SAT and ACT at the University of California*, *Research & Occasional Paper Series*, CENTER FOR STUDIES IN HIGHER EDUCATION (2017) p. 6-7.

<sup>14</sup> Richard Delgado, *Official Elitism or Institutional Self-Interest-IO Reasons Why UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 UC DAVIS LAW REVIEW 598, 599 (2009).

<sup>15</sup> Lani Guinier, *Law School Affirmative Action: An Empirical Study*, 25(2) LAW & SOCIAL INQUIRY, 565-583 (2000).

<sup>16</sup> *ABA Profile of the Legal Profession 2022*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>, (1.2% of attorneys are disabled).

<sup>17</sup> *Reporting of Openly LGBT Lawyers - NALP Directory of Legal Employers*, NATIONAL ASSOCIATION FOR LAW PLACEMENT, <https://www.nalp.org/0118research#table1> (2.64% of attorneys are LGBTQ+).

<sup>18</sup> *ABA Profile of the Legal Profession 2022*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>, (19% of attorneys are people of color, of this conglomerated statistic, 5.5% are Asian, 5.8% are Hispanic, and 4.5% are Black. The percentage of Black lawyers went down from 4.7% in 2012 to only 4.5% 2022).



women.<sup>19</sup> first generation attorneys<sup>20</sup> and many other groups. Indeed, percentages of historically marginalized lawyers dropped in 2022, displaying a lack of diversity.<sup>21</sup> While there is little cross-sectional data on vital intersections, we can correlate that the disabled individuals who are LGBTQ, Black, Latinx, and Indigenous are further underrepresented by systematic subjugation, as these groups also report high percentages of disability.<sup>22</sup> The fact that the state of California has seen little change in diversity in the legal profession indicates that new, innovative programs must be implemented to ensure diversity increases.<sup>23</sup> One of many needed ways to ensure equity in the profession includes a thorough undertaking to revamp the reasonable accommodations process.

#### **IV. Disabled Attorneys are Assets to the Legal Field**

The State Bar seeks to "advance diversity, equity, and inclusion (DEI) in the legal profession by focusing on key areas of influence, specifically the pipeline into the legal profession, retention and career advancement, and judicial diversity." Ensuring individuals with disabilities have a transparent, accessible pipeline to becoming licensed is of the upmost priority to increase the diversity of our legal community. In this way, the State Bar should seek to incorporate "accessibility" into their DEI work in order to advance diversity, equity, inclusion.

While it should be a point of non-contention, we reaffirm that disabled community members are an asset to the legal field. Disabled individuals have an innovation, creativity, and dedication to proficiently serve California communities with their legal needs.

Overall, the fact that California has seen little change in diversity in the legal profession has indicated that more must be done than simply discussing diversity.<sup>24</sup> One of many discussions on improving access to legal careers should be the process for licensing, including revising the reasonable

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<sup>19</sup> *ABA Profile of the Legal Profession 2022*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>, (38.3% of lawyers are women).

<sup>20</sup> *NALP Reports Employment Outcomes for First-Generation College Students Fall Below Those of Their Peers, and Disparities in Outcomes by Race/Ethnicity Persist*, NATIONAL ASSOCIATION FOR LAW PLACEMENT [https://www.nalp.org/uploads/PressReleases/NALPPressReleaseJobsandJDs\\_200ctober2021.pdf](https://www.nalp.org/uploads/PressReleases/NALPPressReleaseJobsandJDs_200ctober2021.pdf).

<sup>21</sup> *ABA Profile of the Legal Profession 2022*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>.

<sup>22</sup> *Disability and Health Promotion: Ethnicity and Race*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>.

<sup>23</sup> *Diversity of 2022 California Licensed Attorneys*, THE STATE BAR OF CALIFORNIA, <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>, ("There has been very little change in attorney demographics over the last four years. Click the Dig Deeper box to explore year-over-year data since 2019, when the State Bar of California first issued the attorney census.").

<sup>24</sup> *Diversity of 2022 California Licensed Attorneys*, THE STATE BAR OF CALIFORNIA, <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>.

accommodations process to the Bar, and the current efforts by the Blue-Ribbon Commission to implement the Law Practice Program (LPP).

## **V. PROPOSAL RECOMMENDATIONS**

The proposal should be **REJECTED**, in order to provide a more comprehensive proposal backed by research that includes the following:

### **A. The State Bar Must Reform Its Pedagogy and Theories Regarding the Accommodations Process**

Applicants have reported that denials occur often, even when candidates have received the same accommodation situated tests such as the LSAT, or in institutions of higher education in ABA accredited law schools.<sup>25</sup> Denials have occurred regardless of the amount assessments, overly voluminous medical testing, imaging, and lab results. Denials have also occurred for no legitimate reason. The current proposal forgoes analyzing the assumptions and process that the current employees who review accommodations input. Accommodations for the Bar appear to be viewed as an unfair advantage by reviewers. The Bar reviewers seem to accept the theory that if people are not able to succeed on the standardized tests without "extra help," they are less proficient and by extension, not qualified to become attorneys.<sup>26</sup> This must change. The bar's language used in the application such as the need to receive evidence "necessary to rule out intellectual limitation as an alternative explanation for academic difficulty" show that the Bar assumes individuals requesting accommodations are those with "low intelligence," or simply lazy learners. In addition, outside consulting parties for accommodations have similar theoretical framework in assuming individuals are "posing" as a person with a disability.<sup>27</sup> This mindset must be systematically addressed with the application of empirically based evidence on the validity of accommodations in order to provide the framework necessary to create additional proposals.

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<sup>25</sup> Stephanie Francis Ward, *Bar Examinees Have Little Success With Accommodation Requests And Say The Process Is Stressful*, ABA JOURNAL, <https://www.abajournal.com/web/article/bar-examinees-have-little-success-with-accommodation-requests-and-say-the-process-is-stressful>.

<sup>26</sup> Michelle Tenam-Zernach, Daniel R. Conn, & Paul T. Parkison. *Unraveling The Assessment Industrial Complex Understanding How Testing Perpetuates Inequity and Injustice in America*, (New York Routledge, 2021), at 9.

<sup>27</sup> *Open Session Agenda Item 50-1 November 2022*, THE STATE BAR OF CALIFORNIA, <https://board.calbar.ca.gov/docs/agendaltem!Public/agendaitem1000029923.pdf> (see Bar vendors for 2022, John Hosterman, PhD and MD Psychiatric Forensics).

## **B. Presume ABA Accredited Law Schools Who Provide Accommodations Are Accurate And Should Be Accepted**

The State Bar oversees ABA accredited and California Approved by the State Bar's Committee of Bar Examiners (CALS) accredited law schools throughout California.<sup>28</sup> As the Bar itself assist to oversee and regulate these law schools, if the Bar already vetted an institution, it should also trust the institution to provide accurate accommodations. For further efficiency, the Bar can request the documentation housed within directly from the school. Requesting documentation from the institution would also decrease burdens upon applicants. Unless accommodations or disabilities have changed and the accommodations need to be updated, such accommodations should be applied directly to the California bar without further voluminous documentation to achieve the Bar's goal of "streamlining" the process.

When applicants are not granted the same accommodations they received in law school, this places them at a severe disadvantage. For example, a disabled law student would have spent three years of legal education with their accommodations only to be forced to quickly adjust to being tested on their legal skills without them. This further widens the equality by making the bar examination more difficult for disabled law students than their non-disabled peers. It also has the unintended effect of forcing students to make the difficult decision to forgo accommodations completely when they take the bar examination because the months of preparation will likely be denied regardless. While the ADA stands for increasing accessibility in our society, these rules would degrade any meaningful progress that the disability community has made to become included within the legal profession.

## **C. Update Communication Process to Provide an Interactive Process**

Currently, the proposed edits to Rule 4.80-4.93 lacks an update to ensure feasible communication between the Bar and the applicant. Solutions to the prior convoluted system will need to align with Federal and State anti-discrimination laws as a best practice for legal competence. Reasonable Accommodations are required under the ADA to have what is called an "interactive process." The interactive process is an example of how to effectively communicate with applicants and ensure transparency.

Applicants wait for months after a long application process. Even if the applicant applies months before, the Bar often sends their acceptances or denials just a month before the Bar. This current process

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<sup>28</sup> *Law Schools*, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Admissions/Law-School-Regulation/Law-Schools>.

results in decisions being impossible to appeal before taking the Bar. The lack of candor is detrimental. The State Bar needs an interactive process and updates on when they are reviewing, sending to an outside consultant to review, the qualifications of any reviews or denials, and any additional steps the request goes through. The Bar should respond promptly to messages from applicants in order to ensure the applicant is noticed and informed of the process.

**Example:** Reports have been made of denials by phone with no return phone number and the message system of "emails" deleted after a certain amount of time passes. Applicants have contacted the Bar only to be called from an anonymous phone number many days later stating an important detail opening many questions, but no way to call back the Bar number, and thus no way to further discuss the accommodation process.

DRC recommends a viable system of accessible ways to contact and participate in the accommodation process. It is readily feasible that the Bar have dedicated lines to call specifically for reasonable accommodations as well as an email system that does not delete messages and is responded to in a timely manner.

#### **D. Vague and Unnecessarily Lengthy Dates and Deadlines Should be Eliminated**

The proposed edits to Rule 4.80-4.93 make no change to the current timeline for disabled applicants, while insisting the proposals will streamline the process. Indeed, the proposed edits seek to explicitly declare that the timeline is not changed. The Bar currently instructs students to submit their accommodations "a minimum of 60 days from the date your application is determined complete and processing of petitions requiring review by outside consultants retained by the committee or those requiring applicants to submit additional information will most likely take longer."<sup>29</sup> It is unclear whether the Bar deems the 60 days minimum process as business days or all days of the month. As the Bar works Monday-Friday, this brief will use business days, as these are the dates an accommodation can be reviewed by the Bar Administrators. Thus, the dates and deadlines in accordance with the policy for the July 2022 bar exam are as follows:

- o **January 5:** RA must be submitted by this deadline in order to provide 60 business day minimum before the April 1st timely application filing. Applicants are also highly

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<sup>32</sup> *Requesting Testing Accommodations*, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>.

suggested to submit accommodation requests more than the six months before the bar, as the submission should be "no later than six months prior"<sup>30</sup>

- o **March 4:** RA must be submitted by this deadline in order to provide 60 business day minimum in order to submit for the final filing deadline
- o **April 1:** timely filing of bar application
- o **June 1:** final filing deadline of bar application, and deadline to submit an RA<sup>31</sup>
- o **June 28:** First day that exam bulletin is posted
- o **July 1:** Reasonable Accommodation appeal deadline

This shows that in order to comply with the 60-day minimum review and processing, applicants need to submit six months ahead of the bar in order to provide an adequate review and finalization so that they can apply to take the bar. Indeed the Bar rules still state applicants should submit "their petitions at least by the beginning of their last year of law study and attorney applicants *no later* than six months prior to the examination they wish to take," stating that applicants are recommended to submit *more than* six months in advance." Rules of the State Bar, Title 4, Div. 1, Chap. 7, R. 4.88 (*emphasis added*). However, this specific indication of "no later than six months prior" is also not indicated on the Bar's accommodation's web page for applicants, but hidden in the large document entitled "Complete Rules of the State Bar," a title which gives no indication that this document would contain information necessary for applicants, not just the Bar itself.<sup>32</sup>

DRC acknowledges that if there is a large volume of requests for review, the Bar would prefer to have applicants submit as early as possible. But if applicants are to provide information far in advance for the convenience of the Bar exam, the Bar must apply this same respect of time to the decisions they provide. Applicants have often received accommodation decisions much later than the 60-day minimum. For instance, reports have come from applicants that although they applied in January, following the requested six-month timeline for a July exam, they did not receive a decision until the end of June. This is 100+ business days after submitting. Although those applications were approved, the applicant had no understanding of whether they will have the opportunity to take the bar exam until a few weeks before

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<sup>30</sup> Title 4. Admissions And Educational Standards, Division 1. Admission To Practice Law In California, THE STATE BAR OF CALIFORNIA, [https://www.calbar.ca.gov/Portals/0/documents/rules/Rules\\_Title4\\_Div1-Adm-Prac-Law.pelf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div1-Adm-Prac-Law.pelf).

<sup>31</sup> Proposed Amendments, Title 4. Admissions And Educational Standards, Division 1. Admission To Practice Law In California, THE STATE BAR OF CALIFORNIA, <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029889.pdf>

<sup>32</sup> Requesting Testing Accommodations, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>.

the examination date.

Potential efficiency issues on the how the Bar processes the accommodations should be found and addressed in the proposal. In addition to an analysis of where time could be cut in the Bar's process, implementation of the other recommendations noted here, including the revision and tailoring of required medical documentation, will likely shorten wait times.

**E. Applicants Do Not Have Sufficient Notice of Bar Policies: The Bar Must Provide Detailed Information From The "Bulletin"**

The Bulletin provided for each exam is not released until after the deadline to submit reasonable accommodations.<sup>33</sup> This information must be given in tandem with the timeline for reasonable accommodations. The Bulletin for each exam contains detailed information that applicants will need to understand in order to request adequate accommodations. For example, dates and deadlines for the July 2022 bar were as follows:

- o **January 5:** RA must be submitted by this deadline in order to provide 60 business day minimum before the April 1st timely application filing.
- o **March 4:** RA must be submitted by this deadline in order to provide 60 business day minimum in order to submit for the final filing deadline
- o **June 28:** Exam bulletin is posted
- o **July 1:** RA appeal deadline

Applicants are recommended to submit as least six months ahead of the bar. However, while students are applying months ahead of the bar, the bulletin listing critical information about the bar is not published until a month before the examination date. Furthermore, if the new information on the bulletin triggers a need for a reasonable accommodation, there is no feasible way to request as the bulletin is given after the deadline for requesting accommodations. Additionally, the bulletin is only published a few weeks before the bar exam and only two days before the appeal deadline for a reasonable accommodation, which does not give enough time to adequately appeal. The bulletins from prior exams are also taken offline soon after the administration, so applicants for the next bar exam will

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<sup>33</sup> *July 2022 Bar Exam Admittance Ticket Bulletin*, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Portals/Ofdocuments/admissions/Examinations/July-2022-Bar-Exam-Admittance-Ticket-Bulletin.pdf>; *February 2023 Bar Exam Admittance Ticket Bulletin*, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Portals/Ofdocuments/admissions/Examinations/February-2023-Bar-Exam-Admittance-Ticket-Bulletin.pdf>

not be informed of these rules until the new bulletin is submitted. Further, new applicants will not know to check prior year's bulletin as they will presume this bulletin is specific to each exam.

The bulletin states specific information on logistics of the Bar, such as the banning of mechanical pencils, that are not detailed on the Bar webpage for applicant information.<sup>34</sup> An applicant may not know such things like mechanical pencils, pens, rulers, paperclips, highlighters, wallets, tissues, lip balm, cough drops/throat lozenges, or bookstands will not be allowed. However, this detailed banned list is not given to students until it is too late. Thus, those who may need an eraser, mechanical pencil or throat lozenge due to their disability will not be able to request any additional accommodations in accordance with the new information. This is a far cry from meaningful access in the context of applying for bar accommodations and obtaining licensing. This lack of transparency on specific information hinders disabled students greatly.

**Example:** Applicant has limited fine motor movements in their hands. Applicant has always succeeded at using a mechanical pencil which fabrication and design are lighter and more ergonomic for their writing. Applicant has used mechanical pencils without any accommodation on all past law school exams. Applicant did not have notice that mechanical pencils would be banned for the Bar, and now will be at a deficiency. Applicant will not be able to apply for a reasonable accommodation because the deadline has past.

**Example:** Applicant has a vision impairment and was planning to bring in an analog clock that is larger than 4 x 4 in order to see the time. Applicant was uninformed of the Bar will not allow a clock larger than 4 x 4 while they were applying to the reasonable accommodation process and now does not have the opportunity to submit an updated reasonable accommodation to compensate for this new rule.

**Example:** Applicant uses voice-to-text technology which must include a microphone. Application has been approved for voice to text technology which they assumed would include the microphone which is provided with the software. Applicant was not noticed they needed to

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<sup>34</sup>California Bar Examination, **THE** STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination> (webpage holds an overview of legal topics on the bar exam and how the exam is graded, but fails to provide the list of specific rules for the examination itself).

separately list each component of the software, and now cannot bring a vital part of their voice to text program in the exam.

**Example:** Applicant did not receive notice that eyedrops must be in "single-use vials," and did not submit any reasonable accommodations. Their prescription eyedrops cannot be contained in single-use vials because the medication within will lose its viability, but it is now too late to submit an accommodation to submit a reasonable accommodation to use a multi-use vial.

The Bar must publish specific procedures and policies, including a list of banned items and other intricate details at the same time as they ask applicants to submit reasonable accommodations. Without this, applicants are filing for reasonable accommodations are guessing as to how the Bar will be formatted procedurally. A list of banned items, the fact that wall clocks are not provided, information such as your timing device "cannot be larger than 4"x 4", and eyedrops in single-use vials are all information that needs to be provided on the website at all times. The specific procedural rules for the bar exam should be included as a link on the page titled "Requesting Testing Accommodations."<sup>35</sup>

#### **F. Need for Process Day-of Better Procedures and Training**

The proposed edits to Rule 4.80-4.93 do not take into consideration the need to propose detailed processes *ONCE* the accommodation is approved. Policy and procedures to implement the accommodation on the day on the exam need to be in place to give all students notice and an equal opportunity to take the Bar without additional stress. Employees must be better trained to understand each policy and procedure that will occur with the specific accommodation. On the day of testing, assigned employees overseeing the accommodations of students must be adequately trained to answer questions regarding the accommodations process and how the accommodation will be implemented.

**Example:** Applicants using assistive technology have reported that there was no standardized guidance on the day of on ensuring their submissions look similar to other applicants to prevent grader bias. The Bar must give correct font size, margins, and other formatting standards to create truly anonymous applicant submissions for those with accommodations and submit on the ExamSoft software. Submissions must be identical regardless of accommodations, so submissions are truly

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<sup>35</sup> *Requesting Testing Accommodations*, THE STATE **BAR** OF CALIFORNIA, <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>.



anonymous and disabled applicant submissions are graded according to the same standards and anonymity as others.

**Example:** If an individual is using an alternative assistive technology format, applicants have not been told they should not submit the ExamSoft practice test, as the system will be set up differently, leading to payment and wasted time. Better communication of alternative procedures are needed to ensure transparency and ease as soon as an accommodation is granted.

**Example:** Applicants have reported that they were not told the day-of process would put them in a room with other individuals' accommodations which impacted their own. For instance, an applicant with an accommodation of multiple breaks during the exam was paired with an applicant without such breaks in the same room. This caused the proctor to force exam stoppage of both applicants when the other applicant had instituted their break.

**G. Medical Documentation Is Excessive: Medical Information Should Be Narrowly Tailored to What Is Necessary To Provide A Nexus**

The current proposal does not provide an examination of the overinclusive culture the Bar's application for accommodations intreats. The Bar's current application process creates an atmosphere of fear regarding denial for an "incomplete application," however the current application has overinclusive and invasive questions, requiring capture of every medical item possible from each applicant, instead of allowing qualified physicians to give the needed information for the individual applicants needs.

In order to analyze a reasonable accommodation request, the Bar should be analyzing the disability's nexus to the accommodation. This is achievable by a physician and applicants' explanation of why the accommodation is needed because of the disability and how it offers equal opportunity on the Bar. All other extensive medical documentation is unnecessary. The Bar should revise questioning to limit unrelated medical documentation unrelated to the Exam accommodation.

According to the Bar's current language, extensive medical documents and documentation are assumed to be required in order to receive an accommodation. Such language such as the below examples leave no room for doubt for an applicant that extensive documentation is the only way an

applicant might receive the accommodation.<sup>36</sup>

- "The decision made by the State Bar will be based on the information provided by the applicant;"
- "As you deem necessary, helpful and/or appropriate, collect letters, transcripts, and other documentation in order to submit a comprehensive petition that provides the State Bar with complete information regarding the functional limitation(s) you experience in your academic, professional, and personal life;"
- "The State Bar reserves the right to request additional information at any time;"

This wording on its face demands a presumption for as much documentation as possible. This thinly veiled warning, along with (1) the well-known fact that accommodations are extremely difficult to obtain on the Bar, (2) are often denied, as well as (3) denied too close to the Bar exam to allow for any sufficient appeal, intimidates applicants into providing highly personal and protected medical documentation. While **DRC** acknowledges that it is necessary for the Bar to receive a detailed reasoning between the disability and the accommodation, the heavy emphasis on providing HIPAA protected medical documentation must be revised.

The current application for accommodations states such intrusive asks such as "Who was the medical professional (name, occupation, and specialty) who first diagnosed your disability?," "What treatment and/or medication are currently being prescribed?," "Are you taking the treatment and/or medication as prescribed?," "Are the treatment and/or medication effective in addressing or controlling your symptoms?, ifno, explain why not." These questions must be answered by all applicants, but may not be relevant to the accommodation they seek. The verification form from the applicant's physician is abundantly sufficient to give the nexus for each applicant's individual accommodation needs.

Asks such as "Are the treatment and/or medication effective in addressing or controlling your symptoms?" are not relevant, as the Bar is not a qualified physician analyzing current effectiveness of treatment. The State Bar is unqualified to analyze this question. An applicant may be on multiple medications that may not be pertinent to the disability pertaining to their needed accommodation but provides anyways because the Bar demands the application be "complete" without any further guidance. This creates an environment of overinclusion of information that has no nexus to the accommodation. The Bar should defer to the applicant's qualified physician on whether the accommodation is

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<sup>36</sup> *Requesting Testing Accommodations*, THE STATE BAR OF CALIFORNIA,  
<https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>.

appropriate.

Furthermore, Form B-E for physicians are also much more intrusive than needs be. The medical professional should indicate a thorough analysis of the nexus between the accommodation and the disability and why it is needed. Excessive medical information such as requesting the measurements, copies of detailed medical reports, medical terminology and specific information only to be analyzed by a trained medical professional is currently asked. For example, the questions below are invasive, improper, and simply unnecessary for purposes of an accommodation:

- "Visual Field: threshold field, not confrontation (provide measurements and copies of reports)
- Binocular Evaluation: eye deviation (provide measurements), diplopia, suppression, depth perception, convergence, etc. Specify whether difficulty with distance, near point, or both.
- Accommodative Skills: at near point, with and without lenses (provide measurements)
- Oculomotor Skills: saccades, pursuits, tracking"
- "results of any tests or instruments used to supplement the clinical interview and support the presence of functional limitations, including any psychoeducational or neuropsychological testing, rating scales, or personality tests,"
- "applicant's compliance with and response to treatment and medication, if prescribed"
- "all psychiatric/psychological history"
- "Attach copies of any prior evaluation reports, test results, or other records related to the initial diagnosis"

Information such as all prior test results, all evaluations, all medical history, and all treatment is overly burdensome and invasive.

#### **H. Other Documentation is Excessive**

Requesting prior accommodations and "any other documentation" from applicants should be further explained to applicants. The current application states that "[a] petition will not be considered complete until all necessary forms have been received... Applicants are encouraged to submit any additional documentation that they believe will help support their request for testing accommodations ... collect letters, transcripts, and other documentation in order to submit a comprehensive petition that provides

the State Bar with complete information regarding the functional limitation(s) you experience in your academic, professional, and personal life."

This massive amount of information to collect and the process of trying to deduct which documents the Bar will deem "necessary, helpful and/or appropriate," all while trying to finish the last year of law school or while studying for the Bar itself puts a greater burden on disabled applicants. This high burden of extensive and superfluous documentation, often requires applicants to request new additional documentation, update all medical exams, and require an applicant to dig through decades worth of different medical providers, exams, school and other institutions other high stakes testing applications, and other documentation. Requesting an applicant further discuss their functional limitations in their "personal life" has implications of obtaining highly personal details of an applicant's life that are categorically unnecessary for purposes of what an applicant may need to achieve equal access to the Bar. Overall, the extensive burden of documentation means disabled applicants must work for months beforehand to ensure the amount and detail the Bar requires is submitted, while those without disabilities can focus on their grades or Bar preparation.

In addition, "it is recommended that you provide copies of all IEPs or 504 Plans," however IEP and 504 plans are only offered in elementary and high school. Accommodations that were received in elementary school and high school are not the most accurate signifier of what accommodations are needed for the bar exam and as a practicing attorney. Even if an applicant has long had accommodations, the burden is great to achieve a record of accommodations received in elementary, middle, and high school. Most institutions do not keep a record of such accommodations for more than five to ten years and most applicants will be far outside of this holding period. The recommendation that applications be as thorough as possible while including asks such as 504 plans is unduly burdensome, as applicants who did receive such measures will feel beholden to find and report them, even if accommodations received in elementary school institutions are far outdated and not a good indicator of the current accommodations needed by the applicant.

Furthermore, often times, applicants with disabilities may not receive accommodations until they are much older. This can be attributed to a number of factors, including acquiring a disability later in life, lack of access to medical care, or having parents that are not knowledgeable of their child's right to have accommodations. Another factor as to why a student may not have a long history of accommodations is because they may be weary to disclose their disability due to fear of being discriminated against. As a recent study by the National Center for Educational Statistics shows, "A

majority of college students with disabilities at both two and four year institutions do not inform their college of their disability" because of the strong biases seen to this day that individuals who receive accommodations are either unintelligent or gaming the system.<sup>37</sup>

Implying that an applicant's request for accommodations is not complete without childhood IEPs and 504 plans is a much higher standard than allowed under the ADA. The technical assistance manual promulgated by the Department of Justice states that entities are not allowed to extensively inquire into a disability when such a record is not required. "The ADA prohibits unnecessary inquiries into the existence of a disability". Such unnecessary inquiries are in violation of the ADA if they tend to screen out applicants with disabilities. For example, an applicant who did not have accommodations until law school may be denied assistance based on the lack of historical record of their accommodations. In this way, the "recommendations" asserted by the State Bar to provide such extensive documentation will act as a barrier to their request for accommodations. As stated above, any unnecessary inquiries that tend to screen out applicants with disabilities is a violation of the ADA. An applicant's record that they received accommodations in law school would be a more accurate depiction of whether such accommodations are appropriate for the bar exam.

On balance, the California Bar Examination's "recommendations" for additional documentation is excessive. As currently written, the State Bar is insinuating that decades of documentation is required to ensure that an application is complete. Therefore, many disabled applicants feel dissuaded from either applying for accommodations or anxious that they will be denied if they do not meet this high burden.

To be clear, it is important that the State Bar is held to a high standard to maintain effective legal advocacy within the profession. However, the fear that accommodations will not be appropriately given if the rules were changed does not justify the negative impact it has on people with disabilities. These unnecessarily high standards for record production results in people with disabilities being screened out of the legal profession and contributes to the extremely low number of disabled attorneys in California.

#### **I. The Qualifications to Become A "Disability Accommodations Expert" are Unknown.**

Proposed rule 4.81(F) declares that the "disability accommodations expert" is a qualified professional designated by the State Bar to make recommendations regarding an applicant's testing accommodations request". The rules fail to describe what qualification the State Bar will look to when

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<sup>37</sup> *A Majority of College Students with Disabilities Do Not Inform School, New NCES Data Show*, NATIONAL CENTER FOR EDUCATION STATISTICS, (April 26, 2022), [https://nces.ed.gov/whatsnew/press\\_releases/4\\_26\\_2022.asp](https://nces.ed.gov/whatsnew/press_releases/4_26_2022.asp).

appointing these experts, and who the pool of applicants will come from. Will these "experts" be disability lawyers, 504 plan workers, reasonable accommodation managers from businesses, psychologists, or physicians? It is unknown.

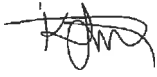
To streamline the process for the application of testing accommodations, the Bar should implement a process of several certified reasonable accommodation professionals from disability rights organizations who are vetted and qualified in disability rights law and the reasonable accommodation process. Such professionals must ensure the accommodation process better models current anti-discrimination law while also understanding how to be more attentive and respectful to the disability community.

## **II. CONCLUSION**

For the forestated reasons stated in this letter, Disability Rights California **OPPOSES** the rule changes and associated "high-level framework," as the current proposal does little to create sincere change in the efficiency and effectiveness of the process. The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into contemporary standards for disability access and inclusion. In order to truly streamline the accommodations process for both the State Bar and applications, we suggest the above recommendations to be used to ensure an adequate proposal. If adopted, the current proposal would mark a substantial step backwards.

The proposals are at odds with the standards for testing accommodations set out by the U.S. Department of Justice and the DFEH v. LSAC litigation. As testing accommodation standards for LSAC allow for greater inclusion at the beginning of the legal education, these proposals would reverse any progress made, by screening out many qualified candidates due to strict eligibility requirements. The large discrepancies between the LSAT and the State Bar must be resolved. The revaluation of the proposed rules will ensure that diversity and inclusion efforts are successful while enhancing the quality and perspective of the California legal community. We urge the Board of Trustees to pursue the alternative changes outlined above in order to meet the goals of elimination of bias, professional diversity, and access to justice.

Sincerely,



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Director of Administration



January 31, 2023

Board of Trustees  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

(Submitted online via <https://fs22.formsite.com/sbcta/luqsi3zlk9/index.html>)

**Re: Comments Regarding Proposed Amendments to the Rules of the State Bar  
Pertaining to Testing Accommodations**

To the State Bar Board of Trustees:

The California Access to Justice Commission writes in to raise concerns regarding the proposed amendments to the Rules of the State Bar pertaining to testing accommodations.

The California Access to Justice Commission advances access to civil justice for all Californians, expands civil justice resources for low and moderate-income people, and develops innovations that reduce barriers to civil justice for Californians from diverse backgrounds. To do so, the Access Commission facilitates collaboration among the courts, the Bar, and the public-including all three branches of government and stakeholders throughout the state.

We agree with and support the State Bar's goals, identified in its 2022 *"Report Card on the Diversity of California's Legal Profession,"* to increase the diversity of the legal profession and its acknowledgment that a diverse legal profession positively impacts the administration of justice and is integral to fairness. Unfortunately, as the State Bar's most recent data also shows, individuals with disabilities are particularly under-represented in the legal professions, with only 6 percent of California attorneys reporting living with a disability, even though more than 20% of Californians report having a disability.

Ensuring appropriate Bar Exam testing accommodations is a critical way to help ensure that candidates with disabilities have a fair and equal opportunity to practice law in California. The revised rules should reflect a commitment to these principles as a way of supporting the Bar's efforts to increase the diversity of the legal profession.

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## **We Recommend that the State Bar Amend its Proposed Rule to More Closely Adhere to the Federal Department of Justice Regulations and Guidelines.**

The fundamental purpose of testing accommodations is that the test scores of individuals with disabilities must accurately reflect the individual's aptitude or achievement rather than the individual's impairment.<sup>1</sup> Towards this end, the federal Department of Justice has issued regulations and guidelines. We urge the State Bar to amend its proposed rule to more closely adhere to these DOJ requirements in the following areas:

1. Revise the current process so that accommodation requests can be addressed in a more timely manner. As specified in the DOJ guidance, "Testing entities should ensure that their process for reviewing and approving testing accommodations responds in time for applicants to register and prepare for the test. In addition, the process should provide applicants with a reasonable opportunity to respond to any requests for additional information from the testing entity and still be able to take the test in the same testing cycle." The proposed rule falls short, instead eliminating or extending existing deadlines.
2. The rules, rather than the proposed framework, should specify accommodations that were previously approved for other standardized tests, or in law school will be automatically approved for the Bar Exam. This approach, provided that it does not include the many exceptions identified in the framework, would be consistent with the DOJ guidance that "[p]roof of past testing accommodations in similar test settings is generally sufficient to support a request for the same testing accommodations for other high-stakes testing.
3. The rules, rather than the framework, should commit to giving more deference to the recommendations of a qualified professional who has individually assessed the individual rather than the opinion of a consulting expert. Specifically, the DOJ guidance provides, "[c]andidates who submit documentation ... that is based on careful consideration of the candidate by a qualified professional should not be required by entities to submit additional documentation. The testing entity should generally accept such documentation and provide the recommended testing accommodation."
4. The rules should allow for a fair review process instead allowing 30 days for appeal rather than the current ten days. This would better allow the candidate, for example, to secure needed documentation. Similarly, the rule should be amended to allow a right to review following a denial of each accommodation request.

The Access Commission notes that the Disability Rights Education Defense Fund (DREDF) and other legal services organizations have submitted extensive comments. We encourage the thoughtful review and consideration of these comments in addition to the ones provided above.

<sup>1</sup> U.S. Dep't of Justice, ADA Requirements: Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html)

The Access Commission appreciates the State Bar's review and proposals related to testing accommodations and asks that these and other public comments be carefully reviewed and considered before moving forward with amendments to testing accommodations.

Sincerely,

, S--

Judge Mark Juhas  
Chair

## Commenter 18

My name is Brandie Solovay. I am legally blind and have been since birth. I completed law school and took the California Bar Exam, so I am personally familiar with the accommodation request process and hurdles discussed in this comment. Not only am I currently one of the few legally blind attorneys practicing law in California, I am also the Legal Director of the Independent Living and Resource Center San Francisco (ILRCSF). ILRCSF is a disability rights advocacy and support organization. Our mission is to ensure that people with disabilities are full social and economic partners, within their families and within a fully accessible community. We work to empower individuals and the community, so that all people with disabilities have as full, productive and independent lives as they so choose. We are uniquely positioned to understand the dire need for disabled attorneys in California. Californians with disabilities need attorneys that understand first-hand the type of issues that people with disabilities face. The California Bar needs to reflect the populations served and needs to include attorneys with disabilities. (Not only attorneys who become disabled later in life, but attorneys who are disabled at the time they join the bar and during the majority of their practicing years.) This goal cannot be achieved under the proposed rules as it will continue to limit the opportunity for people with disabilities to become licensed in California, and may even discourage students with disabilities from pursuing the law as a career.

ILRCSF strongly OPPOSES the proposed amendments to the rules of the State Bar, with the “high level framework.” We are extremely troubled by the proposal. We are aligned with Disability Rights Education and Defense Fund as well as numerous other civil rights and disability rights organizations and join them in urging the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

ILRCSF is committed to the following principles:

Persons with disabilities are experts on their own needs.

Individuals and families have the right to make informed decisions about their own lives.

Full access to and inclusion in the community for all people with disabilities means the same range of choices as the general community.

To breathe life into these premises, we need a legal profession well versed in supporting people with disabilities to overcome numerous forms of discrimination and oppression. For this reason, among others, we promote diversity in the legal profession - particularly diversity that includes people with disabilities of all backgrounds, including people with disabilities who are at the margins of numerous oppressed categories. We call upon the California Bar and California leadership generally to promote diversity in the legal profession and to eliminate unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color and people of all sizes is better equipped to serve the varied people and communities who live and work in California, including indigent people.

As a legally blind law student and bar candidate, I faced many barriers and can personally attest to the importance of improving the process of accommodation approval. Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers like the ones I witnessed continue to exclude people with disabilities from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of

disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability. It is beyond disappointing that, while we have lessened the bar exam burden for non-disabled applicants by reducing the exam length by a full day, we are poised to implement insufficient and discriminatory policies that will target applicants with disabilities for unfair treatment, making it harder than it should be for them to become practicing attorneys.

I required reasonable accommodations to take the CA Bar Exam. Many of my disabled legal colleagues did as well. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

I have personally known people who were discouraged from applying for needed accommodations to take the CA Bar Exam due to the required process, which is very unfriendly to people with disabilities. Others have made it through the process only to face the stress and uncertainty of denials. Despite the accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state. Again, how can Californians with disabilities find representation by people that truly understand their situation when those very attorneys are unlikely to receive the accommodations they need to become members of the CA Bar?

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

#### Accommodation Requests Are Time-Sensitive and Require a Timely Response

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

#### Independent Review of Denials Must Be Provided, Timely, and Clearly Articulated

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right!!! Proposed Rule 4.90(E).

#### Candidates Must Be Guaranteed Appropriate Time to Seek Review - Minimum of 30 Days

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule requires that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

#### Candidates Must Be Guaranteed More Than One Review

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

### State Bar Consultants Should Include Diverse Experts, Including Multiple Experts with Disabilities Themselves, Representing a Wide Variety of the Diverse Disability Community

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. The ultimate goal should be accommodation reviews conducted only by experts who are attorneys with disabilities. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement regarding diversifying expertise, but there is no such provision in the State Bar's proposal.

### State Bar Must Provide Ongoing, Nuanced Training in Disability Competence

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

State Bar Should Be Required to Grant the Same Testing Accommodations that Candidates Were Previously Granted on Standardized Tests Regardless of the Time Elapsed Since They Were Granted

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue

to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

#### State Bar Should Be Required to Grant the Same Testing Accommodations that Candidates Were Previously Granted in College, Law School, or Other Post-Graduate Training, Regardless of the Time Elapsed Since They Were First Granted

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college, post-graduate, and law school. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

#### Documentation By a Qualified Individual Who Conducted an Individualized Assessment Must Be Given Deference Over the Opinion of a “Paper-Only-Review” Consultant

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

#### Given the History of Disability Discrimination in the United States, Documentation Should Be Narrowly Tailored, Reasonable, and Limited to Information Needed

People with disabilities have a long history of being targets for intrusive questioning for cruel, prurient, objectifying, and other inappropriate purposes. The State Bar must avoid even the appearance of antagonizing the disability community in this way moving forward. The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

#### State Bar Leadership Must Be Assessed from a Disability-Aware Perspective - The Proposal As Written

Should Not Have Been Put Forth and It It Calls Into Question the Chain of Command for Evaluating Requested Accommodations

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, the Independent Living Resource Center San Francisco OPPOSES the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial and disheartening step backwards.

Sincerely,

Brandie Solovay  
Independent Living Resource Center San Francisco



I am writing as a concerned citizen on behalf of California lawyers with disabilities. I am committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals

but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes but is not limited to:

- The rules should require timely responses to accommodation requests
- The rules should retain an option for an independent review of accommodation denials
- The rules should allow a candidate an appropriate period of time to seek review
- The rules should make clear that candidates may seek more than one review
- The proposal should commit the State Bar to more and more diverse consultants
- The proposal should commit the State Bar to training and retraining
- The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests
- The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school
- The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant
- The rules should limit required supporting documentation to that which is "reasonable, limited, and narrowly tailored to the information needed"
- The proposal should include an assessment of leadership

For the reasons stated in this letter, I oppose the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Thank you for your time.

January 26, 2023

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework,"  
Pertaining to Testing Accommodations on the State Bar - **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz,  
Knoll, Shelby, Sowell, and Toney:

I am a distinguished professor and the Dean of the University of San Francisco School of Law. I am writing to provide comments on your proposed amendments to the State Bar Rules which govern the testing accommodation process for the California Bar Exam. I am joined in this letter by Amy Flynn, Associate Dean for Academic Affairs and Professor of Law; Stephanie Carlos, Assistant Dean for Student Affairs; Jonathan Chu and Katie Moran, Associate Professors and Co-Directors of the Academic and Bar Exam Success Program; and Carol Wilson and Heidi Ho, Assistant Professors and Co-Directors of the Academic Support Program.

The University of San Francisco School of Law's public interest mission prioritizes advocacy of and support for our majority minority student body, which includes our students with disabilities. We have a significant interest in ensuring our students with disabilities receive appropriate accommodations for and equal access to the California Bar Exam. Accordingly, we **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

### Commitment to Diversity

The University of San Francisco School of Law is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse community of lawyers from all backgrounds and statuses facilitates access to justice, improves legal services, offers role models for the next generation of attorneys, and promotes public confidence in our ability to represent diverse perspectives, cultures, and backgrounds. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people is better equipped to serve the varied people and communities who live and work in California, including indigent people.

### Barriers Continue to Exclude Students with Disabilities from the Legal Profession

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This

mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent (2%) of all California judges) identify as having a disability.

#### Testing Accommodations are a Necessary and Accepted Means for Including Individuals with Disabilities in the Legal Profession

Many people with disabilities require reasonable accommodations, such as extended time, and privacy, to take high-stakes exams. Testing accommodations allow the individual to demonstrate their knowledge and abilities as measured by the exam. Without such accommodations, the resulting scores reflect the effects of their disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through Individualized Education Plans (IEPs) and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

#### The CA State Bar Regularly Denies Requests for Testing Accommodations on the Bar Exam

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities in our community report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the employment plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing

testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

#### The Rules Should Require Timely Responses to Accommodation Requests

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With approximately seven weeks between the registration deadline and the bar exam, it is necessary for applicants to receive a response from State Bar staff within two weeks of receipt. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing, processing, and result of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations schedule prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams with their accommodated time.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

#### The Rules Should Retain an Option for an Independent Review of Accommodation Denials with an Appropriate Period of Time to Seek Review

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should also allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule requires that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation. Our student

body has encountered even shorter timeframes (as few as six (6) hours) to submit an appeal which has, in many instances, prevented the submission of an appeal at all.

#### The Proposal Should Commit the State Bar to More Diverse Consultants

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

#### The Proposal Should Commit the State Bar to Train and Retrain

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://civildrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

#### The Rules Should Require that the State Bar Automatically Grant Candidates the Same Testing Accommodations that they Previously Received on Standardized Tests

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five (5) years ago;
- no grant if prior approval is within five (5) years but based on an automatic grant outside the five (5) years;
- no grant of more than 50% extra time (unless severe visual impairment);

- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The Rules Should also Require that the State Bar Automatically Grant Candidates the same Testine: Accommodations that they Previously Received in College or Law School

[The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH v LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.]

---f commented [ICB1]: This is the section that Amy and Susan expressed reluctance in including

The Rules Should Require that the State Bar give Deference or More Weight to the Documentation of a Qualified Professional who has Individually Assessed the Applicant Compared to the Opinion of a Consultant

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014),

<https://www.ada.gov/reports/2014/testing-accommodations.html>; *DFEHv. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The Rules Should Limit Required Supporting Documentation to that which is "Reasonable, Limited, and Narrowly Tailored to the Information Needed"

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does currently for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The Proposal Should Include an Assessment of Leadership

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, The University of San Francisco School of Law **OPPOSES** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Susan Freiwald  
Dean and Professor of Law  
University of San Francisco School of Law



Amy Flynn  
Associate Dean for Academic Affairs and Professor  
University of San Francisco School of Law

Stephanie Carlos  
Assistant Dean for Student Affairs  
University of San Francisco School of Law

Jonathan Chu  
Co-Director of the Academic and Bar Exam Success Program and Associate Professor  
University of San Francisco School of Law

Katie Moran  
Co-Director of the Academic and Bar Exam Success Program and Associate Professor  
University of San Francisco School of Law

Carol Wilson  
Co-Director of the Academic Support Program and Assistant Professor  
University of San Francisco School of Law

Heidi Ho  
Co-Director of the Academic Support Program and Assistant Professor  
University of San Francisco School of Law

## Commenter 21

I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

A diverse bar and bench with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession. Right now, the State Bar regularly denies requests for testing accommodations on the bar exam, and the current proposal is a step backward.

The State Bar rules should automatically grant candidates the same testing accommodations that candidates previously received on standardized tests or in college or law school – without unfair restrictions.

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant employed by the State Bar.

The proposal should commit the State Bar to more diverse consultants because existing longtime consultants approach testing accommodations requests with unfair skepticism and bias.

Finally, the proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,  
Katelyn

## Commenter 22

Accommodations are a reasonable and necessary way of expanding access to the legal profession for people with disabilities. People with disabilities should be welcomed into the legal profession; they bring a wealth of diverse personal experiences and ideas.

Accommodations are already difficult enough to access, particularly on official standardized tests. The California Bar rules should streamline and clarify how people with disabilities can secure accommodations. They should enable review of accommodations in a neutral, fair, and timely way.

Restricting access to accommodations for people who need them is discriminatory in practice and in effect. It is both morally wrong and discourages the vital participation of people with disabilities in the legal profession.

## Commenter 23

The Board of Trustees should reject the staff proposal and instead adopt an alternative that includes the following:

- The rules should require timely responses – within two weeks – to accommodation requests

- The rules should retain an option for an independent review of accommodation denials

- The rules should allow a candidate an appropriate period of time – 30 days – to seek review

- The rules should make clear that candidates may seek more than one review

- The proposal should commit the State Bar to more and more diverse consultants; existing longtime consultants approach requests with unfair skepticism and bias

- The proposal should commit the State Bar to training and retraining to end its harmful and unnecessary “zero sum game” approach to accommodation requests

- The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests – without convoluted and unfair restrictions

- The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school

- The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant

- The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed,” and make clear the expensive comprehensive reports are no longer required

- The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

January 29, 2023  
Leah T. Wilson  
Executive Director  
State Bar of California

RE: Testing Accommodations comments

The matter of Testing Accommodations (TA) is personal to me because I experienced the full culmination of my physical disabilities when I took the CBX and could barely read the test questions and afterward I went to the Veterans Administration for the first time for an eye examination due to not affording proper health care.

When the eye doctor met me for the first time and examined my right eye I was diagnosed with a permanent physical condition known as Macular Degeneration because there were significant amounts of blood in the back of my eye. Dr. Bertolucci had not ever met me prior to my initial eye examination, therefore there was no chance of bias and He was the most qualified to make the diagnosis and has expressed to me incredulation when I requested from him to fill out again another form to document that my condition is permanent Macular Degeneration.

Additionally, I am incredibly amazed that I must continually ask a third-party medical eye doctor professional to fill out a form to document a condition that is permanent when he has already done so when first asked. I am amazed because Calbar has placed me in a position of potential adversity in relationship to my eye doctor and that is unnecessary.

Further, the Calbar TA authorities have become adversaries to me without just cause when asking me to start over with my TA application because I was granted my accommodation already for a permanent eye condition and instead of granting an automatic accommodation due a permanent eye condition I must start over and has caused me hardship because nearly two years have passed since I was eligible to take the bar exam, in large part due to the requirement to request Dr. Bertolucci to do paperwork that he has already filled out verifying my eye condition as permanent when he has already done so.

Also, there is no acknowledgment that I had input when asking for the amount of extra minutes that I was approved for because I was a novice to the idea of requesting extra minutes for an eye condition. The inability to read because of Macular Degeneration in one eye is like reading with one eye and the peripheral vision that two healthy eyes create has been ignored because there have been no studies that I know of that relate to a speed reading exam and had I been properly informed I would have requested much more time. Therefore the current revision of TA rules is inadequate and I must object.

Thomas Walker-128636

January 29, 2023

Via Portal and StaffEmail

Ruben Duran, Chair

Brandon N. Stallings, Vice-Chair

Mark Broughton

Hailyn Chen

Jose Cisneros

Juan De La Cruz

Gregory E. Knoll

Melanie M. Shelby

Arnold Sowell Jr.

Mark W. Toney, Ph.D.

Trustees

Board of Trustees

State Bar of California

180 Howard Street

San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," **Pertaining to Testing Accommodations** on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing as both a current appellate attorney and former special education teacher, and as someone who has also worked as an advocate for crossover youth, the vast majority of which are also impacted by some form of disability-oftentimes undiagnosed and/or under-accommodated. I mention the latter only because I know that my experience as a special education teacher has enhanced my ability to advocate for this population. I

also hope these facts underscore the importance of having more advocates fluent in the challenges (and triumphs) encountered by those managing a disability.

**I STRONGLY OPPOSE the proposed amendments** to the rules of the State Bar, with the "high level framework." I urge the Board of Trustees to adopt an alternative proposal that includes the principles and goals mentioned below.

Commitment to diversity in the legal profession is something that must be manifested through action-not a hollow promise targeted towards proper branding. This includes eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities from practicing law in our state. Only a very few California lawyers identify as disabled - and even fewer California judges.

A truly diverse bar facilitates access to justice, improves legal services, offers more role models, and promotes public confidence. It also fosters a deeper sense of community. A legal profession that licenses qualified lawyers with disabilities of all backgrounds and ethnicities is better equipped to serve the diverse populations California embraces.

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal and other professions. Right now, the State Bar regularly denies requests for testing accommodations on the bar exam, and the current proposal is a misstep in a backward direction.

Briefly, the State Bar should adjust its accommodation protocols as follows:

- 1) Provide a testing fee reduction offset for anyone who a) qualifies as a low-income applicant and b) is required by the state bar to produce the results of specialized testing to prove a legitimate need for the accommodation requested. Otherwise, the bar is excluding applicants not based on ability, but on disability and socio-economic status.
- 2) The State Bar rules should automatically grant candidates with permanent disabilities the same testing accommodations they previously received on standardized tests or in college or law school - without unfair restrictions.
- 3) The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant employed by the State Bar. Similarly, it should give weight to accommodations received in law school, which is nothing more than an acknowledgement that law schools are equally invested in fairness and have done their own due diligence prior to granting accommodations.

- 4) The proposal should comm.it the State Bar to more diverse consultants because existing longtime consultants approach testing accommodations requests with unfair skepticism and bias.
- 5) The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.
- 6) The proposal should include a voluntary peer-review committee-ideally composed primarily of attorneys to whom the State Bar previously granted testing accommodations. I would be happy to serve on such a committee.
- 7) The proposal should include a timelier review and appeals process.

For the reasons stated in this letter, I wholeheartedly **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal more reflective of its stated goals of access and inclusion.

If adopted, the current proposal would be a substantial step backwards, manifesting a hypocrisy that entirely undermines the State Bar's credibility as well as its higher purpose.

Sincerely,

/s/ **Kathleen J. Becket**  
SBN 334091  
Altadena, California  
213-700-8355



Dear Committee:

I am glad that we may have this discussion openly with the input of others. After reading the proposal, I found it concerning that the California State Bar calls to implement rules that would unduly restrict those with disability from obtaining accommodations. Especially concerning is the lack of deference to qualified professionals who are better able to assess individuals.

The California State Bar should defer to medical professionals who have diagnosed and evaluated prospective bar takers seeking accommodations. The Bar should not be more restrictive when a student proves that they have a disability that affects their daily life- including exams. When one has a disability, it tends to impact every area of their life-this includes test taking. It should not be presumed that it is test-taking anxiety. Of course, everyone is going to experience anxiety before sitting for the bar. However, those with disabilities have a more difficult time because our brains do not operate in the same manner as "norm." Not being able to comprehend information in the same manner that others can is a huge disadvantage to those with disabilities who are trying to persevere in the face of adversity.

You stated that "The process relies heavily on proof of past testing accommodations on high stakes exams" but this is not a sound measurement of one's disability. I do not disagree that proof of past accommodations are not a factor that should be considered; but I do disagree with giving it more weight than professional examiners who have concluded the disability and provided a sufficient rationale.

I understand the need to ensure that this process is not taken advantage of by those who do not have a disability. But, when creating harsher rules for obtaining accommodations, you may be denying and discrediting many, many people who truly need those accommodations. Proof of disability should be based on a medical examiner who has assessed and evaluated the student. Not all disabilities are the same. For example, ADHD does not come in one form. Disabilities do not come in one form. There may be more than one disability that compounds the other. The entire purpose is to ensure that individual is able to access the exam in the same manner that someone without a disability is able to. It is extremely detrimental to those who have disabilities to be denied and excluded from the profession. There is a serious need to address a more accurate process.

I cannot stress enough-- disabilities are not all cookie-cutter. The entire purpose of allowing disability accommodations is to ensure that bar takers have an equal opportunity-- an equal playing field with the other exam takers. It should be celebrated that despite having disabilities, students are preserving and trying to push through obstacles that other students do not have to suffer through. It is important that the Bar defers to qualified medical experts who have personally diagnosed and evaluated the individual. When the bar considers these requests, a more thorough review needs to be conducted and more consideration needs to be placed on what the professional reports. Before rejecting requests for accommodations that are supported by medical professionals, a peer-to-peer review should be conducted between the evaluating professional and someone qualified in the disability department with the California bar, with the consent of the applicant.

I cannot express enough how harmful it is to receive a rejection on unqualified ground stating that someone is essentially not disabled enough or that it is of the board's opinion that accommodations should not be granted, especially when there is sufficient medical proof of the disability and how it affects the individual. For those who truly have disabilities, making it more difficult to access the exam is

not the route that the California Bar should be taking. I do not believe that this proposal is founded on adherence to ADA or any medical professional standards.

The proposal change should be for the benefit and protection of the disabled who is struggling due to their disability-- there is not a need to make it more difficult and extreme. The purpose is to ensure fairness and an even the playing field, not to restrict those who have disabilities.

The California State Bar should stand for fairness, equality, and reason. I urge you to reconsider this proposal and to seriously amend the accommodation process to reflect a more accurate measurement and review of accommodation requests. I am not sure how the process works, but the disability department who are reviewing these requests should be made up exclusively of qualified psychiatrists, psychologists, and medical doctors. And for those who appeal a rejection, an option to request a peer-to-peer review between the reviewer and the doctor who examined and evaluated the individual should be permitted. To propose that there should be a final determination that does not allow appeal or redress is unfair and prejudicial and eliminates an important safeguard. Again, deference to medical professionals should be given greater weight.

Thank you.

## Commenter 26 cont.

The California State Bar should defer to medical professionals who have diagnosed and evaluated bar takers seeking accommodations. The Bar should not be more restrictive when a student proves that they have a disability that affects their daily life, including exams.

Some, like myself, have a very difficult time processing information and issues with reading comprehension. Disabilities are not cookie-cutter. The entire purpose of allowing disability accommodations are to ensure that bar takers have an equal opportunity-- an equal playing field with the other exam takers. Therefore, when the bar needs to be more thorough and considerate when they review a student who is in need of accommodations-- especially when 1 Psychiatrist, 2 Psychologists/ Psychotherapists, 3 Rheumatologists, 2 Neurotologists, and 1 Neurologist are all stating the same thing.

Personally speaking, I am appealing my rejection because it was baseless. It provided no concrete rationale. Of course I submitted it to my psychiatrist, school, and attorney and they do not understand the rejection either-- the rejection was made up of inferences that had no grounds. I am not sure how this process is conducted, but I am assuming it is not conducted by a licensed medical professional who specializes in each category of disabilities.

I cannot express enough to you how harmful it is for those who truly have disabilities that make it more difficult to take examinations-- not due to "anxiety" but due to ADHD and other cognitive impairments.

I do not believe that this proposal is founded on adherence to ADA or any medical professional.

The proposal should be for the benefit of the exam taker who is struggling due to their disability-- there is not a need to make it more difficult and extreme.

January 27, 2023

*Via Portal and Staff Email*

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
[Louisa.Ayrpetan@calbar.ca.gov](mailto:Louisa.Ayrpetan@calbar.ca.gov)

Devan McFarland  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: **OPPOSE** - Proposed Amendments Pertaining to Testing  
Accommodations on the California State Bar Exam

To Whom It May Concern:

As a recent bar examinee who was denied accommodations despite extensive documentation of disability, I am writing to **OPPOSE** the proposed amendments to the rules of the State Bar.

My experience, summarized below, exemplifies some of the very real issues the Board of Trustees must address in the accommodations request vetting protocol. Unfortunately, the proposed amendments do not adequately address these problems. In particular, the State Bar discounted clear documentation from multiple doctors and my law school, and instead based its denial on an erroneous reading of my supporting documentation. What's worse, despite the fact that I filed my accommodations request well ahead of my deadline, the State Bar denied my accommodation without allowing me a realistic timeframe to meaningfully appeal.

Instead of adopt a flawed approach that is opposed by numerous experts, the Board of Trustees should instead adopt an alternative proposal that remove the unjust obstacles that currently hinder examinees who are rightfully entitled to accommodations.

**My accommodations request experience for the July 2021 exam<sup>1</sup>**

I enrolled at Stanford Law School in 2018 and took the California bar exam in July 2021. Years earlier, immediately after graduating from college, I began experiencing seizures, and I was diagnosed with epilepsy in 2013. It took multiple medications to get my seizures under control, each of which had common side effects that impair test-taking, such as drowsiness.<sup>2</sup>

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<sup>1</sup> I would be happy to provide the Trustees with documentation of my experience if it would be helpful to their evaluation of proposed reforms.

<sup>2</sup> See *Oxcarbazepine*, <https://medlineplus.gov/druginfo/meds/a601245.html> ("[Y]ou should know that this medication may make you drowsy"); *Levetiracetam*, <https://www.epilepsy.com/tools-resources/seizure-medication->

When I began studying for the LSAT, I quickly noted that how much these side effects were affecting my performance compared to before I started taking the anti-seizure medications. My thinking was considerably slower than it had been in undergrad, and I struggled to complete sections within the standard time. Based on my combination of medications, my neurologist was not surprised that I was struggling. Based on a neuropsychologist evaluation, my neurologist wrote a letter endorsing my time accommodations request, which LSAC granted. Stanford gave me similar time accommodations on exams throughout law school based on the same documentation from my neurologist.

When I began preparing for the California bar exam, I was warned to expect a significantly more burdensome accommodations process. One recent examinee advised me not to count on receiving accommodations, even with the proper paperwork and a documented history of accommodations. I was also warned that the process would take significantly longer than it reasonably should.

With these warnings in mind, I submitted my accommodations request in mid-March 2021, well before the deadline. I submitted a recent letter of support from my neurologist along with all the necessary paperwork, including my doctor's notes from a recent visit and proof of the accommodations I received from LSAC and Stanford. As I was warned to expect, weeks went by without any word on my application. And as the exam date crept closer, I requested status updates numerous times by phone, email, and portal messages. In these messages, I pointed out that, in the event I needed to appeal, it would be difficult for me to coordinate with my neurologist on short notice. In the interim, I continued to prepare for the bar exam as if my accommodation petition would be denied.

The State Bar denied my accommodation request on June 24, 2021, a week before the deadline to appeal the determination and approximately a month before the first day of the bar exam. Rather than credit my neurologist's explicit recommendation that I receive accommodations based on his familiarity with my symptoms and medication side effects-not to mention the fact that both LSAC and Stanford granted accommodations based on prior clinician's advice-the State Bar's reviewer cherry-picked minutia in my neurologist's visit notes. I was confident an appeal of this determination would be fruitless, even if I could coordinate with my neurologist on short notice to prepare additional supporting documentation in between taking practice exams. With exam day looming, I decided not to appeal and simply accepted that I would take the test with a handicap compared to other examinees.

Despite the fact that I was denied an accommodation that was clearly supported by the record, I passed the July 2021 bar exam. I am entirely confident that there were other examinees who were inappropriately denied accommodations, who took the exam under standard conditions, and did not pass as a result.

Mine is not a success story, however. Instead, my experience shows how the current accommodations vetting system is utterly broken. The current process is a bureaucratic gauntlet designed to impose unnecessary barriers, even on examinees who are well-prepared with the proper documentation. In my case, the State Bar denied a demonstrably adequate petition on

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list/levetiracetam ("What are the most common side effects of Levetiracetam? [... ] Sleepiness"); *Lacosamide*, <https://medlineplus.gov/druginfo/meds/a609028.html> ("[Y]ou should know that lacosamide may make you dizzy or drowsy").

specious grounds. Despite having received my application long before the deadline, the State Bar denied my request without affording me sufficient time to challenge the ridiculous denial. Had the State Bar answered any of my update requests or indicated that my extensive documentation was still inadequate to support my petition, I absolutely would have appealed to vindicate my rights. Instead, the State Bar utterly failed to support me and other examinees seeking accommodations so that they could enter the legal field on even footing.

### **Needed reforms to the State Bar's accommodations process**

As it did in my case, the State Bar denies valid requests for testing accommodations on the bar exam. The State Bar should meaningfully address the flaws in the current accommodations process that lead to these inappropriate denials.

Among other reforms, the State Bar should:

Take time to consider whether a timed, rapid-fire examination is even an appropriate means of assessing minimum competence to practice law in the first place. If all that an otherwise competent applicant needs to pass the exam is additional time, it is far from clear that the current, extremely punishing time schedule contributes anything to the bar exam's proposed aim of protecting the public from incompetent representation.

Ensure examinees receive prompt responses to their accommodations petitions so that they have a meaningful opportunity to appeal inappropriate denials.

Automatically grant candidates the same testing accommodations that candidates previously received on standardized tests or in college or law school - without unfair restrictions.

Require that the State Bar defer to recommendations submitted by qualified professionals who have individually assessed applicants, rather than allow a consultant employed by the State Bar to second guess those recommendations without adequate support.

There are numerous shortcomings in the current accommodations process, and the State Bar should take this opportunity to meaningfully address them. Unfortunately, the current proposal would not do so and would actually introduce additional barriers to applicants seeking accommodations.

Accordingly, I **OPPOSE** the proposed rules changes and associated "high-level framework." I urge the Board of Trustees instead to adopt an alternative proposal that adequately serves examinees in need of accommodations. The State Bar should not continue failing candidates as it failed me and so many others.

Sincerely,

Shawn Musgrave

CA Bar No. 341359

## **Commenter 28**

I would simply add that people like me who have visual challenges should be afforded more time and more ability to bring in extra LED lighting for exams since Hotel rooms and/or convention centers do not offer that ability.

Further, more comfortable chairs are also important for concentration and focus.

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Proposed Amendments to the Rules of the State Bar, with "High-Level Framework,"  
Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

**To Whom it May Concern,**

While I commend the State Bar's recognition of the flaws within the current accommodation process for disabled students, I am deeply troubled by the proposed changes embodied within the "high-level framework" and **OPPOSE** the proposed amendments to the rules of the State Bar for the reasons disused herein. I urge the California State Bar to address existing issues that are hindering its goals to streamline a "transparent process." Namely, the stigmatization of non-visible disabilities exhibited by testing consultants, testing-consultants writing conflicting denial notices, and that prioritize privileged individuals that have had access to private entity.

**Risks to the Integrity of the Profession**

Maintaining the integrity of the legal profession and its stated commitments to diversity demands vehement rejection of these rules, which would further hinder an already grueling, invalidating, discouraging, and unjust process. In effect, implementing these rules would further exclude disabled individuals who identify as people of color, women, non-binary individuals, and low-income and first-generation graduate students. *See* Text - H.R.9604 - 117th Congress (2021-2022): Expanding Disability Access to Higher Education Act, H.R.9604, 117th Cong. (2022), <https://www.conirress.gov/bi11/117th-commrress/house-bi11/9604/text> (noting the frequency in which disabled students have multiple marginalized identities). "Many students who are low income, first generation, or minorities also have a disability." *Id.*

To further exclude marginalized individuals from entering the legal field is mutually exclusive with the State Bar's publicized commitments to diversity and the ethical rules it has implemented to uphold our profession's sanctity. Indeed, the ethical standards established, promoted, and maintained by the State Bar are consistent with efforts to increase diversity within the profession. The State Bar should not only include disabled attorneys but also **welcome and license** qualified lawyers with disabilities. It is common knowledge that a diverse legal community is better equipped to serve the varied needs of the people and communities within California. *See e.g.*, Amendment of Americans With Disabilities Act Title II and Title III Regulations To Implement ADA Amendments Act of 2008 81, Fed. Reg. 52304, 52319 (Aug. 11, 2016) (final rule) (noting that amendments to the ADA and changes to the rule are "expected to generate



psychological benefits for covered individuals, including reduced stress and an increased sense of personal dignity and self-worth, as more individuals with disabilities are able to successfully complete tests and exams and more accurately demonstrate their academic skills and abilities.""). As emphasized by the Department of Justice, "[a]dditional benefits to society arise from improved testing accessibility." Benefits to not only the Bar but greater society include, "some persons with disabilities are able to increase their earnings, they may need less public support-either direct financial support or support from other programs or services. This, in turn, would lead to cross-sector benefits from resource savings arising from reduced social service agency outlays." *Id.*

However, these proposed rules generate grave concerns about the impact on individuals with marginalized identities. Notably, the high-level framework **does not** address the discriminatory nature of the current system and practical issues. For example, the rules should **expressly state that a test evaluator's subjective opinion should not be given greater weight than documentation completed by medical professionals**. The State Bar should make policies to improve the tone with which testing consultants write letters to applicants. Many students experience letters that are not only contrary to federal regulations, but that are demeaning, elitist, and discouraging. The State Bar should conduct an in-depth review of the rationales applied in students' denial letters, and have training as to the federal regulations, and the intent proscribed under the ADA.

The high-level framework that has been proposed does not solve any of these issues plaguing the accommodations process. In fact, the process is so invalidating it discourages students with disabilities from taking the bar. Thus, further limiting the number of attorneys with disabilities. I urge the State Bar to conduct a thorough investigation into this issue pay special attention to the intolerance shown toward low-income students that could not afford "symptom validity" testing. It is essential for the State Bar to recognize that the current framework already benefits students of privilege that are white, come from a financially stable background, and have access to medical care and insurance funds. Implementing these rules would work to further exclude disabled individuals who identify as people of color, women, non-binary individuals, and low-income and first-generation graduate students. Thus, they reflect a step backward that will serve as yet another burden for law students seeking protected accommodations under the ADA.

**The State Bar Should Explicitly Abandon The Practice of Requesting Testing That Costs Thousands of Dollars and Are Inaccessible for Students with Multiple Marginalized Identities**

As the State Bar itself has reported, only five percent of California lawyers report having a disability, a fraction of the proportion of disabled people in the state population (about one in five) and only two percent of all California judges identify as being disabled. Many students cannot access the "comprehensive reports" heavily relied upon by the State Bar because they do not have access to healthcare

or have state insurance which does not cover such expenses. A recent quote by a California facility advertising its comprehensive evaluating services as frequently sufficient to meet the State Bar's standards charges nearly \$5000 for this type of testing. *See also* GAO-22-104430 Higher Education Testing Accommodations 1, 19 (July 2022) (estimated costs of evaluations ranging from \$2,000 to \$7,000).

The inappropriate reliance on expensive testing, invasive and unnecessary testing predominantly available to the white upper-middle class, is not explicitly called for by any federal or state law. Accordingly, the State Bar should **revise the rules to explicitly denounce** its previous reliance on these tests and make accommodations more accessible for low-income individuals without access to what has been termed "boutique psychological evaluations." In addition, the rules should be revised to explicitly state that the State Bar will no longer require "comprehensive reports" for individuals that have already provided documentation from medical professionals and have identified cost as a substantial obstacle preventing them from obtaining such testing.

**The State Bar Should Explicitly Denounce the Practice of Using Students LSAT Scores, and Academic Achievements as a Basis for Denial according to DOJ Regulations**

A frequent issue cited by law student graduates is that testing consultants justify the denial of accommodations and ignore documentation from medical professionals based on their subjective opinion regarding the individual's achievements in law school, high school, and on other standardized tests like the LSAT and SAT. The pervasiveness of this issue is illustrated in online forums in which law students have come together in hopes of receiving support from one another. Within these forums, law graduates report their frustrations with the State Bar's unjust accommodation process and the impact it has had on their perceptions of self-worth. *See e.g.*, (@violetdonut95) REDDIT (2022) ("The denial letter I received in February of 2022 was the most condescending and rude synopsis I have ever read in my life.").

Again, consultants frequently deny disabled students accommodations based on their subjective assessment of that students' achievements rather than their documented disabilities, which is inconsistent with the ADAA and DOJ compliance guidelines. *See id* (user notes that the State Bar denied her accommodations request despite her medical documentation because she had "average grades" and an "average LSAT score."). *See also* r/barexam (@coffeeisjoy) REDDIT (2022) (poll indicating that 57% of respondents with ADHD had been denied accommodations); (@drhockey623)(this individual noted they finally received accommodations after submitting 76 pages of paperwork); (@curiousgeorgia)(describing the accommodation process for those with ADHD as "ableist" and "*textbook discrimination*")(emphasis included in the original); calbarca, *Testing Accommodations Stakeholder Input Forum*, YOUTUBE (June 29, 2022) (13:20)(statement by former elected officials Shirleen DeRezendes) ("it should not be easier to get approved for permanent social security disability benefits than it is to take an outdated exam"); calbarca,

*Testing Accommodations Stakeholder Input Forum*, YOUTUBE (June 29, 2022) (1:48:10)(stating that the amount of work he had to do as a result of the State Bar's request for paperwork was "mind blowing" and that his friend was told that "200 pages was not enough information in a really rude letter").

There are hundreds if not thousands of similar recounts from students with disabilities across California in both public and anonymous forums. One Reddit user made comments underscoring the prevalence of this issue nationwide. r/barexam (@curiousgeorgia) REDDIT (2022)("I'm almost 100% sure that the MPRE/UBE will be sued with a class action pretty soon. Just like the LSAT was. Here's hoping that'll actually help less the inequities!"); (@Intelligent\_Camera95) ("I have cancer and have been through an extraordinary amount of chemo, impacting many things including a loss of fine motor skills; I have no immune system and am missing a lung. As a result, I cannot wear a mask and I cannot hold a pen . . . I requested several accommodations from the state bar. They gave me a very hard time and one lady actually laughed at me.").

In fact, applicants with highly stigmatized disorders such as ADHD have had such demeaning and frustrating experiences that they have joined together and created "strategies," which include excluding documentation of their ADHD on their applications due to State Bar bias. *See e.g.*, r/barexam REDDIT (2022). *See also*, (BlakeJames212) REDDIT (2022) ("I was especially disenchanted by my denial of accommodations because their report essentially accused me of making up my diagnosis .") It is crucial for the State Bar to take these anonymous comments into consideration in light of the valid fear of disclosing disabilities and facing retaliation from the State Bar, and the legal community. The examples contained above are just a short list. The data is not hard to find - the openness with which the State Bar continues to uphold discriminatory policies, especially for those with non-visible disabilities, is deeply troubling.

Importantly, it is directly in violation of the intent of Congress and federal regulations promulgated by the Department of Justice. *See* Amendment of Americans With Disabilities Act Title II and Title III Regulations To Implement ADA Amendments Act of 2008 81, Fed. Reg. 52304, 5342 (Aug. 11, 2016) "(iii) In determining whether an individual has a disability under the "actual disability" or "record of" prongs of the definition of "disability," the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population." U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html)

Although it is not precedent, the commentator urges the Trustees to carefully review the recent settlement agreement between the Department of Justice and the Educational Testing Service ("ETS") to

resolve violations of the ADAA concerning accommodations. UNDER THE AMERICANS WITH DISABILITIES ACT DOJ No. 100061054/USAO No. 2018V00723. UNDER THE AMERICANS WITH DISABILITIES ACT DOJ No. 100061054/USAO No. 2018V00723. Similar to the State Bar, ETS engaged in practices such as: "fail[ing] to give considerable weight to the determinations of qualified professionals who had made individualized assessments of individual[s] with disabilities that supported those Complainants' requested testing accommodation," "fail[ing] to give considerable weight to the history of testing accommodations," and "request[ing] additional levels of documentation, adding significant expense and time to the process for Complainants." The settlement also covers ETS's indifference when applicants advocated for themselves by urging ETS to follow federal guidance. The settlement provides an example in which ETS's former Director of the Office of Disability Policy responded, "I question the diagnosis of a learning disability, given the scores from the WISC-III and the WIAT-II when you were a teenager. There is no question that you were functioning in the gifted range." *Id.*

The commentator makes these comparisons in hopes of the State Bar taking the time to carefully reconsider its approaches, review its actions, and consider whether it is complying with the legal standards, and moral principles, embodied within the ADAA. Sweeping changes, including disability discrimination training and education and hiring staff with disabilities, would benefit the State Bar, the legal profession, and the rest of society. *See* Amendment of Americans With Disabilities Act Title II and Title III Regulations

To Implement ADA Amendments Act of 2008 81, Fed. Reg. 52304, 52319 (Aug. 11, 2016) (final rule) (noting that amendments to the ADA and changes to the rule are "expected to generate psychological benefits for covered individuals, including reduced stress and an increased sense of personal dignity and self-worth, as more individuals with disabilities are able to successfully complete tests and exams and more accurately demonstrate their academic skills and abilities."). Again, as emphasized by the DOJ "Additional benefits to society arise from improved testing accessibility." Benefits to not only the Bar but greater society include, "some persons with disabilities are able to increase their earnings, they may need less public support--either direct financial support or support from other programs or services. This, in turn, would lead to cross-sector benefits from resource savings arising from reduced social service agency outlays." *Id.*

#### **The Rules Should Embody Congressional Intent Under Federal Disability Rights Legislation ADAA & Recent Legislation**

In 2008, Congress explicitly rejected court's "engag[ing] in an inappropriate level of scrutiny as to the severity of an impairment when determining whether an individual has a disability." (Senate Statement of Managers to Accompany S. 3406, Endnote 14.) We intend that the ADA Amendments will have the opposite effect by reducing the depth of analysis related to the severity of the limitation of the impairment and returning the focus to the question of discrimination."154 Cong. Rec. E1841-03, 154 Cong. Rec. E1841-03, E1841-42 (expressing hope that amendments "will allow students and licensure

candidates with documented disabilities to more readily access appropriate accommodations on examinations when needed.").

Despite these clear initiatives, recent legislation proposed and passed by the House of Representatives underscores the widespread concerns about disabled students' rights to reasonable accommodations in the context of higher-education. *See e.g.*, Text - H.R.7370 - 117th Congress (2021-2022): Student Mental Health Rights Act, H.R.7370, 117th Cong. (2022), <https://www.congress.gov/bills/117/congress/house-bill/7370/text> ("The laws described in paragraph (1) prohibit institutions of higher education from discriminating against students with a mental health disabilities, including by failing to provide the reasonable accommodations or reasonable modifications to such a student."); Text - H.R.9604 - 117th Congress (2021-2022): Expanding Disability Access to Higher Education Act, H.R.9604, 117th Cong. (2022), <https://www.congress.gov/bills/117/congress/house-bill/9604/text> ("It is the sense of Congress that individuals with disabilities, particularly those who are low income or first generation, should be able to attend institutions of higher education at the same rate as their peers in the general population"). Federal agencies have also begun to pay heightened attention to violations of the ADA in the context of testing accommodations. Between 2017- 2020, the DOJ received more than 90,000 complaints of ADA violations. GAO-22-104430 Higher Education Testing Accommodations.

#### **The Proposed Rules Do Not Address Existing Issues with Documentation**

Again, the proposed amendments overstep authority and trample students' disability rights in the process. "Once an individual has established that he or she experiences (or has a record of) a physical or mental impairment that substantially limits a major life activity, such individual is entitled to reasonable and appropriate modifications in policies, practices or procedures so long as the modifications in question do not fundamentally alter the nature of the program or service. **We expect that the less demanding standard applied to the definition of disability will allow students and licensure candidates with documented disabilities to more readily access appropriate accommodations on examinations when needed.**"<sup>154</sup> Cong. Rec. E1841-03, 154 Cong. Rec. E1841-03, E1842, 2008. Yet, testing consultant's report that consultants generate "different conclusions about the applicant's ability to function than those of the medical evaluator who performed the tests.". *See* GAO-22-104430 Higher Education Testing Accommodations (commenting on DOJ response to third parties request for unreasonable, burdensome and unnecessary documentation).

These are just a few examples of statements from the Congressional record that explicitly make clear that the ADAA sought to expand the rights of disabled individuals seeking accommodation. Adopting the high-level framework would be a detrimental step backwards for a profession that is already decades

behind in its disability intolerance. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46. This commenter respectfully requests that the Board of Trustees abandon these rules, which adopt eligibility criteria for testing accommodations that would screen out many qualified candidates and exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the elimination of bias, professional diversity, and access to justice.

**The State Bar Should Consider its Ethical Obligations to Mitigate Disability Discrimination**

As illustrated in the foregoing, testing consultants routinely supplant their subjective assumptions as a justification to override documentation by licensed medical professionals, who have had the opportunity to work with the disabled student on a personal level, as opposed to the birds-eye lens of the third-party consultant. Without retraining and substantial reorganization by incorporating disabled and diverse consultant teams- the process is inherently unfair. The State Bar should address and hold itself accountable for the harm these practices have caused aspiring law students. *See e.g.*, Government Accountability Office, Higher Education and Disability, Improved Federal Enforcement Necessary to Better Protect Students Right to Testing GAO-12-40 (Nov. 2011) <https://www.gao.gov/assets/gao-12-40.pdf>; GAO-22-104430 Higher Education Testing Accommodations.

An initiative more in line with eliminating vacancies in the profession and promoting diversity would be to commit to retraining and educating the State Bar and incorporating new consultants or providing rigorous education on disability discrimination for current test consultants that are unable to overcome their subjective bias towards disabled law students. Consultants should approach student applications with a presumption that they are justified. Such an approach would be consistent with the *DFEH v. LSAC*, Best Practices Report, <https://civillibertyrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015) in which the proposed rules purports to model. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game".

For the reasons stated in this letter, the commentator strongly **OPPOSES** the rules changes and associated "high-level framework." Instead, the Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backward.

Sincerely,

Anonymous

## **Commenter 30**

The time limitation is unwarranted. It is unlikely that an individual who has suffered or must deal with a disability throughout their learning life (lifetime) suddenly overcomes it. There should be no time limit (ie the 5 year time period) if the applicant's record demonstrates the need and granting of accomodations during their academic life.

Additionally, the Bar is, again, opening itself for further litigation over this issue by the State of California and DOJ. These tests (SAT, ACT, LSAT etc) are highly discriminatory to people of color, disabled and/or economically disadvantaged.

**January 25, 2023**

*Via portal and email (Louisa.Ayrapetyan@calbar.ca.gov and Devan.McFarland@calbar.ca.gov)*

Ruben Duran, Chair  
Board of Trustees, State Bar of California  
180 Howard Street  
San Francisco, CA 94105

**RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

On behalf of the Alliance for Children's Rights, I am writing to register our opposition to the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

Alliance for Children's Rights advocates for thousands of clients each year-including abused, neglected, and vulnerable children and teens in the foster care system, runaway and emancipating youth, children who need guardians, and the families who step up to care for them. The Alliance for Children's Rights believes that all persons are entitled to equal employment opportunity and does not discriminate against its employees or applicants because of race, color, religion, sex, pregnancy, national origin, ancestry, age, marital status, sexual orientation, disability, medical condition or any other classification recognized by state or federal law. Equal employment opportunity will be extended to all persons in all aspects of the employer-employee relationship, including recruitment, hiring, upgrading, training, promotion, transfer, discipline, layoff, recall and termination.

The Alliance is committed to promoting diversity in the legal profession with particular emphasis on recruitment and retention in public interest law, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a



disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

We respectfully request that the Board of Trustees reject the proposal, and adopt an alternative proposal that includes the following:

- The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.
- A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.
- The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).
- The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).
- The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.
- The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial

grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, *even* if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

- The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.
- Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.
- The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than *five* years ago;
- no grant if prior approval is within *five* years but based on an automatic grant outside the *five* years;
- no grant of more than 50 percent extra time (unless *severe* visual impairment);

- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

- The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.
- The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

- The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

For the reasons stated, the Alliance for Children's Rights OPPOSES the rules changes and associated "high-level framework." If adopted, the proposal would mark a substantial step backwards. The Board of Trustees should instead adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion.

Sincerely,

A handwritten signature in cursive script that reads "Kristin Power".

Kristin Power  
Vice President, Policy & Advocacy

## Commenter 32

The State Bar must commit to diversity in the legal profession and eliminate access barriers, which continue to exclude disabled people from the legal profession

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession

The State Bar regularly denies requests for testing accommodations on the bar exam, and the current proposal is a step backward

The Board of Trustees should reject the staff proposal and instead adopt an alternative that includes the following:

The rules should require timely responses – within two weeks – to accommodation requests

The rules should retain an option for an independent review of accommodation denials

The rules should allow a candidate an appropriate period of time – 30 days – to seek review

The rules should make clear that candidates may seek more than one review

The proposal should commit the State Bar to more and more diverse consultants; existing longtime consultants approach requests with unfair skepticism and bias

The proposal should commit the State Bar to training and retraining to end its harmful and unnecessary “zero sum game” approach to accommodation requests

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests – without convoluted and unfair restrictions

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant

The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed,” and make clear the expensive comprehensive reports are no longer required

The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.



January 25, 2023

*By Public Comment Form and by Email*

Ruben Duran, Esq. Chair  
Brandon N. Stallings, Vice-Chair  
Mark Broughton, Esq.  
Hailyn Chen, Esq.  
Jose Cisneros, Esq.  
Gregory E. Knoll, Esq.  
Melanie M. Shelby  
Arnold Sowell, Jr.  
Mark W. Toney, Ph.D.  
Board of Trustees  
c/o Louisa Ayrapetyan  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
Louisa.Ayrapetyan@calbar.ca.gov

Re: Public Comment on the Proposed Amendments to the Rules of the State Bar Pertaining to Testing Accommodations (rule 4.80(C))

To the Board of Trustees for the State Bar of California,

My office represents attorney applicants in matters regarding California's attorney admissions system. I am writing to strongly oppose the proposed amendments to the Rules of the State Bar Pertaining to Testing Accommodations in rule 4.80(C). Alongside many other disability advocates, I am recommending an alternative proposal that addresses the principles set forth below in this letter. The currently proposed amendments ***directly contravene*** our Legislature's definition of public protection, "which includes support for greater access to, and inclusion in, the legal system... the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions." (Bus. & Prof. Code § 6001.1; see also § 6001.3 ["the State Bar's public protection mission to build, retain, and maintain a diverse legal profession"].)

The Board of Trustees (the "Board") and the Committee of Bar Examiners (the "Committee") has recently shown a promising trend of being fair and judicious in its other decisions, notwithstanding the recommendations and self-interests of State Bar executives and staff. Just some of those successes include the Board's recent and unprecedented decision to refund applicants who experienced bar exam software technical failures, and the Committee's successful intervention when Office of Admissions staff unilaterally



cancelled numerous applicants' bar exam registration on the eve of the exam and withheld their exam fees. I urge the Board to continue its trend of prioritizing public protection by rejecting this proposal by the Office of Admissions, which would provide additional means excluding disabled attorney applicants while retaining their exam fees.

Initially, the Office of Admissions' agenda item document for the Proposed Amendments acknowledges that the State Bar is a party to litigation regarding disability discrimination in its attorney admissions process. If the plaintiff in said litigation offered to settle his claims if the Office of Admissions just stopped discriminating against applicants with disabilities (and the State Bar refused said settlement offer), proposing an even more discriminatory framework will only result in more and more disability rights litigation. The Board is reminded that the Office of Admissions staff (and at least one Committee member) have openly made discriminatory remarks about disabled individuals at Committee meetings, facts that expose the State Bar to more and more liability under disability rights legislation.<sup>1 2</sup>

The Committee previously held a forum to address the disability accommodations process. If the Board and Committee proceeded to approve these proposed amendments notwithstanding the feedback from that forum, it will likely send the message that such public forums were held in bad faith-further reinforced by the former interim Executive Director leaving shortly after introducing herself.

Again, the Board and the Committee have consistently gained the trust of the public in many recent decisions that required independent judgment from the Office of Admissions. I hope that the Board will carefully scrutinize each part of the Proposed Amendments by considering what the Office of Admissions really means in its proposals, especially in light of its long history of openly discriminating against disabled applicants. As just one example, the proposed addition of a "disability accommodations expert" is meaningless if the Office of Admissions is only going to hire someone with expertise in excluding and rejecting disabled applicants. As another, the Board might ask why applicants have the incentive to appeal accommodations decisions while they are intensively preparing for the bar exam.

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<sup>1</sup> As an example, at least one Office of Admissions staff member claimed that the cost of the exam was increasing as a result of a disabled applicant exercising his right to petition for redress. Another way to reasonably analyze the circumstances is that the Office of Admissions' ongoing discrimination against disabled persons is costing the State Bar far more than the price of being fair and equitable.

<sup>2</sup> Some State Bar staff members seem to think that concealing or destroying meeting records will protect them from said liability. It won't, especially since many members of the public maintain their own copies of said records.





With these considerations in mind, I strongly urge the Board to reject the so-called "high-level framework" and consider an alternative proposal based on the following factors:

## **Commitment to diversity in legal profession and eliminating access barriers**

The State Bar of California is reminded that our Legislature has recently defined public protection to include "greater access to, and inclusion in, the legal system, [which] shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions." (Bus. & Prof. Code § 6001.1.) A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

## **Barriers continue to exclude disabled people from the legal profession**

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

## **Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession**

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for



disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

## **The State Bar regularly denies requests for testing accommodations on the bar exam**

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

## **The current proposal is a step backward**

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

## **The rules should require timely responses to accommodation requests**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar



exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

### **The rules should retain an option for an independent review of accommodation denials**

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

### **The rules should allow a candidate an appropriate period of time to seek review**

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

### **The rules should make clear that candidates may seek more than one review**

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional



documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

### **The proposal should commit the State Bar to more and more diverse consultants**

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

### **The proposal should commit the State Bar to training and retraining**

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC, Best Practices Report*, <https://civillibertyrights.ca.gov/LegalRecords/final-report-of-the-best-practices-paneV>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

### **The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests**

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than



they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c) (ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

**The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school**

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH v. LSAC, Best Practices Report*; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework,"



not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

**The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant**

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC, Best Practices Report*; 2015 U.S. Dist. LEXIS 104751, at ' 46.

**The rules should limit required supporting documentation to that which is "reasonable, limited, and narrowly tailored to the information needed"**

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

**The proposal should include an assessment of leadership.**

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for



reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, I **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Julian Sarkar

cc: Committee of Bar Examiners, State Bar of California c/o Devan McFarland  
cc: Claudia Center, Esq. Disability Rights Education & Defense Fund

January 25, 2023

Ruben Duran  
Chair

Juan De La Cruz  
Trustee

Brandon N. Stallings  
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Gregory E. Knoll  
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Mark Broughton  
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Arnold Sowell Jr.  
Trustee

Jose Cisneros  
Trustee

Mark W. Toney, Ph.D.  
Trustee

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- Oppose Unless Amended

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am an attorney licensed by the California State Bar since 1992 and am an adjunct professor at an accredited local California law school. I am writing in my individual capacity as a long-time equity in education advocate and as a person with disabilities.

When I graduated from Loyola Law School Los Angeles as an evening student in 1991 it was before the ADA was enacted. There were no obviously disabled students in our cohort as we all had to pass through a very fine sieve to gain admittance to Loyola and successfully complete the LSAT. Thereafter, we had to successfully navigate the licensing requirements of CalBar without any reasonable accommodations. These facial neutral admission requirements worked to screen out bar applicants with disabilities and other marginalized groups of law students from being admitted to ABA law schools and later the CalBar.



After practicing various aspects of civil litigation for over 30 years and seeing the accessibility issues confronting my clients with disabilities and the absence of disabled attorneys actively practicing litigation; I have become more committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. Teaching non-traditional law students at The Colleges of Law in Ventura, and after about two decades of pro bono work working on educational equity and access for disabled students in Ventura County, has only served to reinforce my commitment to creating more representation of historically disenfranchised students with disabilities in higher education and the practice of law.

Based on my professional experience and after earning my master's degree in 2021 while attending Cal Poly SLO as a student with disabilities reasonable accommodations, after never previously attending law school or undergraduate with reasonable accommodations, I have seen first-hand why the arbitrary five-year rule being proposed is discriminatory. As a non-traditional master's student I did not have a history of prior accommodations requests or any high stakes testing completed within five years prior to entering my master's program. Using the logic set forth in the State Bar proposal I would not have subsequently been eligible for reasonable accommodations for the California Bar Exam using the arbitrary agist, ableist criteria being proposed. This is due to my age, having completed my undergraduate course of study in 1986, which was much longer than five years before the proposed look back period, as well as the discriminatory assumption and logic that I was not a person with a disability that needed to be accommodated on a high stakes test. Many non-traditional students are non-traditional due to traumatic life experiences, such as Veteran's or people who experience disabilities later in life or only come to realize that they had a disability later in life, which require reasonable accommodations, such as additional time, to take timed, high-stakes exams. Testing accommodations allow bar takers to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores are not valid, as they reflect the effects of disability rather than aptitude and abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity.

As such, based on my personal and professional experiences it is proposed that the reasonable accommodation and documentation proposal should be rejected or amended as follows:

### **Standards for Required Documentation in Support of Accommodation Requests:**

Documentation by Qualified Provider. The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, the proposal is not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain

disabilities.<sup>1</sup> These comprehensive reports cost thousands of dollars and are not covered by insurance. The State Bar should clarify that it is no longer requiring comprehensive evaluation reports with underlying test results.

**Prior Approval Documentation.** In the context of a request for a testing accommodation based on a prior approval, the framework appropriately limits required documentation to proof of the prior approval coupled with a self-certification of continued need. Section I(A)(1)(c), (e), (8)(1)(d), (f). However, as discussed *infra*, the provisions regarding automatic approvals include extensive and complex exceptions that decimate their application and utility. The State Bar should revise its proposed automatic grant procedures to eliminate the exceptions and to include additional high-stakes exams.

### **Standards for Reviewing Accommodation Requests.**

The State Bar should adopt the following standards for reviewing accommodation requests:

**Automatic Grants for Prior Standardized Testing Accommodations.** The State Bar should automatically grant certain common accommodations for applicants who were previously approved for the same accommodations on prior standardized tests, such as the SAT, GRE, LSAT, and MPRE, including additional time up to double time. See LSAC Consent Decree, at Injunctive Relief, ¶ 5(a); LSAC Policy on Prior Testing Accommodations, <https://www.lsac.org/lSAT/lsac-policy-accommodations-test-takers-disabilities/policy-prior-testing-accommodations>. In such cases, documentation should be limited to that demonstrating the prior approval, and a certification by the test taker that they continue to experience the same limitations due to disability. The automatic grants purportedly offered in the proposed "high-level framework" are riddled with extensive, complex, and unworkable exceptions that will exclude many test takers with longstanding testing accommodations for standardized tests.<sup>2</sup>

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<sup>1</sup> *Compare* Form C re Specific Learning Disorder, Form D re ADHD, and Form E re Psychological Disabilities, all requiring "comprehensive evaluation report" and all underlying "records and test results," <https://www.calbar.ca.gov/Admissions/Examinations/Requesting-Testing-Accommodations>, with proposed draft Qualified Professional Certification, Section 5, stating that documentation "may consist of, where appropriate, a comprehensive evaluation" and "standardized test data from appropriate evaluation instruments."

<sup>2</sup> The proposed "high-level framework" purports to include automatic accommodation grants for prior approved accommodations, but instead subjects this simple concept to a byzantine set of extensive exceptions, including:

- no automatic grants for double time or longer (unless severe visual impairment), Section I(A)(2), (8)(2);
- no automatic grants for private rooms, *id.*;
- no automatic grants if the prior approval is more than five years earlier, Section I(A)(1)(a), (8)(1)(a);
- no automatic grant if the prior approval is within five years but is itself based on a prior automatic grant outside of the five years, Section I(D);
- no automatic grant if the prior approval was for a "temporary" rather than "permanent" disability, with no definitions, Section I(A)(1)(b)(iii) & (iv), (d), (8)(1)(c)(ii), (e);

*Automatic Grants for Prior Accommodations on Additional High-Stakes Exams.* The State Bar should also automatically grant certain common accommodations for applicants who were previously approved for the same accommodations on prior high-stakes tests, such as on timed in-class exams in college or law school, including additional time up to double time. See 2014 U.S. DOJ Guidance. The proposal only states that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6).

*Presumptive Grant of Previously Approved Accommodations in Other Contexts.* The State Bar should presumptively grant accommodations that were previously approved for the applicant on other academic or professional tasks (other than on standardized tests and/or high-stakes exams). See Best Practices Report; *DFEH v. LSAC*, 2015 U.S. Dist. LEXIS 104751, at \*45. The proposal states only that the State Bar should "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6).

*Deference (More Weight) to Documentation Provided by Qualified Professional Who Individually Assessed the Applicant Compared to Opinion of Consultant.* The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation *vis a vis* the opinion of its reviewing consultants. The State Bar should commit to giving deference - *more* weight - to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not assessed the candidate. See 2014 U.S. DOJ Guidance; Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

### **Form of Standards Regarding Documentation and Review of Requests.**

The core principles regarding required documentation and the standards for reviewing requests for testing accommodations should be contained in formal Rules adopted by the State Bar. The relegation of these critical standards to the less formal "high-level framework" makes it much more likely that standards will change without notice and that that applicants will not be able to make plans in reliance on applicable standards.

### **Blue Ribbon Commission on the Future of the State Bar**

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- no automatic grants if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, if there is a grant, then a denial, then the State Bar will look to the denial), Section I(A)(1)(b), (B)(1)(b); and
  - no automatic grants if the prior approval was for a list of standardized tests such as the LSAT, GRE, GMAT, or SAT, but the test taker *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar, Section 1(8)(1)(b).

None of these exceptions are part of the LSAC framework.

The CalBar should not allow these proposed revisions to occur in a silo, especially while it is simultaneously considering the recommendations of the Blue Ribbon Commission with regard to testing and alternatives to testing which could be implemented to demonstrate mastery of legal principles and fitness to practice law in the this state. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires inclusion of the Blue Ribbon Commission which includes multiple stakeholders and educators who are also wholeheartedly committed to disability equality not just racial equity and socio-economic equity of bar applicants, and who also embrace accessibility and inclusion of historically marginalized disabled and non-traditional students as a necessary tenant of equal opportunity.

For the reasons stated in this letter, I OPPOSE the agist, ableist proposed rules changes and associated "high-level framework" unless substantially amended.

Sincerely,  
Deborah Meyer-Morris, M.A.  
Attorney/Advocate/Adjunct Professor  
**SBN: 158876**  
Ventura, California



Drinko Hall  
55 West 12<sup>th</sup> Avenue  
Columbus, OH 43210

January 23, 2023

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Re: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework,"  
Pertaining to Testing Accommodations on the State Bar - Oppose Unless Amended

Dear Chair Duran, Vice-Chair Stalling, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am a Distinguished University Professor at the Moritz College of Law at The Ohio State University, and a member of the Ohio bar. I am writing to provide comments on your proposed amendments to the State Bar Rules with respect to the testing accommodation process. I am joined in this letter by two of the co-authors of the Best Practices Panel Report created by the consent decree between The Department of Fair Employing and Housing, the U.S. Department of Justice and LSAC.

I am a well-recognized expert on disability law, especially with regard to testing accommodations. See Ruth Colker, Test Validity: Faster Is Not Necessary! 49 SETON HALL L. REV. 679 (2019); Ruth Colker, Extra Time as an Accommodation, 69 U. PITT. L. REV. 413 (2008). I am joined in this letter by Nancy Mather, Ph.D., Professor Emeritus, Department of Disability and Psychoeducational Studies, College of Education, University of Arizona; and Nicole Ofiesh, Ph.D., Nicole S. Ofiesh & Associates, LLC. They are each well-recognized experts in the fields of learning disabilities and testing accommodations.

Because your recommendations purport to be consistent with that consent decree, we will especially emphasize ways in which it sharply contrasts with The Department of Fair Employment and Housing v. LSAC Consent Decree and, in fact, moves backwards from recent developments in disability law that emphasize universal design rather than an onerous and invalid accommodation process.

#### Universal Design

Let us start with a brief comment on the lack of consideration of universal design in your recommendations. When we sat on the Best Practices Panel, we were not allowed to make recommendations about the LSAT, itself, as an exam. By contrast, you have influence over the content and structure of the bar exam itself. We would therefore strongly urge you to start by considering the structure of the exam from a universal design perspective. It is a highly time pressured exam with few breaks. On the first day, for example, a candidate is expected to answer three 60-minute essays questions, with no breaks. In the afternoon, they are expected to answer two 60-minute and one 90-minute test, again with no break.

How did California arrive at these time protocols? Did they find that people who took 90 minutes rather than 60 minutes to answer those essay questions were less capable to be lawyers in California? Did they find that people who took breaks between sections were less capable? On the exam, itself, have they studied the examination answers from applicants who did not complete these questions within these time limits to those who did? California requires applicants to go through an arduous process to obtain extended time for those questions. As Professor Colker argues in her *Seton Hall* article, testing entities should have to justify the time limits, themselves. Research suggests that breaks are especially helpful for people with ADHD. California requires applicants to spend thousands of dollars to request that they get reasonable breaks between these exam questions. Few people are likely to demonstrate their abilities well with several hours of work with no breaks. We urge you to request that the exam preparers re-think their use of breaks and time limits for all test takers *without* making the exam even more difficult.

As a law professor, Professor Colker abandoned time-limited exams decades ago. Many of her colleagues have followed suit. (She gives her students 12 hours to answer an exam that would traditionally be offered as a 4-hour exam.) By offering an exam without functional time limits, she no longer gets the student exam that ends with "out of time." Instead, she learns their actual knowledge on the subject. She still gives some students a D or F because they did not learn the material, but she can be confident that she is testing them on their knowledge and abilities rather than on their disability and test anxiety.

It is disappointing to see California move in the direction of even more rigorous gatekeeping for extended time consideration rather than benefit from the decades of research on the advantages of universal design models that largely avoid time pressures altogether. Some of the universal design experts work in California and sat on the Best Practices Panel. We would be happy to meet with you and help you move towards more modern conceptions of disability justice.

#### Accommodation Process Itself

These proposed rules are inconsistent with the Best Practices Report, which became part of the LSAC Consent decree, and have governed LSAC's accommodation process even after the Consent Decree expired.

First, the five-year rule for substantiation of disability is inconsistent with the Best Practices Report. We recommended that LSAC accept documentation from age 13. *See* Best Practices Report, at n. 7 (justifying age 13 cut-off). We used the age 13 cut off (*not* a five year rule) because the Consent Decree provided that LSAC provide the equivalent testing accommodations to an individual who has previously received such accommodations under the ACT or SAT, so long as the individual indicates (without additional documentation) that they are still disabled. In other words, to be consistent with the Best Practices Report, California should accept evidence that the applicant was previously accommodated on another standardized exam *or* has documentation from age 13 that demonstrates a disability.

Second, the proposed rules give no weight to a decision by a university or law school to accommodate a test taker. By contrast, the Best Practices Report gave conclusive weight to an accommodation decision under a student's IEP or Section 504 plan, which would be comparable to an accommodation decision at a university or law school.

Third, the proposed rules give insufficient weight to a medical professional who has met the candidate in contrast with a bar examiner reviewer. The Best Practices Report recommended that

more weight be given to qualified professionals *who have previous!J examined the candidate* because those evaluations are likely to be more accurate than someone who merely reviews a file.

#### Consequences of California's Proposed Rules

The first problem imposes a significant expense and time commitment on most applicants who seek accommodations since there is typically no reason for disabled people to obtain such documentation. Because they could have obtained accommodations on the LSAT based on prior accommodations on other standardized exams, they are unlikely to have such documentation. The costs of such testing in California typically exceeds \$4500. Applicants would also have to schedule multiple days of testing during their third year of law school when they have many other pressing concerns such as studying for the bar exam itself, which increases the stress of the examination process itself.

The second problem is pernicious because exam takers, who have spent three years in law school being evaluated for their work under particular, accommodated circumstances, **will** now have to potentially demonstrate their knowledge and abilities under different circumstances, depending on how California responds to their accommodation requests.

The third problem misunderstands the disability identification process. There is no single "test" that determines, for example, if an applicant has an anxiety disorder or ADHD. Those kinds of evaluations are made by interviewing and treating individuals. The applicant's self-report is also an important aspect of that evaluation process. A California reviewer is in no position to second-guess the judgments of treatment professionals who have met the applicant.

#### Conclusion

California has recently been a national leader in the standardized testing context by eliminating the consideration of standardized exams for admissions to its state colleges and universities. Those changes were made, in part, because of the recognition of how those time-pressured exams had a disparate impact against the admissions prospects of applicants with disabilities and many minority applicants. The American Bar Association is also on the cusp of permitting law schools to admit applicants without consideration of an LSAT score. Because of those developments, which are consistent with a universal design model for education, many students will enter law school without having taken time-pressured, high-stakes exams. They **will** also not have had to hire medical or other qualified professionals to document their need for extended time on such tests. California should be seeking to advance disability justice by moving towards a universal design model rather than creating even higher hurdles for those who want to enter the legal profession.

One mantra of the disability justice movement is "Nothing about us without us." The proposed changes do not reflect the consensus within the disability community for how to offer fair exams that measure candidates' knowledge and abilities rather than disabilities. We would be happy to recommend people who could have leadership positions within your organization to make that reality more possible.

Sincerely yours,

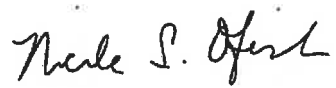


Ruth Colker  
Distinguished University Professor &

Heck-Faust Memorial Chair in Constitutional Law  
Moritz College of Law  
The Ohio State University

A handwritten signature in cursive script that reads "Nancy Mather".

Nancy Mather, Ph.D.  
Professor Emeritus  
Department of Disability and Psychoeducational Studies  
College of Education  
University of Arizona

A handwritten signature in cursive script that reads "Nicole S. Ofiesh".

Nicole Ofiesh, Ph.D.  
Nicole S. Ofiesh, Ph.D., LLC



## Commenter 36

In 2023, it is shameful that the State Bar is not committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. Only a very few California lawyers identify as disabled – and even fewer California judges.

A diverse bar and bench with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession. Right now, the State Bar regularly denies requests for testing accommodations on the bar exam, and the current proposal is a step backward.

The State Bar rules should automatically grant candidates the same testing accommodations that candidates previously received on standardized tests or in college or law school – without unfair restrictions.

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant employed by the State Bar.

The proposal should commit the State Bar to more diverse consultants because existing longtime consultants approach testing accommodations requests with unfair skepticism and bias.

Finally, the proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.”

The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

## Commenter 37

### OPPOSE

I am an attorney and I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

I am committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations.

The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civillibrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

## Commenter 38

RE:Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

My name is Sreeja Kodali and I’m a 4th year Yale medical student with a background and interest in advocating for patients with disabilities. I OPPOSE the proposed amendments to the rules of the State Bar. I urge the Board of Trustees to adopt an alternative proposal that involves the principles below.

In my medical education thus far, I have collaborated with disabled lawyers on advancing medical care for vulnerable, disabled patient populations. Their unique insights from their lived experience of disability not only enriched my knowledge but also pushed me on how to provide better patient care to disabled patients and taught me about innovative care models. And as a higher education student, I have also witnessed how arduous accommodation procedures prevent excellent disabled students from receiving equal opportunities, leaving people with disabilities and their valuable perspectives out.

Although the proposal is intended to reform State Bar testing accommodations rules, it embeds testing accommodation eligibility criteria that would screen out several qualified candidates. If implemented, this proposal would cause the exclusion of more qualified disabled candidates from accessing testing accommodations for the State Bar. This would work against the aims of eliminating bias, increasing professional diversity, and enhancing access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

- The rules should require timely responses to accommodation requests
- The rules should retain an option for an independent review of accommodation denials
- The rules should allow a candidate an appropriate period of time to seek review
- The rules should make clear that candidates may seek more than one review
- The proposal should commit the State Bar to more diverse consultants
- The proposal should commit the State Bar to training and retraining
- The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests
- The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school
- The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant
- The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed”
- The proposal should include an assessment of leadership

In conclusion, I OPPOSE the proposal changes. The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Sreeja Kodali  
MD Candidate 2023  
Yale School of Medicine



January 23, 2023

Ruben Duran, *Chair*

Brandon N. Stallings, *Vice-Chair*

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
*Trustees*

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework,"  
Pertaining to Testing Accommodations on the State Bar- OPPOSE

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

As a college student passionate about disability rights and accessibility, I am writing to express my opposition to the proposed amendments to the rules of the State Bar, with the "high level framework." I **urge the Board of Trustees to adopt an alternative proposal** with principles described in the following comment.

True justice requires eliminating the bias and barriers that exclude qualified individuals with disabilities. A bar with diverse lawyers of all backgrounds improves legal services, offers role models, promotes public confidence, and reflects the society it serves. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities-including disabled people of color-will be able to serve more people who live and work in the state.

Given the importance of an inclusive legal profession, it is not right that unnecessary barriers **continue to exclude people with disabilities from becoming licensed California attorneys.** As the State Bar itself has reported, only five percent of California attorneys report having a disability, which is disproportionate to the number of people with disabilities in the state overall (about twenty percent). This mismatch ultimately contributes to disparities in the California judiciary, where only 18 state court judges (two percent of total state judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without accommodations, scores are not a true representation of a person's knowledge, abilities, or qualifications. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, **testing accommodations are a regular, recognized, and accepted part of our educational and professional systems**, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, reformed the pipeline for the legal profession nationwide and opened the doors to law school for people with disabilities. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, **many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis.** Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Accommodation requests are often denied shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate submits a request on time with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. As a result, qualified candidates are excluded, which is not only devastating to the individual candidates but also detrimental to the legal profession and communities it serves.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. However, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. **If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from receiving testing accommodations.** It would directly counteract the goals of eliminating bias, promoting professional diversity, and expanding access to justice.

**The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:**

*1. The rules should require timely responses to accommodation requests.*

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule **4.88(8)** (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

*2. The rules should retain an option for an independent review of accommodation denials.*

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

*3. The rules should allow a candidate an appropriate period of time to seek review.*

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

*4. The rules should make clear that candidates may seek more than one review.*

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

*5. The proposal should commit the State Bar to more and more diverse consultants.*

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

*6. The proposal should commit the State Bar to training and retraining.*

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

*7. The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on (or been approved for) prior standardized tests.*

The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

8. *The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.*

Dfeh v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

9. *The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant.*

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional

who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [http s://www.ada. ov/re s2014/testin accommodations.html](http://www.ada.ov/re_s2014/testin_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

*10. The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed."*

The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(I), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

*11. [The proposal should include an assessment of leadership.]*

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, I **OPPOSE** the rules changes and associated **"high-level framework."** The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would represent a significant step backwards.

Sincerely,

Hannah Trillo  
Santa Clara University

## Commenter 40

The proposed amendments represent a step back for accessibility and inclusion in the Californian legal profession. I strongly oppose the passage of the proposed amendments for a number of reasons.

It is imperative for the State Bar to make decisions on applications for testing accommodations in a timely manner. It is an unfair burden for applicants with disabilities to wait unreasonably long to receive an approval or denial of their accommodation request, resulting in an inability to engage in the request for review process or fully focus on studying for the test. The rules should require a timely response to accommodation requests of no more than three weeks.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should also require that the State Bar automatically grant applicants the same testing accommodations they have received for other high-stakes standardized tests (LSAT, MPRE, etc.). If the applicant can certify to experiencing the same need for accommodation, the State Bar should honor their history of accommodation. The proposed rules contain no such provisions and discriminate against applicants that have received certain accommodations (e.g. separate testing room and more than time and one half) in the past so that such history receives no weight in the evaluation process.

If adopted, the amendments make no progress and represent a step backward for disability accessibility in the legal profession. Please closely reconsider so that the accommodation approval process provides equal access and our legal community can finally represent the diversity of the wider community.

## Commenter 41

RE: Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

I am a developmental psychologist and mother to two neurodivergent children. I am writing as a private citizen who believes that increased diversity in lawyers will lead to more accurate and empathic representation of all citizens. I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and



assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten

days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civillrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but

the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and

- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality,

and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I oppose the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,  
Victoria Kintner-Duffy, Ph.D

## Commenter 42

RE: Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

[Introduction] I am writing on behalf of the people in my life I care about that live with disabilities and all those that would be affected by this. We OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

[Commitment to diversity in legal profession and eliminating access barriers] I am committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

[Barriers continue to exclude disabled people from the legal profession] Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

[Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession] Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

[The State Bar regularly denies requests for testing accommodations on the bar exam] Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit

detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

[The current proposal is a step backward] According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

[The rules should require timely responses to accommodation requests]

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

[The rules should retain an option for an independent review of accommodation denials] The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of

accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

[The rules should allow a candidate an appropriate period of time to seek review] The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

[The rules should make clear that candidates may seek more than one review] The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

[The proposal should commit the State Bar to more and more diverse consultants] The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

[The proposal should commit the State Bar to training and retraining] Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civillrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

[The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests]

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior

accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A “high-level framework” that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

no grant if prior approval is more than five years ago;

no grant if prior approval is within five years but based on an automatic grant outside the five years;

no grant of more than 50 percent extra time (unless severe visual impairment);

no grant of a private room;

no grant if the prior approval is not the “most recently approved” of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);

no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

[The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school] The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

[The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant] The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.



[The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed”] The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

[The proposal should include an assessment of leadership.] The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, Sophia Mangasarian OPPOSES the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Sophia Mangasarian  
Temple University 2024

## **Commenter 43**

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession. Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity.

*Legal Aid Fights for Justice. We Fight for Them.*



**January 20, 2023**

Board of Trustees  
The State Bar of California, San Francisco Office  
180 Howard Street  
San Francisco, CA 94105

**Re: Proposed Amendments to the Rules of the State Bar Pertaining to Testing Accommodations-Oppose**

To the Board of Trustees,

We are writing on behalf of the Legal Aid Association of California (LAAC) regarding the proposed amendments to the rules of the Bar pertaining to testing accommodations on the Bar Exam. We **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

**LAAC is the statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California.** LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

**LAAC is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities.** A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

**Barriers continue to exclude disabled people from the legal profession.** Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about

one in five). This mismatch ultimately leads to disparities in the California judiciary, where only 18 judges (two percent of all California judges) identify as having a disability.

**Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession.** Many people with disabilities require accommodations, such as extended time, to take timed exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

**The State Bar regularly denies requests for testing accommodations on the bar exam.** Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as on the LSAT, in college, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

**The current proposal is a step backward.** According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

**The rules should require timely responses to accommodation requests.** The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses: Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

**The rules should retain an option for an independent review of accommodation denials.** The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right.<sup>1</sup>

**The rules should allow a candidate an appropriate period of time to seek review.** The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days.<sup>2</sup> Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

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<sup>1</sup> Proposed Rule 4.90(E).

<sup>2</sup> Rule 4.90(A) & Proposed Rule 4.89(A).

**The rules should make clear that candidates may seek more than one review.** The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information or evidence to provide.<sup>3</sup>

**The proposal should commit the State Bar to more and more diverse consultants.** The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH V. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

**The proposal should commit the State Bar to training and retraining.** Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified.<sup>4</sup> Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

**The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests.** The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other state bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

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<sup>3</sup> See Proposed Rule 4.90(C).

<sup>4</sup> *DFEH V. LSAC*, Best Practices Report, <https://civillibertyrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015).

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.<sup>5</sup>

These convoluted and exclusionary standards do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The five-year requirement is particularly devastating for applicants, and improperly presumes that people grow out of their disabilities.

**The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.** The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school.<sup>6</sup> This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so.<sup>7</sup> This is inadequate.

**The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant.** The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The

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<sup>5</sup> "High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D).

<sup>6</sup> *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53.

<sup>7</sup> "High-Level Framework" at Section II(A)(6).

proposed rules include no provision on the weight to be given such documentation. The "high-level framework," not part of the rules proposal, states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate."<sup>8</sup> This statement is appropriate but does not say how much relative weight the State Bar should give such documentation *vis a vis* the opinion of its reviewing consultants. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a consultant.<sup>9</sup>

**The rules should limit required supporting documentation to that which is "reasonable, limited, and narrowly tailored to the information needed."** The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework," not part of the proposed rules, appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, the proposal is not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

**The proposal should include an assessment of leadership.** The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, LAAC **OPPOSES** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into contemporary standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

**zJcfi** wman, *Directing Attorney*, **Legal Aid Association of California**

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<sup>8</sup> Section II(A)(5).

<sup>9</sup> U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.



## Commenter 45

I am a person living with ADHD, anxiety, and depression. When I was in high school, I was denied accommodations for testing because my ADHD diagnosis didn't come until I was already partway through high school, age 16. I felt like I always had to work much harder than my peers for mediocre test scores. I had to take the ACT multiple times and still ended up with a score that I wasn't proud of and didn't give me opportunities for scholarships that some of my peers without disabilities got. I believe I would have had a less stressful time with testing had I received accommodations. Families of children with disabilities already have to jump through hoops to make sure their kids get the support they need. Please don't make this process even harder.

## Commenter 47

I am writing on behalf of myself only, though as a physical therapist who works with a population of disabled children and teens, I feel personally called to ensure that people with disabilities are granted the rights they deserve to pursue higher education and meaningful work. I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

I strongly believe in promoting diversity in the legal profession, and to eliminate unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people. Again, I work with children affected by the improper application of FAPE and IDEA laws in public school, and having disabled lawyers who understand first hand how these systems work and fail to work is crucial in improving all children's access to free, equitable education.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no

opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting

documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students'

Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and

- additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

[The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school] The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality,

and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Alison West, PT, DPT  
Physical Therapist  
Contra Costa County

## Commenter 48

People with disability needs these accommodations because it is not their fault to have this challenges. . The reasonable accommodation can only bring dreams come true for those who those who learn differently. Making it harder, is like excluding and segregating again. All their life they have to prove themselves that their disability is not a hindrance to make the dream come true. However, why do they always have to fight for seeing their ability ? We are in 2023 and we should keep this world in an inclusive world and not segregating people's differences.

January 18, 2023

*Via Portal and Staff Email*

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
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Committee of Bar Examiners Staff Contact  
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RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing as a disabled person who works with disabled students in higher education. The proposed amendments to the rules of the State Bar Exam, which are offered as a more accessible alternative to existing rules, do not take equity, accessibility, and ease of use into consideration.



I want to urge the Board of Trustees to set aside the medical model of forcing disabled people to "prove" to your satisfaction, that they are disabled enough to earn the opportunity to have accommodations for State Bar Exam. Instead, take the following into consideration:

In my work serving disabled college students from diverse backgrounds, I am committed to equity, inclusion, and eliminating unnecessary bias and barriers that exclude qualified, disabled candidates. The legal profession has too long excluded people who are not of privileged ability, race, and gender. A good start toward ensuring the legal profession is accessible for all is include, welcome, and license qualified lawyers with disabilities including disabled people of color. They are better equipped to serve the people of marginalized identities and communities who live and work in California.

Unnecessary demands for "proof" of disability continue to exclude disabled people. As the State Bar itself has reported, only five percent of California attorneys identify as disabled, a fraction of the disabled population in the State of California (about one in five). This leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as disabled.

Many disabled people reasonable accommodations, such as extended time, to take high-stakes exams. I have seen firsthand the impact of demands for "proof" that the person's disability is sufficient to be "allowed" to take high-stakes exams with accommodations, including a student who is legally blind and was denied a Braille exam. Students who are in every way prepared and qualified to enter their chose professions are denied accommodations, not because their disability doesn't rise to the level set by the ADA, but, as I have been told by professionals who determine eligibility for high-stakes exams, due to a mistaken belief at accommodations invalidate the reliability of the exam.

Testing accommodations allow the disabled person an equitable opportunity to demonstrate their knowledge and abilities as measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or ability. Testing accommodations do not confer an unfair advantage or invalidate the reliability of the exam.

Testing accommodations are a recognized and accepted part of our educational and professional systems. At my university, out of 3,101 students eligible for accommodations, 2,253 have testing accommodations. Testing accommodations are an effective and necessary means for including disabled people, including disabled people of color in the any profession.

Despite this accepted understanding of the role of testing accommodations, I have had former students come to me for advice after their requests for testing accommodations on the bar exam were denied. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school,

on the SAT, in college, on the LSAT, or in law school. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Requirements that documentation be "current", usually within the last 5 years, can cost a disabled person in excess of \$3,000 and months of time to get an updated assessment. The cost and time required are prohibitive.

If accommodation denials occur shortly before the scheduled exam, the candidate is left in a Catch-22 of trying to obtain more documentation which may or may not be accepted, or canceling their exam and delaying their admission to the Bar. The end result is exclusion of qualified candidates, which is harmful to the candidate.

The current proposal not only fails to meet minimum standards, but also has eligibility criteria for testing accommodations that would exclude many qualified candidates. If implemented, candidates will have to go to even more effort and expense to "prove" they are disabled enough to need testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The ADA does not give a time frame, but does include the expectation that provision of accommodations will be timely. The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner. Disabled candidates should be able to register with their nondisabled fellow applicants, respond to any request for any additional information, and complete any review procedures, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt of an accommodation request is reasonable, and leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-months ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8)

(60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

At my university, we **never** determine eligibility based solely on a review of the documentation. The rules should include the opportunity to have an interactive conversation with the individual tasked with determining eligibility. The interactive process laid out by the ADA was never meant only to be a series of letters, emails, and/or phone calls.

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation. Even 30 days is a very short time.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. Consideration should be given to the radical idea that lawyers, doctors, psychiatrists, and psychologists should not be the ones to determine eligibility, as they are all trained to apply the outdated medical model to their decision making process. Certified Rehabilitation Counselors (CRC) are highly educated professionals whose focus of learning and certification is determining eligibility for accommodations for disabled people using a social justice lens, as well as a deep understanding of the impact and effect disability has on activities, including test taking. At a minimum, staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is reasonable.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for)

prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus, subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar to automatically grant candidates the same testing accommodations that they previously received in college or law school. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to psychoeducational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar **give more weight to the the narrative of the candidate's disability experience** than any documentation or assessment from a professional. No matter how well the professional may know the candidate, they cannot speak from experience regarding the impact and barriers presented by the candidate's disability.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed" and candidates should have "flexibility in the type and source of the supporting documentation." Requiring "comprehensive evaluation reports" is a prohibitively time-consuming and expensive demand. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

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For the reasons stated in this letter, I oppose the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into the 21<sup>st</sup> century where equitable access and inclusion are given the space they deserve. If adopted, the current proposal would mark a substantial step backwards.

Sincerely,

Darcy Kramer, CRC, NCC  
Access Counselor & Consultant  
Disability Resource Center

## Commenter 50

I write to disagree specifically with the five year bar on previous accommodations. Professionally, I am an education attorney who provides direct representation to foster youth including special education accommodations.

The Bar should comport with the LSAC settlement and allow evidence of accommodations on any post-secondary examination. Given the extreme nature of the Bar examination, in terms of physical duration and mental strain, examinees may need accommodations that they did not use on the LSAT. In addition, many of those sitting for the Bar took the LSAT more than five years ago. Anyone who went to a non-traditional program, deferred entry to a traditional one, or is retaking the Bar could end up more than 5 years on from the LSAT. Given that many schools do not require LSAT scores within a particular timeframe now, 5 years is arbitrary and unnecessary.

In addition, the burden should be on those advocating for a five year bar to show why it is necessary. I find the request for "evidence based alternatives" to be odd since there is not even a clear problem that needs solving, let alone evidence for 5 years as appropriate. The \*vast majority\* of disabilities we are talking about here are congenital or acquired in early childhood development and are not reversible. Issues that most commonly require testing accommodations, such as dyslexia, vision impairment, IDD, autism, and ADHD, rarely "get better" or require less accommodation over time. Students may develop better coping and masking skills over time, but this is precisely one of the things that the LSAC settlement says should not be considered.

I would amend the proposal to create a strong presumption in favor of providing the accommodations if the minimum evidence standards are met. These are issues that simply cannot be second-guessed in Sacramento by folks lacking the student's extensive educational and clinical history.

## Commenter 51

I am writing to you as a student from the UK who cares about disability access. I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein. Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability. Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates). The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This

right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civillibertyrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);



no grant of a private room;  
no grant if the prior approval is not the “most recently approved” of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);  
no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and  
additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Tabby Evans

## Commenter 52

RE:Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession. Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

The current proposal is a step backward. According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S.

Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

1) Timely Response to Testing Accommodation Requests.

a) The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

b) A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

2) Independent Review of Accommodation Denials. The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

3) Appropriate Time Period to Seek Review. The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation. The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test

cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

4) Proposal Should Commit State Bar to More Diverse Consultants. The proposal should commit the State Bar to increase in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

5) Presumption that Testing Accommodation Request is Legitimate. Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

6) Automatic Grant of Previous Accommodations.

a) Previous Standardized Test Accommodations. The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on (or were approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards. The proposed rules contain no such provisions. The "High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D) includes convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities. Furthermore, this "High-Level Framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

no grant if prior approval is more than five years ago;

no grant if prior approval is within five years but based on an automatic grant outside the five years;

no grant of more than 50 percent extra time (unless severe visual impairment);

no grant of a private room;

no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);

no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the

candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and additional unnecessary and harmful exceptions.

b) Automatic Grant of Previous Higher Education Testing Accommodations. The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in higher education, including college, law school, and other graduate school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

7) Deference to Qualified Professional Assessment. The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

8) Reasonable Supporting Documentation Requirements. The rules should limit required supporting documentation to that which is "reasonable, limited, and narrowly tailored to the information needed" The "High-Level Framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

9) Assessment of Leadership. The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

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For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Ann Collins

## Commenter 53

I am writing to express my opposition to the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).



The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civillrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant

approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the “most recently approved” of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and

additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to

whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,  
Ingria Jones

January 18, 2023

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

I'm committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar

exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

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The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

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The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates

from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

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- no grant if prior approval is more than five years ago;
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- no grant of a private room;
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"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

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disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

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For the reasons stated in this letter, I **OPPOSE** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backward.

Sincerely,

Isabella Reyes-De Pillo

## **Commenter 55**

I have a friend who is blind and has been a practicing attorney for her entire career. She worked for the US Government Accounting Office until she retired due to a different medical issue. She is/was extremely competent; with these recommendations, she might have been barred from taking the bar.

I myself, have a Ph.D. in Social Policy and have Post-Polio Syndrome. While I was never interested in becoming a lawyer, my disability would also have affected my ability to take the exams had I been interested. That would have been a waste as well.

## Commenter 56

I am writing to OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

The state should be committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

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The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

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to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I strongly OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Christa Lindsey

January 18, 2023

*Via Portal and Staff Email*

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing on behalf of the Dayle McIntosh Center for the Disabled in Orange County, California. Established in 1977, the Dayle McIntosh Center for the Disabled (also known as DMC) is a 501(c)(3) nonprofit organization that provides services to people with disabilities and facilitates equal access and inclusion within the community. As a peer-led organization, we partner with people with disabilities to achieve personal goals for maximum independence. We advocate for equity and accessibility in all walks of life and



professions. As such, we **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

DMC is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary, where only 18 judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require accommodations, such as extended time, to take timed exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as on the LSAT, in college, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, *even* when a candidate timely submits an accommodation request with complete supporting documentation. The resulting

exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (8) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is

critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information or evidence to provide. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH V. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH V. LSAC*, Best Practices Report, <https://civildrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015).

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other state bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted and exclusionary standards do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The five-year requirement is particularly devastating for applicants, and improperly presumes that people grow out of their disabilities.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework," not part of the rules proposal, states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation *vis a vis* the opinion of its reviewing consultants. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework," not part of the proposed rules, appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, the

proposal is not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, DMC **OPPOSES** the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into contemporary standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Brittany Zazueta  
Executive Director  
Dayle McIntosh Center for the Disabled

To Whom it may concern:

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

Sincerely,  
Mara Santilli

## Commenter 59

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

## Commenter 60

The proposed amendments must not come to pass. The State Bar regularly denies requests for testing accommodations on the bar exam, and the current proposal is a step backward. Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession. The State Bar must commit to diversity in the legal profession and eliminate access barriers, which continue to exclude disabled people from the legal profession.

The Board of Trustees should reject the staff proposal and instead adopt an alternative that includes the following:

- The rules should require timely responses – within two weeks – to accommodation requests
- The rules should retain an option for an independent review of accommodation denials
- The rules should allow a candidate an appropriate period of time – 30 days – to seek review
- The rules should make clear that candidates may seek more than one review
- The proposal should commit the State Bar to more and more diverse consultants; existing longtime consultants approach requests with unfair skepticism and bias
- The proposal should commit the State Bar to training and retraining to end its harmful and unnecessary “zero sum game” approach to accommodation requests
- The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests – without convoluted and unfair restrictions
- The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school
- The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant
- The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed,” and make clear the expensive comprehensive reports are no longer required
- The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

The Board should work to make sure that barriers caused by standardized testing are removed so everyone can have fair chances to share what they know. Denying this proposal and instead including these features would be a necessary start.



## Commenter 61

RE:Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

I am a lifelong California resident and Lutheran pastor who believes people with disabilities should be given every necessary and reasonable accommodation to succeed in a society that was not built with them in mind. I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

I am committed to promoting diversity in the legal and every profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no

opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

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documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
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- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
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- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students'

Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and

- additional unnecessary and harmful exceptions.

“High-Level Framework” at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key

lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Rev. Jennifer Garcia  
First Lutheran Church  
Fullerton, CA

## Commenter 62

RE:Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

I am writing on behalf of myself as mother of child with disabilities and requires accommodations to participate fully in school and other activities. I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

I support all organizations promoting diversity in the legal profession, and that work hard to eliminate unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity.

Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities, including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings.

Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often

occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

- The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.
- A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.
- The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).
- The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).
- The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten

days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

- The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

- The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

- Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civillrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

- The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but



the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and

- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

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and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards and a clear violation of the Americans with Disabilities Act.

Sincerely,

Elisha Gillette  
Concerned Citizen  
Pennsylvania

## Commenter 63

I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

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The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

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## Commenter 64

The rules should require timely responses – within two weeks – to accommodation requests

The rules should retain an option for an independent review of accommodation denials

The rules should allow a candidate an appropriate period of time – 30 days – to seek review

The rules should make clear that candidates may seek more than one review

The proposal should commit the State Bar to more and more diverse consultants; existing longtime consultants approach requests with unfair skepticism and bias

The proposal should commit the State Bar to training and retraining to end its harmful and unnecessary “zero sum game” approach to accommodation requests

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests – without convoluted and unfair restrictions

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant

The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed,” and make clear the expensive comprehensive reports are no longer required

The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

## Commenter 65

As a professional in a different field, I know there is immense pressure and professional pride in the more painful and anxiety-provoking aspects of professional education (including all the testing to be recognized as one of those elite professionals). However, as we have seen with the backlash against inhumane working conditions for medical residents, we may need to let go of some of those aspects of professional gatekeeping that have not aged well. In addition, doubling down, as appears here, does not do your profession any favors (as older health care providers and educational institutions found with resident training).

We must learn from the past and commit to inclusion - and that includes our professional organizations.

Thanks,  
Crystal

Main points:

The State Bar must commit to diversity in the legal profession and eliminate access barriers, which continue to exclude disabled people from the legal profession

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession

The State Bar regularly denies requests for testing accommodations on the bar exam, and the current proposal is a step backward

The Board of Trustees should reject the staff proposal and instead adopt an alternative that includes the following:

- The rules should require timely responses – within two weeks – to accommodation requests

- The rules should retain an option for an independent review of accommodation denials

- The rules should allow a candidate an appropriate period of time – 30 days – to seek review

- The rules should make clear that candidates may seek more than one review

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## Commenter 66

RE:Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– OPPOSE

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standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

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The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://civildrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices

Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \*

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Anne Wolf  
Salem, Massachusetts

## Commenter 67

The current proposal should be rejected and in its stead one with the following tenets should be adopted~

The rules should require timely responses – within two weeks – to accommodation requests

The rules should retain an option for an independent review of accommodation denials

The rules should allow a candidate an appropriate period of time – 30 days – to seek review

The rules should make clear that candidates may seek more than one review

The proposal should commit the State Bar to more and more diverse consultants; existing longtime consultants approach requests with unfair skepticism and bias

The proposal should commit the State Bar to training and retraining to end its harmful and unnecessary “zero sum game” approach to accommodation requests

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests – without convoluted and unfair restrictions

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant

The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed,” and make clear the expensive comprehensive reports are no longer required

The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

## Commenter 68

I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking

timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

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## Commenter 69

I OPPOSE the proposed amendments to the rules of the State Bar, with the “high level framework.” I urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

I'm committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psycho-educational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to

reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

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The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further,

each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

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- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people

grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The proposal should include an assessment of leadership. The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, I OPPOSE the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into

prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

## Commenter 70

We deserve a diverse bar with lawyers of all backgrounds and statuses so we can facilitate access to justice, improve legal services, offer role models, and promote public confidence. The proposed recommendations would be a step backward. Instead:

The rules should require timely responses – within two weeks – to accommodation requests

The rules should retain an option for an independent review of accommodation denials

The rules should allow a candidate an appropriate period of time – 30 days – to seek review

The rules should make clear that candidates may seek more than one review

The proposal should commit the State Bar to more and more diverse consultants; existing longtime consultants approach requests with unfair skepticism and bias

The proposal should commit the State Bar to training and retraining to end its harmful and unnecessary “zero sum game” approach to accommodation requests

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests – without convoluted and unfair restrictions

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school

The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant

The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed,” and make clear the expensive comprehensive reports are no longer required

The proposal should include an assessment and review of leadership, as a fair system requires leaders who embrace testing accommodations as a core component of equal opportunity.

## **Commenter 71**

As someone who benefited from testing accommodations for another state bar years ago, I think that it is important NOT to over rely on past accommodations because circumstances can change. By these standards, I would have been eligible for accommodation for the CA bar exam even though I no longer technically needed the accommodation because my medical condition had changed (and thankfully improved). 5 years should be the absolute maximum, but depending on the type of disability and accommodation request. Streamlining is good, but it needs to be counterbalanced by the integrity of the process. Operation Varsity Blues showed us how accommodations can be bought and manipulated and use to the advantage of the wealthy and privileged. Let's face it, including the children of many members of the bar.

## Commenter 72

25% of the population is disabled.

Are you trying to eugenically “cleanse” the legal profession?

Or ensure that the population of lawyers reflects and quite literally is ABLE to effectively REPRESENT society?!!

Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession! Doing away with them or making them harder to access—raising the “bar” for disability access in the worst way—means the former.



## Commenter 73

There should also be extended-time accommodation provided to elderly examinees for the sheer fact that they would be slow in typing, slowness in mobility, weaker vision, have been out of law school for a while, but has sharp minds to analyze legal questions. None of these elderly handicaps would have doctor's letters to the Bar, as it is a normal process of aging. As a result, I am of age 73 is unable to provide you that I need further time (Currently I have 1 hour extended time given due to back injury) for me to complete the exam. Additionally, we are at a disadvantage that we have been out of school for so long, but that does not diminish our capability to be a lawyer.. I would need more time than what I have been given due to the fact that I am 73 years old..

I am hoping you would provide me and others over a certain age with more time - especially for the essays and PT exams. I cannot provide more documentation on aging handicaps - they are natural part of life.and may not be considered a disability. I will be taking the February 2023 bar, and if I fail, I will take it until physically I can no longer take it.

Thanks

--Mrs.Arti Denterlein

## Commenter 74

I believe the State Bar of CA can create a more accessible, fair, and non-discriminatory process for requesting testing accommodations by accepting verified documentation from not only other high-stakes testing entities but an applicant's previous academic institutions as well.

While accepting documentation from high-stakes testing entities is helpful, it is narrow in scope and does not offer a broad, comprehensive picture of the applicant's history of accommodations and current needs. Accepting documentation from previous schools will provide the Bar with much needed and important information on the applicant's diagnosis/impairment, as well as accommodations received. This, along with information on any high-stakes testing accommodation information would give the Bar better information that goes beyond what, if any, accommodations an applicant may have received for a high-stakes exam. Only accepting documentation from high-stakes agencies would also only give the Bar reviewers a recent view of an applicant's accommodation needs, which can be problematic when making accommodation decisions.

Thank you.

## **Commenter 75**

I am a disability service coordinator @ the Univ of San Francisco. I support any amendment that does not put up a barrier to students getting accommodations on the state BAR exam in California.

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
Louisa.Ayrapetyan@calbar.ca.gov

Devan McFarland  
Committee of Bar Examiners Staff Contact  
Devan.McFarland@calbar.ca.gov

RE: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- OPPOSE

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing on behalf of Service Center for Independent Life, a nonprofit organization that provides free services for individuals with disabilities and seniors. Our organization and its network were founded based on the Independent Living Movement that fights for the rights of individuals with disabilities to live on their own terms, including the pursuit of career aspirations.

We OPPOSE the proposed amendments to the rules of the State Bar, with the "high-level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

Service Center for Independent Life is committed to promoting diversity in the legal profession and eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities, including disabled people of color, is better equipped to serve the varied people and communities who live and work in California, including indigent people.

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary, where only 18 judges (two percent of all California judges) identify as having a disability.

Many people with disabilities require accommodations, such as extended time, to take timed exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but provide equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs, Section 504 plans, college, LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted DFEH v. LSAC litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities, including disabled people of color, in the legal profession.

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as on the LSAT, in college, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit

detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal fails to meet these minimum standards and embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information or evidence to provide. See Proposed Rule 4.90(C).

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. DFEH v. LSAC, Best

Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other state bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;
- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate subsequently takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and additional unnecessary and harmful exceptions.

High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted and exclusionary standards do not match the U.S. Department of



Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The five-year requirement is particularly devastating for applicants, and improperly presumes that people grow out of their disabilities.

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework," not part of the rules proposal, states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation vis a vis the opinion of its reviewing consultants. The rules should commit to giving deference or more weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); DFEH v. LSAC, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework," not part of the proposed rules, appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, the proposal is not at all

clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, ORGANIZATION OPPOSES the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into contemporary standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Carabeth Mckernan  
Systems Change Advocate  
Service Center for Independent Life

## Accommodation Feedback

I'm very glad that the Bar is seeking feedback about my experience with the accommodations process.

In short, my experience was awful. My first request for accommodations was turned down by the Bar, largely based on its consultant's erroneous review of my request. In turning down my request, the Bar violated ADA. ADA requires that I should have been given the accommodations that I have consistently received on other important tests. At great additional expense, in order to appeal the Bar's initial decision, I had to seek legal counsel and additional reports from a licensed psychologist. Ultimately, on appeal the Bar granted my request for accommodations. However, the process of obtaining them caused me needless stress and anxiety.

Here's a bit more background.

I have had a well-documented learning disability since 2005. I have received appropriate accommodations from every school I have ever attended and on important standardized tests. Specifically, I received accommodations for the SAT, ACT, LSAT and GRE. I have received the same accommodations I requested from the Bar from the LSAT and GRE and in law school. (The accommodations I requested were not technologically available when I took the ACT and SAT.) Initially, the Bar denied me the same accommodations I received on the LSAT and the GRE and that I received in law school and in college. I provided the Bar a complete record of all the accommodations I received but the Bar initially did not acknowledge I received these accommodations when the Bar denied me accommodations for the July 2022 Bar exam. The Bar's consultant who denied accommodations cited factually incorrect information regarding learning disability research. The reviewer also did not cite to any data that my licensed psychologist provided, which demonstrated that the reviewer did not read or understand the psychologist's evaluation. The consultant's review of my request for accommodations was insulting because it was not rooted in data and was instead guided by what seemed to be the reviewer's uninformed opinion. My psychologist and noted experts on my particular learning issue were appalled at the reviewer's lack of knowledge.

## Appeal process

The appeals process is egregious. 10 days is not enough time to write an appropriate appeal. The letter did not state if this was 10 business days or 10 calendar days, and it was unclear when the appeal was due. When submitting the appeal, there was no link or place to submit my materials which caused a great amount of stress and underscored how unorganized the testing accommodation process was. I was grateful that my appeal was ultimately granted. I was preparing to go to Court if the appeal was unsuccessful.

## Computer requirements

The Bar was not clear about the requirements to wipe the laptop of information. If an applicant is using her own computer to take the Bar exam because that accommodation was granted, then it is not possible to completely wipe the computer because all data the applicant uses for the rest of her life, such as, by way of example, bank accounts and personal photos, cannot be wiped without losing valuable files. No one was there to provide assistance on Monday (the day before the exam) approve the device or to answer questions about which files could be left on the computer and which could not. The proctors did not know anything about approving the computer.

#### Test day

Despite driving to the Bar's office and testing the software, on the MBE test day, my exam was delayed an hour or longer because the USB drive holding the test would not work. The proctors had no idea what was wrong or how to fix it. This was already an incredibly long day of testing (9 hours), and this delay made the day even longer and was very stressful.

I thank the Bar for, in the end, granting me the accommodations on appeal. However, the appeal should not have been necessary. The Bar should follow ADA and give accommodations which have been granted for other important tests. I fervently hope the Bar takes steps to fix the accommodations process so that others will not have to suffer.

I am happy to report that I passed the July 2022 exam on the first attempt. I would not have been able to do it without the accommodations. My experience proves that given the appropriate accommodations, one can be successful in taking the California Bar exam.

## **Commenter 78**

The invasive nature of the request for medical documentation on behalf of the Bar that forces students to bare their mental illness to an invisible panel of judges that ultimately determine if a person is unwell enough to receive testing accommodations from within one of the most mentally ill professions in the country is a shameful practice.

*In Re: Testing Accommodations Rules Revision Initiative*

Dear State Bar of California Office of Admissions, Committee of Bar Examiners, and Board of Trustees:

I have been a practicing California-licensed attorney for approximately 30 years (SBN # 98390). For more than 30 years, I was the Chief Regional Civil Rights Attorney for the U.S. Department of Education, Office for Civil Rights. For 22 years, I was a recurring adjunct professor of disability law at the University of California School of Law, San Francisco. In the later part of my career and since retirement I have specialized in the practice of postsecondary student disability law. Among the *institutions* that I advise are the general counsels' offices of all three of the University of California Systems.

As an individual with multiple disabilities, I am compelled to ask, why is the State Bar of California so committed to using my Bar dues to erect and maintain barriers to professional participation by persons with disabilities? What is the Bar's objection to this component of diversity in the field of law? Why is the Bar doing its best to make sure that the judicial branch of government will not be an effective venue for vindication of the civil rights of persons with disabilities? In whose interest do you think you are acting? Most certainly not your members with disabilities or any member who needs protection from discrimination.

In furtherance of my concerns, I am writing to endorse the substance of the public comments on the pending rules revision initiative submitted by Benjamin Kohn and shared with me through the Disability Rights Bar Association. I have carefully reviewed Mr. Kohn's comments and agree both that the State Bar's current Admission Rules facially deprive applicants with disabilities of equal opportunity to that afforded to nondisabled applicants and that the present proposal you've circulated for public comment makes this situation worse rather than better, for the precise reasons Mr. Kohn articulated. [I tried appending Mr. Kahn's comments to this endorsement but the digital portal rejected the file as too large.]

Further, Mr. Kahn's comments reference litigation positions the State Bar has taken regarding the Americans with Disabilities Act and corresponding disability nondiscrimination statutes in his pending appeal in the Ninth Circuit. From my review of the briefs filed in that case, I've ascertained that the State Bar is using my mandatory annual dues to advocate for positions that would create broadly-applicable precedent contrary to not only my own personal interests as an attorney with multiple disabilities as well as much of what I have worked for on behalf of clients with disabilities, but also to the public policy interests of the State of California and the statutory "public protection" mission of the State Bar as defined by the legislature in Cal. Bus. & Prof. Code 6001.1.

I have recently achieved much success in turning around public entities who have proposed to take actions contrary to the civil rights of the communities they profess to serve. (I give you the example of the recent decision of the Los Angeles Community College District to withdraw its petition for certiorari in *Payan v. LACCD*.) I am so deeply offended by the proposed legal interpretations of the State Bar and how it is advocating on these issues, that I am seriously considering contesting future assessments of dues based on this use thereof as well as advocating for similar actions by my disabled colleagues who are also Bar members.

Accordingly, I ask that the State Bar reject the proposal of its staff and replace it with a proposal in line with Mr. Kahn's suggested reforms.

Sincerely,

*ftpA/1),*

Paul D. Grossman

12/30/2022

**PETER N. MADURO, J.D., Psy.D., Psy.D.**

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December 27, 2022

The State Bar of California  
845 South Figueroa Street  
Los Angeles, CA 90017

Dear State Bar of California;

I write in connection with your proposed "Testing Accommodations Rules Revision Initiative" that has been circulated for a 60-day public comment period required by your notice-and-comment rulemaking procedures.

My opinions on this issue draw upon my experience (1) as an attorney licensed in California, Massachusetts, and New York (currently "inactive" and in good standing in each such jurisdiction) who took 4 bar exams, including the Massachusetts bar exam (successful passage on one attempt in 1988), the New York bar exam (successful passage on one attempt in 1988), and the California bar exam (1 x failed attempt, 1993; 1 x successful passage, 1994); and (2) as a clinical and forensic psychologist (licensed in California in 2004) who has worked in a psychotherapy capacity with disabled patients, more than one of whom has been a law student who attempted to take the California bar exam, required test-taking accommodations responsive to his/her disabilities, and encountered insufficiencies in the accommodations provided that resulted in unfair and in some cases traumatic outcomes.

Accordingly, I endorse, support, and incorporate by reference herein the comments and recommendations detailed and delivered to you by Benjamin Kohn in his public comment letter dated 12/7/2022 (appended hereto). I have read and considered the substance and implications of Mr. Kohn's comments and recommendations, drawing upon my above expertise and perspectives, and support them in full. Please review and integrate their important substance, and particularly two-week maximum processing time by your staff with opportunities for collaborative review thereby, by way of open, critical consideration thereof.

Thank you for your attention to this matter of great significance to us all.

Very truly yours,  
/s/ Peter N. Maduro, J.D., Psy.D., Psy.D.



## **Commenter 82**

I do not believe that it should be up to one person to make decisions on appeal. I still believe it should be decided on by the committee.

## Commenter 83

To whom it may concern:

I fully back the recommended changes to testing accommodations. As someone who had accommodations throughout undergrad, law school, and for the California Bar Exam, I can tell you that the Bar required more items and "proof" of my disability than I ever had been asked for. I am lucky to have had parents who believed in mental health and sought help at a young age. Without my parent's diligence and belief in mental health issues, I would be like many bar takers who were not tested or treated for their mental health issues/disabilities at a young age. Without the history and record of my diagnoses, I would be like many other bar takers I know of with mental health/disabilities but are not given their appropriate accommodations.

Please, pass the proposed amendments to help law school graduates with mental disabilities get the accommodations they need to be on equal footing with other examiners without disabilities.

Thank you,

Christian

## Commenter 84

To Whom It May Concern:

In February 2022, I took the California Bar Exam. Previously, in 2019, I took the New York Bar Exam and passed. For the NY Bar Exam I received accommodations in the form of extra time. I also received accommodations during law school. The process to receive accommodations for NY was straightforward; I sent documentation from my law school and licensed psychologist.

In contrast to NY, the process to apply for accommodations for the California Bar Exam was burdensome. I submitted exactly the same documentation when I requested accommodations for the NY Bar Exam, along with the approval letter from the NY Bar Examiners granting me accommodations. When I applied for accommodations for the California Bar Exam, I was denied because I failed to provide sufficient documentation and required to provide an updated evaluation. However, this was during the time of Covid, and the psychologist that diagnosed me with learning disabilities was outside of the country and unresponsive to my emails. I submitted additional documentation, such as elementary and high school records, cover letter, emails, and explanation of my situation. I continued to be stymied by the process and denied accommodations. I regularly called the California Bar regarding my application and next steps to take. I finally appeal the decision and waited additional weeks about my application. It was not until my case was reviewed by an expert that I was finally granted accommodations a few weeks before the bar exam. The expert determined that I qualified for accommodations based on the totality of my educational history, receiving accommodations during law school and the NY Bar Exam, and clinical scores regarding language comprehension. The expert determined that, based on receiving accommodations during the NY Bar Exam, there was sufficient documentation to support a finding of being granted accommodations during the California Bar Exam.

I passed the February 2022 Bar Exam. However, I believe that I passed the exam because I received accommodations. However, there are many applicants who qualify for accommodations but do not receive such accommodations because California, by all accounts, makes the process difficult and more burdensome than necessary. I hope that the California State Bar makes the process for accommodations to be easier, as well as California learns from other states, such as New York when evaluating applications. I was lucky enough to receive accommodations because I was persistent and had documentation, including school records, law school records, and NY Bar accommodations letter; other applicants would have given up by the byzantine process and demand for more documentation required by California.

The main problem I encountered was that the people reviewing applications for accommodations were not experts, but regular State Bar of California employees. It was not until my case was reviewed by an expert that my application was approved. I support California making any changes that move towards the use of experts, streamlined process, and less documentation in order to receive accommodations. The bar exam is already stressful enough, it is not necessary to make the process for accommodations more opaque and stressful than the actual bar exam.

## Commenter 85

Some disabled testers has commented that although the Bar is willing to accept a LSAT accommodations determination, it is only accepted it if it's within 5 years of taking the Bar Exam. If a student doesn't go directly to law school and/or doesn't pass the Bar the first time, they'll need to go through the whole accommodations process again. The time limit could be more generous. The suggestion is 10 years since for many people with disabilities, their disabilities have been present for most of their life - requiring them to get retested is an expensive process that can be eliminated if the timeline is lengthened.

## Commenter 86

This approach seems like the best one possible under the circumstances.

## **Commenter 87**

I cannot for the life of me understand why the State Bar seems to be of the opinion that they know more about which accommodations a prospective examinee requires than the medical care providers who made such determinations well in advance of law school admissions. If a student received accommodations for disabilities before entering law school, and continued with those accommodations throughout law school, the SAME accommodations should be granted to them when they sit for the bar examination.

## **Commenter 89**

As someone who needs such accommodations. This is a refreshing first step to accomplishing equal and fair guidelines across the board. If I take my LSAT and my exams in law school with accommodations, then I should be able to take my Bar exam, which is a consolidation of my core law school courses, with the same accommodations.

## Commenter 90

I made an attempt to request accommodations for the California State Bar Exam. My request was rejected, which was of course not the result I was looking for. The end result was far less offensive than the process in general, however.

I sent over neuropsychological evaluations that had been conducted when I was an adult, at age 25. Due to my slightly more advanced age, however, they were more than 5 years old. This did not bother UCLA, the LSAT, or the New York state bar, all of which honored my request for accommodations. The California state bar, however, saw fit to deny me on these grounds. The additional documentation furnished proving continued executive function issues were treated as trifles. Note that this included a note from my psychiatrist at the time.

I was told all of this within a month of the bar exam being conducted. When I appealed the process, providing additional documentation, I was denied. This was not because they felt I had failed to prove my diagnosis. It was so well documented that they could not help but reverse that aspect of the ruling. But according to those responsible for making these sorts of decisions, there was not enough proof that my executive functioning issues had "severely impacted [my] life."

I cannot tell you how [REDACTED] offensive that is to me.

What did they want, a tearful breakdown of every time I had failed to arrive on time, leave on time, hand an assignment in, failed to complete a test? Did they want a blow by blow of the destruction this wrought on my self-esteem? I wasn't suicidal before I hit a wall in college and just could not keep up. I have thought about killing myself almost every day since.

The emotional component of my difficulties was not a part of what I was asked to provide and has no place in this process. Evaluations conducted while someone is an adult are just as good the day they were conducted as ten years later. Nor is it realistic to ask a law school student to take another evaluation in the middle of school (costing anywhere from 3 to 5 thousand dollars, mind you) in order to get the CA state bar to follow state and federal disability accommodations law.

I know the weirdos who make these decisions have nothing but disdain for those who seek their aid. I would frequently hear their ilk speak ill of those who had extra time on law school exams during my time at UCLA. I also know there is a contingent of the CA state bar that despises the idea of making their test more accessible. As such, I applaud this small change. If it results in swifter, more uniform decisions then I am all for it.



## Commenter 93

Those taking the General Bar Exam and the First year Exam should benefit from the disability expert opinion. There are often discrepancies that are not noted without the expert opinion. managing the timeframe of five years is often too limited. Thank you for your request to review.

By the way i believe that a Surpeme Court Judicial Review should be obtained on the issue of : " Who has the right to set the passing level on the Bar Exams?" ... This is applicable to California on the Multi State Professional Responsibility Exams.. because of the facts that the NBE consturcts the exams, moinitors for the computer efficiency efficacy and accountability, grades the exams. and sets a passing level for all examinees, bears the burden of the exam and its construct and test validity. The failure to accept the apssing level interferes with state and federals laws set forth for educational institutions across the states and cshould have questions of Constitutional law applied.

## **Commenter 94**

A person who has been deemed qualified for accommodations should not need to repeat the process if the applicant must sit for the exam within a certain time period.

## Commenter 95

I received testing accommodations in law school and on the MPRE exam, however, my accommodations request were denied for the California Bar Exam. I believe proof of testing accommodations in law school and on the MPRE should be sufficient proof for the need of testing accommodations on the bar exam.

Law school exams and the MPRE are essentially high stake exams. If a student fails a law school exam, particularly in their first year of law school, their first year job opportunities, scholarship opportunities, and/or even career opportunities may be jeopardize. Also, an applicant cannot practice law without successfully passing the MPRE. Therefore that's are high stake exams.

Requiring applicants to go through a more rigorous accommodations process than law schools and the National Conference of Bar Examiners (publishers of the MPRE) requires, indirectly illustrates the California State Bar exam committee does not trust law schools nor the National Conference of Bar Examiners to make rational decisions. Lastly, it makes the California Bar Exam committees job harder.

## Commenter 96

I agree that the Bar should honor an accommodations determination made by a prior test administrator (seemingly the LSAT in most cases). But the 5-year rule is unnecessary. It seems to reinforce a perceived barrier the State Bar has put in place to make things difficult for Bar-takers with disabilities.

If someone has had a disability for most/their entire life, and if that person has received accommodations on the LSAT and throughout school, there is no logical reason why the Bar should require them to repeat any medical testing/seek new documentation to be accommodated on the Bar Exam.

Many people's disabilities do not change. To suggest that after 5 years their disabilities and accommodations needs have changed conveys that disabled people are lying about their needs. This demonstrates an anti-disability bias on the part of the State Bar that the revision of these policies could remove.

## Commenter 97

I'm [REDACTED]

[REDACTED] As a result I'm mental disabled and I because of my severe trauma I was enable to sit in the exam (July 2022) after fighting back and forth with medical reports, evidence, medical letters, etc. At the end nothing got approved: was a totally dismissal process, feeling the discrimination of: a physical incapable is a valid reason but a mental one is not allowed.

## **Commenter 98**

I strongly encourage support for this change. Because of the current rule requirements I was required at great personal expense to undergo additional testing to re-confirm a diagnosis which had already been made three (3) previous times. The financial costs were in the thousands to meet the criteria laid out by the California Bar - that testing needed to be within five (5) years. To put it in no uncertain terms, the California Bar required me to incur several thousands dollars of testing to re-confirm a diagnosis so that I may receive necessary and reasonable accommodations.

I am not ignorant of the potential cheating / competitive advantages certain applicants may obtain by receiving accommodations without a diagnosis or even having an impairment. I do believe that concern is small and limited, and cannot be properly balanced by the expense of applicants who honestly require accommodations.

## **Commenter 100**

Shame on the State Bar of California for its mercenary testing conditions for the bar exam in terms of time restraints and time structure. The reason why law graduates submit disability applications is to acquire EXTRA TIME on the bar exam to stand a better chance at passing the exam. The State Bar must change the time conditions for EVERYONE taking the bar exam. The solution is to increase time per question on the essays and multiple choice, and to allow exam takers to retake only portions of the exam that they do not pass, instead of forcing them to resit for the exam in its entirety.

**Public Comment Re: Testing Accommodations**

**Introduction:**

The last two Diversity Report Cards compiled by the State Bar's own Office of Research and Institutional Accountability reveal that the State Bar's procedures, policies, and practices towards applicants with disabilities has imposed a tremendously adverse disparate impact on such applicants: only 5-6% of California-licensed attorneys report having one or more disabilities, yet about 26% of California's adult population has at least one disability.<sup>1</sup> The State Bar purports the present proceedings and proposed changes as responsive to public comment at stakeholder forums, remedial to the concerns expressed thereat and demonstrated by statistics, and based on DOJ Testing Accommodations guidelines. It is not. Moreover, the State Bar further undermines this position, and conveys the appearance of lacking any commitment to California's public interest in meaningful access to public programs, activities, and services for disabled persons or disability diversity in California's legal profession, by several of its legal arguments in the Ninth Circuit (No. 20-17316) for broadly precedential (and damaging to the disabled among the public in California) new/changed law, including (for example):

- (1) The State Bar's challenge to the constitutionality of part of the ADA (see *id*, Dkt. 83 ("In accordance with Federal Rule of Appellate Procedure 44 and 28 U.S.C. § 2403(b), we are certifying to the United States Attorney General a constitutional challenge to a federal statute raised in a pending appeal in which the United States is not a party... The federal statute at issue is 42 U.S.C. § 12202."));
- (2) The State Bar's position that: "Neither [ADA] Title II nor its regulations dictates any particular process for receiving accommodation requests, any precise timeline for deciding on accommodation requests, any particular process for how such decisions should be reached, nor a requirement for how much explanation must be given about an accommodations decision to a qualified individual with a disability." (see *id*, 2-ER-84:4-8).
- (3) The State Bar's position that it is an accommodations requester's responsibility to negative the possibility of fundamental alteration or undue burden by a request for an otherwise reasonable accommodations denial to cognizably violate the ADA, and that the reasoning for doing so must be specifically tied to state an ADA failure to reasonably accommodate violation (see *id*, Dkt. 66);
- (4) The State Bar's position that incorrect "professional judgments" denying even plausibly reasonable accommodation requests made without detailed grounds for exclusionary animus rather than "cost or administrative burden" known at the pleading stage do not state violations of the ADA (see *id*, Dkt. 66);

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<sup>1</sup> Notably, at the 10/14/2022 CBE meeting, Staff reported a statistical increase in the proportion of applicants requesting Testing Accommodations, which increased to nearly 10% of applicants for the July 2022 exam. Several CBE members expressed their surprise and concern over the legitimacy of these requests based on this increase, but the State Bar should have expected routinely seeing 26% of applicants need accommodations for disabilities on average based on population statistics. This indicates that even at 10%, the vast majority of disabled applicants are being chilled from exercising their rights and receiving equal footing by the State Bar's overly burdensome TA request procedures, and the Committee's perception that this number is alarmingly high reflects discriminatory implicit bias at best.



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- (5) The State Bar's position that no California disability nondiscrimination statute covers the State Bar as a subject entity, and that California's Unruh Act (an important civil rights panopticon statute supplying unique remedies to victims of not just disability discrimination, but also discrimination against race, gender, sexual orientation, national origin, immigration status, medical condition, etc.) categorically does not apply to government entities (see *id*, Dkt. 66).

The State Bar's continued pursuit of such precedent, despite repeated past offers to settle for no monetary recovery and only a compromise set of TA procedure reforms inspired by good faith discussion of a proposal supported by the State Bar's own public protection alleged mission (see Cal. Bus. & Prof. Code 6001.1), belies the sincerity of its intentions with the present "reforms" process.

Back on point. the State Bar has made (or proposed making) two types of changes: amendments to the State Bar's Admission Rules concernin2:the procedures by which applicants petition for disability-based testing accommodations and administratively appeal denials thereof -which are subject to the present notice-and-comment rulemaking and the formal approval of bodies like the Committee of Bar Examiners. the Board of Trustees. and the California Supreme Court - and changes to unenumerated policies and euidelines of the Office of Admissions pertaining to how testine.accommodation requests should be substantively evaluated and evidentiary sufficiency considerations.

None of the former (proposed rule amendments) would benefit applicants with disabilities, and several of them (proposed changes to Rules 4.84, 4.85, and 4.90) would be to their further detriment and further worsen already discriminatory procedures that facially deprive immediate repeaters with disabilities of equal opportunity to prepare for retakes of the exam. Highlights include that applicants will no longer be able to expect even an initial accommodations decision by the next exam administration (let alone by the appeal deadline for it), unless they are a first time taker whose petition is deemed received complete several months before the filing deadline; a seemingly lifetime cap of 1 appeal of denials per applicant regardless, which would now stop at review by the reviewing medical "expert" and Director of Admissions and no longer be reviewed by the Committee of Bar Examiners<sup>2</sup>; a 5 year age limit to the admissibility of prior approvals and medical reports; and maintain a bar on even discretionary oral argument, even to staff, among other downgrades.

To be sure, the latter (which is not affected by any votes of the CBE or BoT, and unilaterally adopted by staff) does permit a narrow subset of applicants who request extra time of 50% standard testing time or less and/or a semiprivate room a more streamlined process for obtaining those (and only those) accommodations from the State Bar where prior testing agencies have unanimously and recently granted those same accommodations. This, were it not made for cover to act as a Trojan Horse by which the vastly more significant rule downgrades are pushed through, is technically an improvement to the status quo, if not one that goes nearly

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<sup>2</sup> The preliminary appellate review by expert consultants and the Director of Admissions has always been done first under existing TA appeal practices prior to CBE review, rather than constituting a new safeguard added to replace CBE review and improve the process as purported.

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far enough. Even on its own, however, its eligibility requirements are irrationally and arbitrarily redundant and restrictive, and the two specific accommodations it pertains to are too limited of a subset of even commonly requested accommodations for disabilities (especially physical disabilities) to constitute adequate or even meaningful reform. Thus, the few improvements the informal staff policy revisions comprise cannot be fairly characterized as addressing or remedying the concerns raised by stakeholders at the two public comment forums in June<sup>3</sup> and September 2022, let alone bring the State Bar into compliance with the DOJ guidelines it purports to be based on, which vastly exceed that proposal in its own domain and are facially violated by the current and proposed Admission Rules in the procedural domain.

State Bar Staff have accurately identified that applicants, litigants, and the public have persistently criticized the current policies, procedures, and practices of the State Bar on such testing accommodation requests; where the proposal is misleading is its obfuscation that the effect of the proposed rule changes would be remedial to these concerns and based on DOJ guidelines, rather than detrimental to the same.

### **Procedural Downgrades:**

#### **Proposed Changes to Rules 4.84 and 4.88:**

The proposed amendments to Rules 4.84 and 4.88 includes extending the processing time Office of Admissions Staff are permitted to complete initial review within on petitions (renamed "requests") for testing accommodations in times they experience a high volume of requests, such that applicants are informed that failure to apply months early (something immediate repeaters seeking expanded accommodations for new or worsened impairment, delayed documentation, and/or erroneous denials, cannot do) may not expect even an initial decision b the next scheduled administration of the exam. Under the proposed amendments, the current guarantee that timely requests will be decided prior to the exam (if not in time to appeal or rely on for exam prep investments and decision-making, so not timely for equal opportunity to prepare) is stricken, and applicants are instead informed only that their requests will be processed "in the order received" with no commitment to maintain a staffing capacity that would consistently turnaround such requests in time to allow for applicants to even receive an initial decision b the next exam, let alone to have equal opportunity to register and prepare for the exam by the next exam cycle, and without earlier registration deadlines than the nondisabled. This egregiously flouts DOJ guidelines on the requirements of the ADA for testing entities; interpretations that are entitled to both *Auer* and *Chevron* deference.

This guidance is readily achievable; the College Board, LSAC, GMAC, ETS, NCBE, FINRA, and other States' bar examiners (and other licensing agencies) typically have review times of two weeks or less, and live on-demand collaborative phone support with the decision-makers. By extension, the State Bar of California's choice to conserve resources for other priorities by understaffing its testing accommodations program amounts to a willful disregard to both its legal obligations under Federal and California nondiscrimination laws to provide disabled applicants

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<sup>3</sup> See <https://youtu.be/vSakD1D4Q6c>

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with equal opportunity to nondisabled applicants, and pursuant to the policy imperative of diversity, equity, and inclusivity in California's legal profession. Even the 60 days aspirational standard under current rules (let alone the 150+ days often encountered by applicants in practice and now seemingly normalized in the rules revision proposal) is thus not an inevitable axiom that must be assumed when evaluating the propriety of whether other beneficial procedural features prescribed by the DOJ guidance can be simultaneously implemented, which both Office of Admissions Staff and the State Bar OGC have argued as inconsistent relying on the presupposition this duration of staff turnaround time is necessary to complete even a single iteration of non-collaborative review of only written submissions before an iteration of communication about the requests can be accomplished, allowing at most two exchanges of clarifications and positions per administration of the exam and undermining the process's ability to correct even basic errors where non-adversarial consensus could have been reached without delay to a disabled applicant's career, but is not and turns the administrative vetting of requests unnecessarily adversarial while ruining careers, livelihoods, and lives.

Specifically, the DOJ guidelines can be readily achieved by limiting each iteration of Staff review of TA request(s) to no more than 10 business days turnaround and making prompt availability for live telephonic hearings with Staff and the "ADA consulting expert" for applicants, their treating experts, and potentially their legal counsel, both at the core of any workable TA Rules Revision framework sufficient to bring the State Bar into compliance with the DOJ guidance that exam decisions should be made in time for any appeals to conclude far enough in advance of the exam to allow the applicant to rely on the decision in arranging those meaningful exam prep arrangements, without needing to do so at-risk of wasting thousands of dollars and months of full-time work (that does not remain fresh until future exams) for an exam lacking equal footing. Moreover, doing so allows that guidance to be consistently and simultaneously implemented with the further DOJ guidance that testing entities not set a deadline to request testing accommodations for a particular administration of the exam earlier than the final deadline for nondisabled applicants to register for that same exam, and that the testing entity deploy the ADA's iterative, collaborative method of adjudicating requests for disability accommodation.

While Office of Admissions Staff may feel they do not have adequate staff resources under their current budget and headcount to tolerate the workload and logistics of even current State Bar Rules, let alone the ADA requirements those rules already violate on their face, it is nonetheless their (and the Committee's/Board's) responsibility to resolve any understaffing and budget constraints preventing compliance with this requirement by reallocating greater resources into testing accommodations from the programs and preferences it may prefer, and/or adjust fees, member dues, and other funding sources to provide those resources required for compliance, not by doubling down on this extremely harmful and discriminatory procedural defect.

### **Proposed Changes to Rule 4.85:**

I object to the proposed new Rule 4.85(B) wording that allows Staff to summarily deny any request(s) for which they (rightly or wrongly) perceive a clerical defect or omission from the State Bar's checklist of required forms and technical requirements, because it purports to authorize rejection of a request for reasons not permitted by the ADA. Specifically, it purports to authorize the State Bar to set documentation requirements that are purely for bureaucratic

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convenience only, potentially unduly burdensome, and are not inherently required to put the State Bar on sufficient notice of the applicant's disabilities, their effect(s), and what the applicant requests, with enough evidence of those facts to satisfy a *prima facie* case for those facts. Then, even a technical or clerical defect or mistake in how the organization or presentation of sufficient information to vest the legal right to accommodation is submitted, even ones that do not prejudice the State Bar's review or are easily curable such that the delay in perfecting it doesn't actually prejudice the State Bar's review, could allow the State Bar to deem the request "incomplete" and deny it on solely non-substantive grounds, likely with notice to the applicant occurring after the deadline to resubmit.

I also object to the proposed new Rule 4.85(F) wording, because it contains a redundant and less narrowly-tailored requirement that approvals occurred in the past 5 years to receive a same accommodation for permanent disabilities, despite also requiring the proper and more narrowly tailored applicant certification that "they are still experiencing the same functional limitations caused by the disabilities for which the accommodations were previously approved."

### **Proposed Changes to Rule 4.90:**

As the CBE and BoT may recall, this is not the first time Staff have sought procedural downgrades to Rule 4.90 to the detriment of disabled applicants. In December 2020, they introduced a similar 4.90(E) revision, which ultimately made it to circulation for public comment before getting scrapped Spring 2021 after substantial pushback from the public, that would limit applicants who somehow applied so early that their decision for an upcoming exam cycle targeted was made in time to appeal more than once by the appeal deadline to nonetheless receive only a singular right of appeal to the CBE. While Staff claimed that their intent was for this cap to apply on a per-exam-cycle basis, their draft language left this vague enough as to potentially also arguably prevent repeater applicants from gaining review of even new or worsened circumstances on a future exam cycle, let alone reconsideration. I raised that concern in public comment December 2020, but the flawed language was still approved by the CBE and BoT unchanged until it was scrapped after the public comment period.

Staff now introduce this previously rejected restriction into their present wish list of staff-workload-minimizing procedural downgrades to the detriment of disabled applicants, with this same flawed vagueness omitting applicability per exam cycle of the cap intact, suggesting it was not overlooked and intentionally retained to further minimize State Bar review. Even clarified as per exam cycle, what limited policy justification might have existed for such a cap on CBE review (as an appellate body that had not been involved in the initial collaborative process, and one that meets less frequently and is not employed full-time by the State Bar) does not carry over when combined with the simultaneous proposal to make appellate review stop at recommendations by a different reviewing consultant and reconsideration thereupon by the Director of Admissions, which should be part of an iterative collaborative process. Were CBE review maintained and were this policy applied per exam cycle only to CBE review, I personally would find this Staff request to be the most reasonable of those they seek, but to support it I would need Staff to make compromises in other areas, rather than grant them a further skewed misbalancing of their interests against those of disabled applicants. The present proposal does not accomplish this.

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Aside from Proposed Rule 4.90(E), Staff also make the momentous change of limiting all appeals to only Director of Admissions review, and eliminating the safeguard of appellate review to the CBE. While I can understand focusing improvements to the collaborative process on the part handled by staff and limiting CBE review to once per exam cycle, eliminating it altogether, with a sole recourse proposed of seeking discretionary review (e.g., not required to be on the merits; could be rejected for judicial economy) by the California Supreme Court, which that Court would likely consider an extraordinary remedy not available in most cases, but which even attempting would compound applicants' lack of due process by eliminating CBE review of staff decisions by stripping applicants of their right to mandatory judicial review on the merits. This is because Federal Courts other than SCOTUS would lose subject matter jurisdiction under the binding Federal Feldman-Rooker doctrine once review by the California Supreme Court was even requested, while the California Supreme Court is the only state court with subject matter jurisdiction to address matters arising from attorney admission under California law.

While Staff may argue that eliminating CBE review streamlines the appeal process, given the delay to a scheduled meeting that occurs, such delays could be reduced by holding more special meetings to consider TA Appeals as needed, and further mitigated by Staff expediting the excessive review time on their end so that consideration occurs by the next scheduled meeting at least 10-15 days out. The CBE and Subcommittee provide the safeguard of panel-review, which a single staff member (no matter how senior) cannot replicate.

### **Other Omissions:**

The above feedback does not exhaustively reiterate all of the defects with the status quo Admission Rules or proposed improvements thereto contemplated by the Proposed Draft of Admission Rule Revisions (incorporating my proposals into the verbiage and structure of the current Rules and keeping as much language intact as possible) that I've repeatedly submitted in prior public comment, which I summarize below and encourage you to compare and recommend for circulation for public comment instead of the Staff one, as Rules Revisions (if not those sought by Staff) are in fact urgently needed for Testing Accommodations. The above commentary focuses on where the Staff proposal worsens those Admission Rules beyond the present status quo.

### **Current Rule 4.80 Deficiencies:**

Rule 4.80(C) uses the wrong legal standard. I propose amending it to the effect of: "Establish by a legally sufficient preponderance of the evidence the presence of a disability with effects the applicant has reasonably articulated to adversely impact meaningful accessibility or equal opportunity on an examination if taken under standard testing conditions; and that the testing accommodation(s) requested rationally relate to these adverse effects and are what would best ensure a level playing field with nondisabled examinees to the maximum extent possible."

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### Current Rule 4.81 Deficiencies:

Rule 4.81(B) adds impermissible non-substantive requirements that exceed what would sufficiently put the State Bar on notice of the TA requests and the grounds on which they are based. I propose amending it to the effect of:

"The State Bar makes its best effort to process petitions for testing accommodations expeditiously but does not process petitions with insufficient information to reach a conclusion about the material facts that would form a basis for the petition."

### Current Rule 4.82 Deficiencies:

The definition of "disability" provided in Rule 4.82(A) is at best incomplete and in tension with that provided under the ADA. A disability could impact equal access to the California Bar Exam without having to impair performance under standard conditions, by causing unequal access barriers at the threshold point of attempting the exam.

The definition of "reasonable testing accommodation" provided in Rule 4.82(D) is similarly in tension with controlling ADA case law<sup>4</sup> and implementing regulations<sup>5</sup>, which provide that fundamental alteration and undue burden are rebuttal defenses with an inverted burden of proof upon the subject entity not only of their presence, but also that all conceivable accommodations to best ensure a level playing field short of those constituting such had been granted; Rule 4.82(D) impermissibly treats their absence as elements of a reasonable accommodation for an applicant to negative, and this is how State Bar staff apply it in my experience.

Rule 4.82 further fails to accurately define "fundamental alteration" and "undue burden," which seems to result in State Bar Staff applying them based on colorable literal meaning, rather than the legal standards provided in 28 CFR Pt. 35 App. B, at p.707:

I propose defining "fundamental alteration" to the effect of: "A 'fundamental alteration' is where an otherwise reasonable testing accommodation would fundamentally alter the nature of an examination, compromise the security or validity of an examination or the integrity of the examination process, or compromise the Committee's ability to assess through the examination whether the applicant:

- (1) possesses the knowledge, skills, and abilities tested on an examination; or (2) meets the essential eligibility requirements for admission; or
- (2) meets the essential eligibility requirements for admission;

I propose defining "undue burden" to the effect of: "An "undue burden" is a burden upon the State Bar that an otherwise reasonable testing accommodation would impose that is grossly disproportional to the applicant's legitimate interest in ability to attain any benefit that might be conferred by success on a particular examination.

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<sup>4</sup> See *K.M ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1096-97 (9th Cir. 2013).

<sup>5</sup> See 28 CFR 35.164

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### **Current Rule 4.84 Deficiencies:**

While less egregious than the proposed downgraded version, discussed *supra*, for similar reasons the Current Rule 4.84(B) still facially deprives applicants with disabilities (especially immediate repeaters seeking expanded accommodations) of equal opportunity to timely register and prepare for the next administration of the bar exam with equal opportunity, as it still prevents applicants from receiving a final administrative decision sufficiently far enough in advance of the exam to avoid committing time and money to exam prep at risk. Even the current aspirational 60-day timeframe per iteration of non-collaborative review (far longer than any other high stakes testing entity), not reliably executed by Staff, also prevents many applicants from receiving a decision in time to appeal for the next exam cycle, even if the current rules still allow a decision in time for any grants to apply to the next exam.

Rule 4.84(C) also purports to extend jurisdictional, non-extendable for good cause deadlines that are well over a month before the exam. It is questionable to me that a subject entity to the ADA can lawfully unilaterally set such arbitrarily early cutoffs that don't, in the individual facts, objectively deprive it of sufficient lead time to reasonably provide the particular accommodations the individual applicant requested.

### **Current Rule 4.85 Deficiencies:**

Rule 4.85 concerns documentation requirements and evidentiary standards regarding sufficiency for review (e.g., a finding that the petition is "complete"), not even for a finding of threshold reasonableness for the accommodations requested.

The propriety of subsection (A) turns entirely on the reasonableness of the required fields and attachments requested on the State Bar's forms for what must be completed by the applicant, and is improper where it requires applicants to collect specific paperwork from third parties and leaves them unable to even get consideration of their requests on alternative evidence with similar probative value if any of those third parties fails to comply or causes delays or added financial expense.

Subsection (B)'s requirement for a form completed specifically for the California Bar Exam by a specialist medical expert in the specialty of each disability is very burdensome; applicants should be required to support documentation of the disabilities they rely on, but sufficiency for individualized consideration should not turn on whether the expert attestations of diagnosis, effects, and specific recommendations were specifically written for the California Bar Exam if they exist in a different form (historical medical records, similar certifications or reports written for education accommodations or previous standardized tests, and especially if they were written for previous bar exams for those applicants who took the bar in a different jurisdiction first). Having to track down prior specialists, who may no longer even be available to the applicant, or to start from scratch with new evaluations (sometimes costing thousands of dollars) with new experts, just to provide duplicative documentation is excessive and violates 28 C.F.R. § 36.309(b)(1)(iv) and the DOJ guidance interpreting ADA implementing regulations.

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Similarly, subsections (C)-(E) also require specific documentation from third parties that may not be available or may be excessively burdensome to obtain even if the applicant has significant other documentation that establishes the particular findings the State Bar seeks them for. Then, subsection (F) makes each of these requirements jurisdictional to provide individualized consideration in violation of ADA regulations such as 28 CFR 35.160.

I propose replacing Rule 4.85(B)-(F) to adopt a more flexible evidentiary standard for applicants to adopt threshold sufficiency as to findings of disability presence and effects, to the effect of:

"An applicant with a qualified disability seeking testing accommodations must, for each testing accommodation requested, support the disability presence, effects, and rationale for the mitigation of those effects by the proposed testing accommodation with substantial evidence. 'Substantial evidence' is evidence which a reasonable mind could find to be adequate to reach the required findings of fact. This evidence might include documentation from qualified evaluating health care professionals, narrative statements by the applicant, evidence of having received similar testing accommodations from schools or other testing agencies on other examinations, evidence of a history of special education services for the same disability, etc."

I also propose adding a new subsection to Rule 4.85 to clarify the existence of the State Bar's obligations under 28 CFR Ch. 36 App. A at 795-96 and 75 Fed. Reg. 56,236, 56,296-97 (Sept. 15, 2010), as interpreted by DOJ guidance and other case law, to the effect of:

"The State Bar must give substantial deference to treating expert evaluator(s) who have personal familiarity with the applicant over those from its own reviewing expert consultant(s), who have never personally met the applicant or conducted the requisite assessments for diagnosis and treatment. The State Bar will presume the veracity of all material factual assertions by the applicant's treating expert evaluator(s) certified under penalty of perjury that are not found and cogently articulated under penalty of perjury, by both the Director of Admissions and at least two reviewing expert consultants in the same specialty as the applicable treating expert evaluator, to be clearly so incredulous that no reasonable fact finder could find those assertions to be credible, and otherwise accept such factual assertions from the applicant's treating expert evaluator(s) as fact. If the legal effects of all such accepted facts mandates provision of the requested testing accommodation(s), including for example that the State Bar has not established the requested testing accommodations would constitute a fundamental alteration or impose an undue burden, the State Bar must grant such requested testing accommodation(s)."

#### **Current Rule 4.86 Deficiencies:**

The DOJ guidance interprets ADA regulations to require that testing entities not set earlier deadlines to request accommodations than the deadline similarly situated nondisabled applicants have to register for a particular administration of a standardized test or licensing exam. The State Bar sets later deadlines to timely register for an exam for immediate repeaters who failed the previous administration of that exam than for other applicants, because the timely registration deadline for each bar exam is generally prior to the release of exam results from the most recently administered bar exam.



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Under the ADA, applicants with disabilities must be able to benefit equally from this additional grace period to begin expending resources and consideration into retakes so they are not required (or expected, to receive a decision in time to appeal and/or equally prepare) to start their petition before they even know whether they passed or failed their last taken bar exam.

Rule 4.86 is vague as to whether it attaches to the deadlines for general applicants or immediate repeaters as applied to immediate repeaters seeking to renew their previously approved testing accommodations or to petition for expanded testing accommodations, which at bottom should be clarified as to the deadline for immediate repeaters for the above reasons, and with all necessary provisions to ensure that such later deadline does not thwart any remediation of other defects in other rules.

#### **Current Rule 4.87 Deficiencies:**

Rule 4.87 (pertaining to emergency testing accommodation petitions available in some cases after the deadline for ordinary petitions) defines the eligibility for emergency consideration too narrowly. Specifically, it limits that remedy to situations where the disability at issue was acquired subsequent to the deadline for ordinary petitions. This is but one specific example of a situation in which an applicant could be entitled to reasonable accommodations under the ADA, but would not have been able to timely petition exercising due diligence, the apparent purpose of the remedy, and improperly excludes all other good causes for late filing.

Moreover, not only does it presently exclude all other good causes for late filing, but also other causes timely filing would be impracticable due to circumstances entirely outside the applicant's control, and even some where those circumstances were created by the State Bar itself. One such example is where the publication of standard testing conditions by the State Bar for a particular examination comes on or after (or only shortly prior to) the deadline to submit an ordinary petition for testing accommodations, as occurred for the October 2020 California Bar Exam (see below chart).

October 2020 CA Bar Exam Deadlines:	Petition Filing Deadline to Expect Decision Prior to Appeal Deadline (to get up to 10 days to appeal):	Petition Filing Deadline:	Appeal Filing Deadline (if sooner than 10 days from decision):
When exam scheduled July 28-29, 2020 (before 4/27/2020):	4/2/2020	6/1/2020	7/1/2020
When exam scheduled September 9-10, 2020 (4/27/2020 to 7/15/2020):	5/17/2020	7/16/2020 (4 days before first disclosure of standard conditions).	8/13/2020
When exam scheduled October 5-6, 2020 (7/16/2020 on):	5/25/2020	7/24/2020 (4 days after first disclosure of	8/21/2020

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standard  
conditions).

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### Current Rule 4.88 Deficiencies:

The only unproblematic subsection of Rule 4.88 is 4.88(C). Otherwise, this rule as presently worded is on its face incompatible with DOJ guidelines interpreting the ADA and Rule 4.88(A)-(B) is at the root of most deficiencies with the State Bar's process.

The excessively long staff review timeframe in Rule 4.88(A) (as provided, -60 days, though in practice staff frequently fail to complete review in even that timeframe), which vastly exceeds that of all other testing entities for standardized tests and high-stakes licensing exams, prevents critical and mandatory features of a testing accommodations process from being simultaneously practicable and, as reflected in its extended effect as observed by Rule 4.88(B) (requiring applicants to petition six months before the exam, impossible for immediate repeaters, to generally expect an opportunity to appeal), facially deprives immediate repeaters seeking expanded accommodations of equal opportunity to prepare for the exam with equal opportunity (see also "Proposed Changes to Rules 4.84 and 4.88," *supra*). Due to the substantial investment required by competitive exam prep (months of full-time work and thousands of dollars upfront), which is hardly optional with such a low pass rate even among nondisabled applicants, and the fact that the fruits of this exam prep does not remain fresh for subsequent exam cycles without being repeated, it is extraordinarily burdensome for applicants to lack confirmation they will receive enough accommodations for a meaningful attempt until shortly before the start of the exam. This is particularly true during the pandemic and/or "post-[COVID]-pandemic new normal," where for some disabilities accommodations impact not just performance on the exam, but also the safety of sitting it at all.

This is further exacerbated by the non-collaborative nature of the review staff conduct during that time period; because the elapse of that much time generally occurs before staff communicate even the most basic perceived omissions of information or other perceived flaws in the evidentiary support for the applicant's entirely written submission, and receive what inconsistent feedback and explanation of denials is offered only by written letter with no prior hearing at the completion of the process, this magnitude of delay in iterative communication frustrates the resolution of even basic errors in the State Bar's reasoning for denial or the timely provision of further evidence and information responsive to specific concerns of the State Bar in time to be considered by it for the accommodations to be provided on the next exam attempt.

Thus, because of the impact of the length of staff processing time, applicants likely will have to seek accommodations over multiple exam cycles before the decision reflects even the State Bar's judgment (correct or not) on the accurate or complete set of premises, if that happens at all, causing lifelong detriment to the disabled applicant's career prospects and opportunities, following years of lost opportunities and income, and many rounds of exam-related expenses, all due to inefficiencies with resolving accommodation requests created to avoid disproportionately lower inefficiencies in the per-iteration (not even total) administrative cost/burden to State Bar staff. By limiting each iteration of Staff

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**review of TA request(s) to no more than 10 business days turnaround and making prompt availability for live telephonic hearings with Staff and the "ADA consulting expert" for applicants, their treating experts, and potentially their legal counsel, both at the core of any workable TA Rules Revision framework sufficient to bring the State Bar into compliance, these defects can be avoided.**

The presupposition that the timeframe in Rule 4.88(A)-(B) is necessary is also at the root of perceived inconsistencies preventing other proposed reforms (and tenets of DOJ guidelines) from being simultaneously feasible. Specifically, the State Bar OGC has suggested that correcting deadlines requiring the process to start much earlier than the deadline for nondisabled applicants to register for the exam in order to receive a decision in time to appeal to be no earlier than registration for the nondisabled is not simultaneously feasible with correcting final administrative decisions coming too close to the exam to afford opportunities for judicial review and/or to have equal opportunity to prepare for the exam as the nondisabled, but this presupposes the unnecessary and unlawful length of turnaround time per iteration of review contemplated by Rules 4.84 and 4.88(A)-(B).

Finally, the current Rule 4.88(D) is deficient because it is too vague about the level of specificity and detail that must be communicated to satisfy an applicant's right to explanation of the reasons for any denial or partial denial/"modified grant." This allows State Bar Staff to rely on summary and conclusory statements like "insufficient documentation to support those requests" or "inadequate explanation" with no fair notice of the particular analysis or reasoning on which the applicant might try to identify, and be meaningfully heard on, any factual and/or legal errors in the decision.

In practice, State Bar Staff routinely do just that, and/or rely exclusively on the "excerpts" of reviewing "expert" consultant(s) without explanation as to why their opinion (often containing and relying on basic clerical errors about the contents of applicants' files and/or governing legal standards) was credited over those of the applicant's treating experts, despite the high standards for rebutting the opinions of treating experts who are owed deference on credibility over reviewing experts as a matter of law (28 CFR Ch. 36 App. A at 795-96). Decisions also typically fail to provide explanation of the State Bar's determinations on issues of law, as opposed to of fact.

Accordingly, for all of the above reasons, I propose that Rule 4.88 be amended to the effect of:

"(A) An applicant who has filed a Petition for Testing Accommodations in accordance with these rules is notified in writing within five business days of receipt when additional information is required, and of the initial decision on all testing accommodation requests within ten business days of receipt of any additional information, or of the petition if no additional information is requested, unless review by one or more consulting subject matter expert(s) is required to decide one or more of the request(s) for testing accommodations, in which instance the applicant must be told their Petition has been referred to one or more consultant(s) and so action is pending, within that same ten business days period. If review by one or more consulting subject matter expert(s) is required, the initial decision on all testing accommodation requests must be

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communicated to the applicant within 15 business days of the final submission by the applicant, including that timely responsive to any timely request for additional information.

(B) If an applicant timely submits their Petition by the applicable deadline, processing must complete timely for the applicant to exhaust administrative remedies, and receive a final decision on any appeal to the Committee that is received complete within thirty dates of the decision on the Petition, in time to have equal opportunity as nondisabled applicants to register and prepare for a particular administration of the examination knowing that final decision. The period to have equal opportunity should be presumed to be at least ten weeks prior to the first day on which that administration of the examination is scheduled to occur so that the applicant has enough information to equally make exam participation decisions and consequential exam preparation resource allocation decisions in time for a traditional exam preparation process to avoid depriving such disabled applicant equal opportunity.

(C) With the consent of the petitioner, the State Bar or a consultant may confer with a specialist who has treated the petitioner.

(D) A notice of denial of a Petition for Testing Accommodations or a modified grant advises the petitioner of any right to appeal and states in writing the reasons for the denial or modifications sufficiently detailed to provide the applicant fair notice of all relied upon :findings of fact and law on which they might choose to argue error in any appeal remedy, including:

(1) any reviewing expert consultant(s)' opinion(s) relied upon in the decision to reject the factual positions of the applicant and their expert evaluator(s); and

(2) the reasons why the reviewing State Bar staff found the reviewing expert(s)' medical opinion(s) so much more credible or materially probative than that provided by the applicant and their expert evaluator(s) even giving the treating expert(s) substantial deference on issues of credibility compared to non-treating expert(s); and

(3) analysis of the facts considering the weight of the evidence that clearly identifies all evidence proffered and the comparative significance and weight found; and

(4) memorandum of the governing law, admissions rules, and application of the law to the facts and evidence that cogently articulates the conclusions reached upon which the decision is based."

### **Current Rule 4.90 Deficiencies:**

Rule 4.90 currently has many deficiencies. First, the deadlines to initiate an appeal provided by Rule 4.90(A)-(B) (requiring receipt of not notices of appeal, but completed appeal submissions with all expert support to be considered as of right, by the sooner of within 10 calendar days of the State Bar mailing its decision or the first business day of the month in which the exam starts, whichever comes first), especially combined with the unpredictability of when the initial decision will be made and cause the time window to appeal to land for purposes of scheduling doctor appointments during that window with access to a decision's potential explanation of potential denials, greatly frustrates applicants' receipt of a meaningful opportunity to be heard by making access to adequate responsive treating medical expert documentation and/or legal counsel impossible or impracticable. Even when they do not, they are so capriciously short compared to the timeframes allotted to Staff for turnaround on their end (even though, for staff, this is their full-time job whereas disabled applicants have many competing commitments and added health care burdens) that they will almost always prejudice the quality of the appeal submissions. Putting aside the effect on whether an applicant has the ability to appeal at all or the availability or quality of documentation submitted to support such a remedy,

### **Public Comment Re: Testing Accommodations**

this degree of rushed turnaround is extremely disruptive to an applicant's life (especially when imposed without advance notice and typically around the holidays for the February exam) and so unduly burdens disabled applicants even when such process is successful and ultimately affords them sufficient accommodations for an equal footing on the exam itself, and so tends to deprive disabled applicants of equal access even then.

Also problematic is the disconnect between the Rule 4.90(B) part of the deadline and the timing of the communication of initial decisions to applicants by State Bar staff. If a timely petition by an applicant is nonetheless met with an untimely decision by the State Bar, an applicant should be entitled to tolling of such a deadline to the maximum extent possible, and after that to the denied accommodations being granted without consideration of their merit, no matter how much inconvenience is self-imposed upon staff as a result.

Rule 4.90(D)'s provision that appeals be decided "as soon as is practicable" does not appear to, in practice, provide concrete enough guidance to Staff as to how long they may take, and in practice appeals pursuant to this rule take months and culminate in decisions only 1-2 weeks prior to the applicant's exam (thus causing similar prejudice to the excessive turnaround on initial decisions), even when the applicant is so extraordinarily diligent as to initiate their petition within days or weeks after completing the prior administration of the exam and while results were still pending, so at-risk of being a waste of their time and resources. It should instead give staff clear and prompt time limits that reflect the urgency and ordinary legal meaning of that phrase.

Rule 4.90(D) also expressly prohibits live hearings/oral arguments, even as a singular iteration and even as a form of discretionary review for the much smaller subset of applicants who receive denial(s) in the first instance that they choose to appeal, but which appeal cannot be granted by the Director of Admissions on the papers, which would greatly reduce the risk of errors predicated solely based on misconceptions about relied-upon premises or "insufficient explanation" having been anticipated and volunteered. I believe this should be stricken, and procedures added to allow aggrieved applicants, their treating expert(s), and any legal counsel for such applicants, the benefit of a hearing during at least the appeal remedy.

Accordingly, I propose Rule 4.90 be amended to the effect of:

"(A) An applicant notified that a Petition for Testing Accommodations has been denied or partially granted may appeal any or all of the accommodation(s) that were denied. Notice that an appeal will be taken must be submitted within ten days of service of the decision communicating the denial(s) or partial grant sought to be appealed, unless the applicant shows good cause for the late notice. If the Petition for Testing Accommodations was submitted by the final filing deadline for an application to take that administration of the examination applicable to that applicant, the applicant's statements and evidence in support of the appeal may be submitted by the sooner of within thirty days of service of the decision communicating the denial(s) or partial grant sought to be appealed or the cutoff set forth in rule 4.90(B).

(B) Requests for review filed in connection with a particular administration of the examination must be filed no later than 21 days before the first day on which the examination is to be administered, subject to tolling and emergency testing accommodation appeal procedures as set forth in Rule 4.90(F).

### **Public Comment Re: Testing Accommodations**

(C) The Director of Admissions or their designee authorized to grant any testing accommodation request the Director of Admissions would be authorized to grant ("appeal case manager") must review a completed appeal submission within five business days, at which time they may grant all of the requests to be reviewed or designate some or all of those request(s) for further action. If further action is designated, within ten business days of the applicant's completed appeal submission the appeal case manager must either stipulate to the material facts asserted by the applicant's expert evaluator(s) and find that the requested accommodation(s) are unwarranted even crediting all such facts and reasonable inferences, or obtain review by one or more subject matter experts in the specialty of each disability asserted by the applicant as part of the basis for the request(s) to be reviewed, then either grant the accommodation request(s) to be reviewed or both determine that said expert(s) disagree with those material facts and reasonably find that the reviewing expert(s)' reasoning is overwhelmingly more credible than the applicant's expert(s) on those material facts even affording substantial deference to the applicant's expert(s) on credibility. The appeal case manager shall make detailed findings of fact, law, and application of the law to the facts and address the comparative probative weight accorded to all evidence and issues raised by the applicant on appeal, which shall be communicated to the applicant as part of a tentative appeal decision within ten business days of the applicant's completed appeal submission.

(D) If the appeal case manager does not grant all of the accommodation(s) requested to be reviewed, the Committee must set a hearing as a special meeting to consider whether to grant the remaining denied accommodation(s) requested to be reviewed as soon as is practicable, which shall be presumed to be scheduled for a date no more than seven business days after the tentative decision in Rule 4.90(C) unless the applicant waives that right and requests an alternative time. The hearing may be closed to the public, but must be open to the applicant and any legal counsel and/or expert evaluator(s) the applicant may arrange to participate. The Committee shall make best efforts to accommodate the scheduling needs of the applicant and their supporting professional(s), if any, within that seven business days period, and if that is impracticable, to minimize the delay required to include any such professional(s) thereafter if the applicant elects to waive their right to a hearing within seven business days to include such professional(s). The appeal case manager must participate, and any reviewing expert consultant(s) relied upon by the appeal case manager should participate if practicable, and are subject to questioning both by the applicant or their counsel and any other participating expert evaluator(s). The hearing shall be conducted by videoconference technology unless both the applicant and Committee stipulate to an in-person meeting. After the hearing, the Committee may deliberate in a session of that same special meeting closed to the applicant and public at its option, and must provide a final decision to the applicant in writing within two business days of the hearing.

(E) An applicant may only appeal a determination from a Petition for Testing Accommodations connected to a single particular administration of an examination once per administration of the examination if any subsequent appeal for the same administration of an examination would be filed after the final filing deadline to register for that administration of the examination. Otherwise, any appeal would only be reviewable past the process in Rule 4.90(C) by the Committee or Subcommittee pursuant to Rule 4.90(D) at its discretion based on the amount of time available and volume of initial appeals from all applicants pending. Appeals not as a matter of right can be summarily denied without further explanation.

(F) The appeal filing deadline in Rule 4.90(B) is tolled for requests for review filed in connection with a particular administration of the examination that are filed between 10 and 20 days before

### **Public Comment Re: Testing Accommodations**

the first day on which the examination is to be administered if the applicant shows the request or supporting documentation could not have been provided sooner exercising due diligence, including any time the decision were to be communicated to the applicant later than the period set forth in [Proposed Amended (*supra*) Rule 4.88(A)] as to when the petition should be decided by or else when the applicant must be notified action is pending. When such deadline is tolled, the appeal submitted will be considered an emergency testing accommodation appeal. For each of the five business days processing time limit for the appeal case manager's preliminary review in Rule 4.90(C), the ten business days total processing time limit for the process set forth in Rule 4.90(C), and the seven business day time within which to hold a hearing set forth in Rule 4.90(D), those time limits are shortened by one business day for each day tolled, up until such time limits would be 48 hours for each step in Rule 4.90(C) and 72 hours for the hearing in Rule 4.90(D). Emergency testing accommodation appeal hearings may be conducted by the Subcommittee on Examinations instead of the Committee at the Committee's option. The decision on an emergency testing accommodations appeal must be communicated to the applicant in writing no later than two business days before the first day on which the examination is to be administered."

### **Evidentiary Policies Improvement Proposal Insufficiencies:**

Proposal to Summarily Grant Extra Time (up to 50% for summary match purposes) and/or At Least Semiprivate Room to Applicants with Permanent Disabilities Who Received Equivalent or Greater Accommodations on Other Standardized Tests. Licensing Exams, or Bar Exams:

While I agree that the State Bar should consider a prior grant on a different high-stakes exam as sufficient evidence to grant the same accommodation, I believe your proposed eligibility requirements (I. A. 1 and B. 1 are too high (and redundant)) and that the scope of accommodations eligible for this policy is too narrow.

The scope of accommodations eligible for a matched-grant policy should be broader than the two referenced accommodations for the same policy reasons as to why a summary grant policy is beneficial for up to 50% extra time and/or a semiprivate room apply to many other accommodations from a broader set of disabilities and functional limitations. A larger list of common accommodations, such as permissions to bring food and/or medicine if needed during the test, stricter COVID precaution protocols, a computer to type, in-book circling, enlarged font size, JAWS software, braille, screen readers, mobility accessible facilities, ergonomic workstations, and scheduling testing over more or different days should be included. Similarly, applicants who were approved for a private room or some extent of extra time greater than 50% (perhaps up to double time without multiple disabilities or a visual disability and up to triple time if with multiple disabilities and/or a visual disability) should be granted. The State Bar should not exclude any requested accommodation that would not constitute a fundamental alteration or impose an undue burden from the options for either summary grant or a grant upon review, as this would deny applicants with disabilities the individualized consideration to which they are legally entitled (see also I. C. 4, which should also be stricken for this reason).

The eligibility requirements of the proposed matched-grant policy is also problematic.

## **Public Comment Re: Testing Accommodations**

First, all five of the I. A. 1 requirements seem intended to ensure that the disability reasons for which the other testing entity granted the predicate accommodation on the prior exam(s) are still present and applicable to the applicant's bar exam. Requirements (c), (d) and (e) seem the most narrowly tailored to this purpose (e.g. that applicants demonstrate the existence of the prior grant, that it was for a permanent disability, and that the predicate functional limitations remain present), whereas requirements (a) and (b) (e.g. that the approvals from past testing entities occurred in the last five years, and that all past testing entities were unanimous in granting that accommodation) are not.

Requirement (a) of I. A. 1 and I. B. 1 is redundant to requirements (d) and (e) of those two subsections, but has the collateral effect of excluding more people by using less tailored means, which excludes those previously unable to pass due to their disability who wish to retake upon more accessible accommodations process policies, and/or pursued non-traditional educational and career paths that place more time between law school/the MPRE and passage of the bar exam.

Requirement (b) (excluding eligibility of summary matching a prior grant if any testing entity had ever denied (or otherwise didn't approve) that accommodation on any different prior exam) does not distinguish among possible reasons for the omission of such an approval on the other exam. Not only could the standard conditions of the exam on which it was approved more closely resemble the bar exam than the one where it was not, and thus produce no need to request it on all prior exams or (if requested) been denied based on such a difference, but this requirement also amplifies the adverse effect of any history of error or discrimination the applicant may have ever experienced, by preventing them from getting the benefit of having already been able to convince at least one testing entity the accommodation should be granted. Requirement (b) should be stricken from both A. 1 and B. 1.

### **Reform Proposals to Evidentiary Standards/"Documentation Requirements" for Testing Accommodation Requests Not Eligible for Summary Grant:**

I generally support this component of the (non-rules-revision) proposal, save for a few specific concerns: improper substitution of the ADA legal standard of what "best ensures a level playing field to the nondisabled," seemingly for absolute necessity. While "statement of need" is vague, it implies an inapposite medical necessity standard of defining "reasonable" instead of the correct legal standard.

I'm also concerned that stopping at a nominal qualifier of "great weight" to treating expert recommendations, rather than a comparative qualifier that clearly explains the lofty bar for rebutting the reasonableness such recommendations, that generally are per se prima facie sufficient evidence of reasonableness. This bar being compelling peer expert attestation that either no reasonable expert's ability to agree with their premises and recommendations or the establishment of fundamental alteration or undue burden. Otherwise, "great weight" is too vague and leaves too much room for arbitrary rejections of the medical judgment of treating health care providers and their unique opportunities to meet, assess, and determine appropriate treatments and accommodations for each individual patient's unique situation. See 28 CFR Ch. 36 App. A at 795-96. At least the factual premises attested and conclusion of what best ameliorates the



### Public Comment Re: Testing Accommodations

effects of the disability, if not the legal conclusions of what those premises compel the State Bar to grant, made by such treating health care providers should be assumed for the analysis, except possibly where reviewing experts in the appropriate specialty not only disagree, but certify that no reasonable expert in the field could possibly agree. A reviewing expert's recommendation of a denial because they merely not understanding why the treating expert does recommend what they do, or because of dissatisfaction with how thoroughly the expert explains themselves or because they omit specific considerations, should not be enough for a reviewing expert's disagreement to justify rejecting the treating expert's factual testimony.

I'm similarly concerned about the reference to an "exceptional need" standard for certain accommodations State Bar Staff particularly disfavor. The level playing field standard is binding by law and deeming certain accommodations that do not constitute fundamental alteration or undue burden as requiring a higher showing, such as "exceptional need," at most is already incorporated into that standard through the resulting degree of disability impairment where that would be true for the greater accommodation, and to the extent it would mean anything more than that, would unlawfully disregard that binding legal standard.

While the State Bar may make some degree of exclusions on what it will summarily grant based on a prior approval by another testing entity where standard conditions differ and/or it disagrees with that other entity about what best ensures a level playing field, 28 CFR 35.160(b)(2) prohibits the State Bar from going as far as the present staff policy revisions, with a declaration that the State Bar categorically will not consider certain accommodations in any case and never offers them, absent a showing of fundamental alteration or undue burden. There is no plausible argument for fundamental alteration or undue burden for "stop the clock" breaks. an example the policy change gives. nor for remote testing (which was feasible enough to be a standard condition for three exam cycles and the State Bar has admitted it could and would continue if a public health authority decided the nondisabled needed it too and not just the disabled or immunocompromised, whom 2/2022, 7/2022, and 2/2023 exam FAQs instructed need not apply for such).

That said, if the State Bar prefers to substitute equivalent extra time for stop the clock breaks, it should ensure that extra time is additive to any extra time recommendations from the applicant's experts that was quantified based on the assumption it would be concurrent to the stop the clock breaks, and/or for other disabilities and functional limitations than what the stop the clock breaks had been recommended for, as opposed to subsumed into the extra time allocated for other disability needs and thus rendering it insufficient as the State Bar did to me.

Thank you for considering my public comments in this matter,

/s/ Benjamin Kohn

CA SBN # 335723

Dated 12/7/2022

## **Commenter 102**

The Bar as well as other entities have repeatedly been sued due to it's discriminatory practices. It is time to comply with the court order fully. But is time to stop placing obstacles in front of disenfranchised students.

## **Commenter 103**

The proposal to require those who seek accommodations for the Bar exam to submit medical testing that was performed within the past five years would harm candidates and further drive potential attorneys with disabilities from the profession. Testing is incredibly expensive. If a candidate has documented disabilities that were accommodated in college or law school - or by the LSAC - that should be sufficient, no matter when those accommodations were provided. Many candidates do not immediately take the California bar exam following law school, for a variety of reasons. Requiring candidates to pay for new assessments will have an adverse, discriminatory impact on the profession, not just based on disability but also due to socioeconomic status.

Please note that my comment represents my personal views, and is unrelated to my prior position with the U.S. Department of Justice.

**Hernandez, Alfredo**

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**From:** Hernandez, Alfredo  
**Sent:** Tuesday, January 31, 2023 11:53 AM  
**To:** Hernandez, Alfredo  
**Subject:** Opposing to the Proposed Amendments to the Rules of the State Bar, With "High-Level Framework,"  
Pertaining to Testing Accommodations on the State Bar  
**Attachments:** Letter to California State Bar.pdf

**From:** [castlerentals@comcast.net](mailto:castlerentals@comcast.net)  
**Date:** January 30, 2023 at 6:41:54 PM MST  
**To:** "Ayrapetyan, Louisa" <[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)>, "McFarland, Devan" <[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)>  
**Subject:** **RE: Opposing to the Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar**

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Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney,

I am writing on behalf of a nonprofit organization, **Autism Movement LLC** established in 2011 in the State of Illinois. We are disability rights advocates committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities.

We OPPOSE to the Proposed Amendments to the Rules of the State Bar. Please see the attached letter.

Sincerely,

Sandra Stanek  
Director, Autism Movement LLC  
4115 Prairie Crossing Dr.  
St. Charles, IL 60175  
630-400-6545

January 30, 2023

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

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CC: Louisa Ayrapetyan  
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Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Opposing to Proposed Amendments to the Rules of the State Bar,  
With "High-Level Framework," Pertaining to Testing  
Accommodations on the State Bar

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing on behalf of a nonprofit organization, **Autism Movement LLC** established in 2011 in the State of Illinois. We are disability rights advocates, committed to ensuring the voices of the disabled are heard and their rights are protected. If California State Bar adopts the proposed amendments to the rules that create unnecessary barriers and exclude disabled people from becoming licensed California attorneys, we believe that other states may follow, including Illinois.

We **OPPOSE** the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

### **Commitment To Diversity In Legal Profession And Eliminating Access Barriers**

**Autism Movement LLC** is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities is better equipped to serve the varied people and communities who live and work in California, including indigent people.

### **Barriers Continue To Exclude Disabled People From The Legal Profession**

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

### **Testing Accommodations Are A Necessary And Accepted Means For Including People With Disabilities In The Legal Profession**

Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

### **The State Bar Regularly Denies Requests For Testing Accommodations On The Bar Exam**

Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

### **The Current Proposal Is A Step Backward**

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH V. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

### **The Rules Should Require Timely Responses To Accommodation Requests**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-week endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(8) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

### **The Rules Should Retain An Option For An Independent Review Of Accommodation Denials**

The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

### **The Rules Should Allow A Candidate An Appropriate Period Of Time To Seek Review**

The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

### **The Rules Should Make Clear That Candidates May Seek More Than One Review**

The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. See Proposed Rule 4.90(C).



### **The Proposal Should Commit The State Bar To More And More Diverse Consultants**

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH V. LSAC* litigation included such a requirement, but there is no such provision in the State Bar's proposal.

### **The Proposal Should Commit The State Bar To Training And Retraining**

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH V. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

### **The Rules Should Require That The State Bar Automatically Grant Candidates The Same Testing Accommodations That They Previously Received On Standardized Tests**

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states' bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A "high-level framework" that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

- no grant if prior approval is more than five years ago;
- no grant if prior approval is within five years but based on an automatic grant outside the five years;

- no grant of more than 50 percent extra time (unless severe visual impairment);
- no grant of a private room;
- no grant if the prior approval is not the "most recently approved" of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
- no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
- additional unnecessary and harmful exceptions.

"High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (8)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as "exceptional" and improperly presume that people grow out of their disabilities.

**The Rules Should Also Require That The State Bar Automatically Grant Candidates The Same Testing Accommodations That They Previously Received In College Or Law School**

The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The "high-level framework," not part of the formal rules proposal, states only that the State Bar will "consider" such prior accommodations, with no commitment as to how it will do so. "High-Level Framework" at Section II(A)(6). This is inadequate.

**The Rules Should Require That The State Bar Give Deference Or More Weight To The Documentation Of A Qualified Professional Who Has Individually Assessed The Applicant Compared To The Opinion Of A Consultant**

The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The "high-level framework" states that the State Bar "shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate." Section

II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), [https://www.ada.gov/regs2014/testing\\_accommodations.html](https://www.ada.gov/regs2014/testing_accommodations.html); *DFEH V. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

**The Rules Should Limit Required Supporting Documentation To That Which Is "Reasonable, Limited, And Narrowly Tailored To The Information Needed"**

The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed." The "high-level framework" appropriately states that required supporting documentation should be "reasonable, limited, and narrowly tailored to the information needed," and that applicants and qualified professional(s) should have "flexibility in the type and source of the supporting documentation." Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require "comprehensive evaluation reports" as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

**The Proposal Should Include An Assessment Of Leadership.**

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

For the reasons stated in this letter, Autism Movement LLC **OPPOSES** the rules changes and associated "high-level framework." If adopted, the proposal would mark a substantial step backwards. The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion.

Sincerely,

Sandra Stanek  
Director, Autism Movement LLC

**Hernandez, Alfredo**

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**From:** Hernandez, Alfredo  
**Sent:** Wednesday, February 1, 2023 10:52 AM  
**To:** Hernandez, Alfredo  
**Subject:** FW: Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar- OPPOSE  
**Attachments:** Leah Kennedy Letter.pdf

**From:** Jennifer Liu <[jliu@liupetersonfisher.com](mailto:jliu@liupetersonfisher.com)>  
**Sent:** Tuesday, January 31, 2023 11:29 PM  
**To:** Ayrapetyan, Louisa <[Louisa.Ayrapetvan@calbar.ca.gov](mailto:Louisa.Ayrapetvan@calbar.ca.gov)>; McFarland, Devan <[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)>  
**Subject:** Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar - OPPOSE

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To the State Bar of California:

I am an attorney licensed to practice law in the State of California, and the Managing Partner of Liu Peterson-Fisher LLP, an employment and civil rights firm based in Burlingame, California. I am submitting my brief comments in opposition to the proposed amendment to the Rule of the State Bar regarding testing accommodations via email because the public comment form available online was closed as of approximately 11:00pm, even though the webpage indicates that the comment period does not close until 11:30pm today, January 31, 2023. I trust that my comments, transmitted prior to 11:30pm on this day, will be reviewed and considered

I will keep my comments brief. I learned about the proposed amendments from a first-year Associate employed by my firm, Leah Kennedy, who graduated from Stanford Law School last spring and was admitted to the Bar late last year. She has also submitted a letter in opposition to the proposed amendments. I am attaching a copy of her letter to this email, since it makes a much stronger and more personal case for opposing the proposed amendments than I could possibly make.

In my legal career, I have worked with dozens of talented junior associates, many of whom were graduates of top law schools and/or former law clerks. Of those, Ms. Kennedy is one of the very best I have worked with. She is smart, hard-working, and conscientious. Even more importantly, she cares deeply about using her legal training to help those in need. In the short time that she has been working at our firm, she has made a significant impact on our cases.

Despite her impressive credentials and qualifications, Ms. Kennedy almost did not become a lawyer last year because of the State Bar's refusal to provide her with testing accommodations. When I read about her experience seeking testing accommodations from the State Bar, I was appalled. Without accommodations, she nonetheless took the State Bar, no doubt sacrificing her own mental health in order to sit for the bar exam. This is not a choice that law graduates with disabilities should ever have to make.

Ms. Kennedy passed, but she passed in spite of the State Bar's procedures for reviewing and granting accommodations. The public would be better served by measures that protect the public from actual harm, and not by erecting unnecessary roadblocks to law graduates with documented disabilities. The public is far worse off without lawyers like Ms. Kennedy in the practice of law.

**Jen**

**Jennifer Liu**  
**Pronouns: she/her/hers**  
**Liu Peterson-Fisher LLP**  
**1204 Burlingame Ave., Suite 3**  
**Burlingame, CA 94010**  
**Main: (650) 461-9000**  
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**Hernandez, Alfredo**

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**From:** Hernandez, Alfredo  
**Sent:** Wednesday, February 1, 2023 10:54 AM  
**To:** Hernandez, Alfredo  
**Subject:** FW: Public comment error

**From:** FLARE Project <[flareforjustice@gmail.com](mailto:flareforjustice@gmail.com)>  
**Sent:** Tuesday, January 31, 2023 11:19 PM  
**To:** Ayrapetyan, Louisa <[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)>  
**Subject:** Re: Public comment error

I tried to submit this public comment before the deadline, but got a message that the comments were closed so please find comment below. Please confirm receipt and that the comment will be reviewed as other comments.

thank you,

Brandie Solovay, Esq.

January 31, 2023

Via Portal and Staff Email

Ruben Duran  
Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
Hailyn Chen  
Jose Cisneros  
Juan De La Cruz  
Gregory E. Knoll  
Melanie M. Shelby  
Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

Board of Trustees  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: OPPOSE - Proposed Amendments to the Rules of the State Bar, With "High-Level Framework," Pertaining to Testing Accommodations on the State Bar

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

I am writing on behalf of the Fat Legal Advocacy, Rights, and Education Project of the Law Office of Brandie Solovay. We are dedicated to making the lives of higher-weight (aka fat) individuals better through advocacy, legal action, and education. We operate at the intersection of weight and disability and other civil rights laws. We are focused on the disproportionate impact that weight discrimination has on certain racial minority groups. Along with other prominent disability justice and disability rights groups, we OPPOSE the proposed amendments to the rules of the State Bar, with the "high level framework." We urge the Board of Trustees to take a strong stance in favor of disability equity and size diversity in the State Bar and adopt an alternative proposal that includes the principles stated herein.

We are committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified disabled and higher weight individuals. A diverse bar with lawyers of all sizes and backgrounds facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers, including higher weight people, is better equipped to serve the varied people and communities who live and work in California, including indigent people.

The original founder of the FLARE Project, which was started twenty-two years ago, shares this experience:

*I was one of only three fat people in my Ivy League college. I was one of only two fat people at Berkeley Law. My law school had very few seats that I could fit in. When I signed up for the Bar Exam I considered requesting an accommodation, but the lengthy process requiring medical certification was too onerous. Like many younger, higher weight people, I faced extreme medical discrimination and did not have easy access to medical providers who were nonstigmatizing and nondiscriminatory. When I arrived for the Bar Exam I was unable to sit comfortably in the small folding chairs. The chairs pitched forward when I sat in them, putting extreme stress on my legs and knees. There were no other chairs and no one was willing to accommodate me with an alternative chair. While other test takers focused on the three-day exam, I was focused on not falling off the chair. I was in pain from having to hold myself in the chair and keep my legs spread around and wrapped into the back legs of the chair. I had to turn the chair around and sit in it backwards to not fall off, holding my chest against the acrylic-upholstered backrest to stay balanced. Not only was this a difficult and unnatural position, but it was unbearably hot because I had to take the whole test with my chest jammed against the uncomfortable fabric. This unnecessary barrier contributed to me failing the exam.*

*Having failed at my first attempt was very distressing and infuriating. A "regular" failure is hard enough, but to fail because I did not have a simple accommodation that would let me take the exam in some degree of physical comfort took a large toll. In addition, there are financial consequences when an applicant has to re-attempt the exam.*

*For my next attempt, I knew I had to go through the accommodation process. Luckily, I was able to find a new doctor who was herself a fat person. This demonstrates the critical importance of having professionals who reflect the community - and what is true in medicine is similarly true in the legal profession. We need fat doctors and we need fat lawyers. She filled out the ridiculous accommodation forms and "prescribed" a chair for me. I remember her shaking her head and saying, "The California State Bar requires a doctor to certify that you have a fat ass and need a fat chair? I don't even know what to write - this is ludicrous."*

*The process was humiliating and really made no sense. I should not have had to go through the expense and absurdity of finding a doctor to corroborate the fact that I was fat and needed a chair that*

*fit. While the State Bar should have accommodated me easily with an accessible chair, instead I had to provide my own chair. As the thousands of exam takers waited to file in, I was the only person parading her own chair through the lines. Again, while other candidates were worried about which topics would be tested, I was dealing with the stigma of throngs of people watching the fat person drag her chair with her. I did pass the exam with this simple accommodation, but I should never have had to go through that experience. I dedicated my legal career to helping fat people fight the type of discrimination I faced by my own State Bar.*

Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude higher weight people from becoming licensed California attorneys, many of whom are disabled under legal definitions, whether or not they identify affirmatively as disabled. Like many disabled people, what they need to participate in the mainstream of the legal profession is simply reasonable accommodation.

Many people with disabilities require reasonable accommodations to take high-stakes exams. For fat people, commonly the accommodation needed is only a sturdy, armless, weight-appropriate chair. Sometimes proximity to the restroom and entrance/exit is also needed.

According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is "guided heavily" by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the DFEH v. LSAC litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be REJECTED, and the Board of Trustees should adopt an alternative proposal that includes the following:

The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. The pool of experts should be composed of higher weight people and people with a wide variety of disabilities, or lived experience in those communities. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the DFEH v. LSAC litigation included such a requirement, but there is no such provision in the State Bar's proposal.

Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified, and that people of all sizes deserve equitable treatment, including access to appropriate seating. Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing disabled and higher weight candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful, as is making them jump through hoops and engage experts when the needed accommodation is blatantly obvious. The State Bar should end its "zero sum game" mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests. There should be no proof required for accommodation needs that are obvious. People who obviously need a larger chair should receive one without needing a medical certification.

The rules should limit required supporting documentation to that which is "reasonable, limited, and narrowly tailored to the information needed" and medical documentation that is prying and personal should never be



required of higher weight people. The rules should limit any supporting documentation required to that which is "reasonable, limited, and narrowly tailored to the information needed."

The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. It should receive training in cultural competency related to weight and disability. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\*\*\*\*\*

For the reasons stated in this letter, the FLARE Project of the Law Office of Brandie Solovay OPPOSES the rules changes and associated "high-level framework." The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion, including access for higher weight people. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

Brandie Solovay, Esq.  
Director  
Fat Legal Advocacy, Rights, and Education Project of the Law Office of Brandie Solovay

Sent from my iPhone

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On Jan 31, 2023, at 7:15 AM, Ayrapetyan, Louisa <[Louisa.Ayrapetvan@calbar.ca.gov](mailto:Louisa.Ayrapetvan@calbar.ca.gov)> wrote:

Good morning,

The form deadline date has been corrected. Please try again and let me know if you have any issues.

I apologize for any inconvenience.

Thank you,

Louisa Ayrapetyan (she/her/hers) | [Hear my name](#)  
Board Secretary/Principal Program Analyst, Office of the Executive Director  
[The State Bar of California](#) | 845 South Figueroa Street | Los Angeles, CA 90017  
213-765-1375 | [louisa.ayrapetyan@calbar.ca.gov](mailto:louisa.ayrapetyan@calbar.ca.gov)

*Working to protect the public in support of the mission of the State Bar of California.*



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**Salary Survey**

Raleigh Levine

To: The State Bar of California

From: Society of American Law Teachers (SALT)

Date: January 31, 2023

Subject: Proposed rule changes addressing the process for seeking and obtaining testing accommodations for the California Bar Exam or the First-Year Law Students' Exam

As a community of progressive law teachers, law school administrators, librarians, and students, the Society of American Law Teachers is committed to advancing teaching excellence, social justice, and diversity. This work is rooted in our shared commitment to improving the legal profession while expanding access to underserved communities.

Consistent with this mission we are deeply concerned about equity issues and find the concerns raised by law students seeking application to and reasonable accommodations from the California Bar to be a matter of concern consistent with our mission.

SALT supports disability rights as well as the proposal that disability accommodations for the bar examination should at minimum mirror accommodations students appropriately received during their legal education.

Law schools and the legal profession have recognized the legal obligation to accommodate students with disabilities and to ensure that their grades accurately reflect their knowledge and abilities. Therein, all accredited law schools comply with ABA Standard 504 which requires experts in disability accommodations and/or psychoeducational evaluations to review all law student requests for accommodations. Therefore, the decisions of law schools should be given deference by the State Bar.

Such deference is reasonable and appropriate because the necessary interactive process has already been accomplished, documented, and implemented by the law school. The record of disability and the record of receiving accommodations should be determinative and binding upon the State Bar and accommodations provided for the bar examination. To presumptively disregard the evidence provided by an accredited institution documenting the previous accommodations given during the applicant's legal education is unfair and potentially discriminatory.

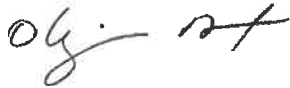
Furthermore, the distinction between the California Bar's interpretation of ordinary and extraordinary accommodations is incorrect. The provision of more than 50% extra time

is ordinary, as is the provision of a private or semi-private room. Other than administrative difficulties, there is no reason why deference for such common disability accommodations should not be identical to those for 50% additional time.

Lastly, the provision of accommodations -- especially those that match prior accommodations -- should be a mechanical process that is done quickly and easily. While the access gap for disability accommodations persists along socioeconomic lines, the documented, implemented accommodations by law schools should overcome concerns about potential abuse. Indeed, requests for accommodations should never be a proxy for investigating the character and fitness of an applicant. As such, the application process for disability accommodations should be identical in ease as compared to that of all other applicants for the bar exam, and the determination almost immediate. Without an appropriately streamlined process, an applicant with disabilities will face an undue burden which will ultimately hinder one's prospect of success.

Thank you again for your invitation to submit comments.

SUBMITTED ON BEHALF OF THE SOCIETY OF AMERICAN LAW TEACHERS BY:



Olympia Duhart  
Co-President



Allyson E. Gold  
Co-President

January 31, 2023

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Chair

Brandon N. Stallings  
Vice-Chair

Mark Broughton  
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Arnold Sowell Jr.  
Mark W. Toney, Ph.D.  
Trustees

**Board of Trustees  
State Bar of California  
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San Francisco, CA 94105**

**CC: Louisa Ayrapetyan  
Board of Trustees Staff Contact  
[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)**

**Devan McFarland  
Committee of Bar Examiners Staff Contact  
[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)**

RE: Opposition to the Proposed Amendments to the Rules of the State Bar of California, with "High-Level Framework," Pertaining to Testing Accommodations on the State Bar.

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

My name is Melissa Gant and I OPPOSE the proposed amendments to the rules of the State Bar of California, with the "high level of framework.

I am an individual not only living with several permanent debilitating physical disabilities, but I am also a current California Bar Exam applicant. Testing accommodations have been and remain crucial for the inclusion of people with disabilities, such as myself, within all steps to and levels of the legal profession. Without the necessary testing accommodations, I would not have been able to graduate from my undergraduate institution let alone attend and graduate from law school. For this reason, I believe that protecting testing accommodations and the process through which they are obtained is paramount.

While the State Bar's proposed amendments to the rules regarding testing accommodations feature attractive words and phrases such as: "streamline the approval process;" "consistent and transparent process;" "limit applicant's need to secure additional documentation and medical evaluation;" and "disability accommodation expert," they appear to make the process that much more difficult for applicants, thereby leading to even greater numbers of testing accommodation denials. As I read through the three sections [1) streamlined approval process/Five-year timeframe, 2) Documentation, and 3) Evaluation) I had several questions and concerns.

#### 1. Streamlined Approve Process/Five Year Timeframe:

The "streamlined approval process" purports to grant the same or equivalent testing accommodations as those approved within the past five years by another testing entity when the request is accompanied by the notice of approved accommodations and includes certification by the applicant that they are still experiencing the same functional limitation. Apparently, this change was designed to save time for some accommodation seekers but not others, thereby failing to be inclusive. Why only five years? Arguably, those whose prior accommodations of the same or equivalent testing accommodations that they are now requesting but that were approved more than five years prior may demonstrate an even greater need for testing accommodations. As mentioned above, I suffer from several permanent debilitating physical disabilities which have and will continue to deteriorate over time. As a result, a greater amount of time had lapsed between my prior grants of testing accommodations by other testing entities and those ultimately granted by the State Bar. Additionally, the degree of accommodation which I require has increased over time as I inevitably lose function.

To make the streamlined approval process more inclusive, the State Bar Rules should automatically grant candidates the same testing accommodations that they previously received on standardized tests, in college, or in law school without unfair restrictions such as the five-year limit. Additionally, candidates should be allowed to petition to modify those automatically granted accommodations with supporting documentation from a qualified medical professional.

#### 2. Documentation:

The revised rules regarding documentation purport to ensure that applicants are only required to submit documentation that is reasonable, limited, and narrowly tailored to the information required to determine an applicant's disability-related functional limitations, their specific access needs, and how those needs relate to the testing accommodations requested. While the rule revision adds that "the State Bar shall defer to documentation from a qualified professional who has made an individualized assessment of the candidate," it still reserves the right to find that the documentation presented does not support the need for the requested accommodation so long as they supply an explanation. This seems problematic. I was diagnosed with several of my debilitating disabilities at a young age and therefore have been treated and closely monitored by specialists for over two decades. These professionals know immense amounts of information about my medical conditions, my limitations due to my conditions, and my accommodation requirements to function effectively day-to-day as well as on an intensive exam such as the California Bar Exam. For the State Bar (through a faceless consultant employed by the same entity) who has no personal knowledge of my condition nor my medical history, to be able to determine that they somehow know better than my treating physicians who has supplied documentation approving specific accommodations, is ridiculous. What qualifications do the phantom consultants have? Do they somehow have special insight into or accommodate individuals with the

unique set of disabilities and limitation of each applicant that they are evaluating? Did they perhaps receive special training which afforded them a license in testing accommodations?

Given the distinctiveness of every single testing accommodation applicant, the revised rules should require the State Bar to give the utmost deference to the documentation from a qualified professional who has individually assessed the applicant over the opinion of a faceless consultant employed by the State Bar that has likely never met the candidate nor knows the extent to which their disabilities/limitations affect them

3. Evaluation:

The State Bar's revised rules for the enhanced testing accommodation process calls for the use of "Disability Accommodation Experts" to evaluate both requests for accommodations and review. The use of these experts appears to be for the purpose of sending accompanying reports to testing accommodations applicants whose requests have either been denied or approved under modification. The expert's reports are meant to replace the excerpts currently provided with the denials/modified acceptances and appear to be slated as final such that following them there will be no further opportunity to request State Bar review of the request. The purpose of this evaluation scheme appears to be two-fold: 1) to eliminate the committee's role as the reviewing body, so as to 2) create a quicker review process by a testing accommodation "expert." After reading through this section my main concern is what qualifications the testing accommodation experts possess that make them the fair and unbiased individuals to evaluate testing accommodation requests? As previously mentioned, testing accommodations are paramount to the success of many individuals with disabilities trying to take the California Bar Exam.

Given that the decision to either grant or deny their request cannot be taken lightly due to its far-reaching effects, extreme caution must be taken to ensure that the individuals who ultimately make the decisions are as diverse as the applicants themselves and unbiased. There should be a system in place to monitor that this rule is being met.

Unfortunately, given the questions and considerations that I've pointed out above, I must OPPOSE the rule changes and associated "high-level framework" proposed by the State Bar. Too much is at stake, not only for those seeking testing accommodations for the California Bar Exam but also to the legal profession. I implore the Board of Trustees to adopt an alternative proposal that focuses on the purpose of testing accommodations, which is to create a level playing field for Bar Exam takers living with disabilities.

Sincerely,  
Melissa Gant

1/31/23

Dear Members of the California Bar Examiners Committee,

Many of the proposed modifications pertaining to the California Bar Exam Rules and internal staff policies and procedures specifically related to California Bar Exam Testing Accommodations appear on its face to be fair and reasonable. However, if you consider how these modifications will be implemented, it will likely result in hundreds of disabled law school graduates being unfairly discriminated against because of the following proposed modifications.

The number of applicants who have been granted a private or semi private room are far below what would be anticipated. The state of California has close to 23% of adults who are disabled. See California Department of Disease Control and Prevention data. However, less than .03 percent of bar exam applicants receive meaningful testing accommodations. This is to include extended time and/or a private or semi private testing room. (<https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/california.html>)

There were approximately 7,164 total applicants who took the July 2022 California bar exam. There are roughly 5 testing accommodation locations throughout the state that provide the accommodation of a private or semi-private testing room. At each location there are approximately 45 applicants who have been granted a private or semi-private room to take their exam. Many of these applicants have also been granted additional time to take their exam.

That means there are approximately 225 bar exam applicants who have been granted a private or semi-private testing room. This is less than .03% of all bar exam applicants for a single test administration. Far below the numbers the California Bar Exam staff have inferred there to be.

(<https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Testing-Centers>)

The existing rules under Chapter 7 and internal staff policies and procedures have been ineffective for at least the past 5 years. I know because I endured significant delays and errors by staff who had little to no proper training. In addition to my accommodation request being wrongly denied, I have helped dozens of other disabled law school graduates apply for their testing accommodations. They too were met with significant errors made by staff members. The proposed rule modifications will not prevent staff

errors, it will however, reduce the ability of applicants to have their paperwork processed properly.

Given the historical discriminatory practices against those with physical or learning disabilities, the current number of applicants granted additional testing time and/or a private or semi private room is far below what would be expected in a state where 23% of the adult population is disabled. The proposed modifications of the internal policies and procedure will further reduce the number of people who are granted testing accommodations of additional time or a private room.

#### **Rule 4.84 (A), (B) When to Submit a request for testing accommodations**

Although California Bar Examiners had previously encouraged exam applicants to submit their request for testing accommodations as far in advance as practicable, there was no mechanism in place for applicants to do so. For example there was not an application visible to applicants until they registered for the bar exam. Telephone calls to the bar exam staff were unanswered and rarely was a call returned. When a request was submitted via the exam applicant portal, those requests for how to submit a request for testing accommodations early were never responded to.

Nothing in the rule or policy recommended amendments will rectify these issues. There is no link or clear instructions of how an applicant can submit their request for testing accommodation early. This is true for first time applicants and repeat test takers. No amount of additional time will prevent staffing errors. Myself and many others have previously submitted our applications on the first day we were able to access the option in the applicant portal, yet staff did not follow up properly or process the paperwork by a reasonable date to allow for additional paperwork to be submitted through the portal.

While the idea of submitting it earlier appears to be a reasonable request, it does nothing to alleviate the problems. The proposed policy modifications do nothing to correct these issues or assure applicants their applications will be received and processed in a timely manner. Additionally, a disabled exam applicant should not be required to apply for the exam or submit testing accommodation requests earlier than a nondisabled applicant. Basic ADA law addresses this type of discriminatory policy.

(D) "Depending on the nature of a disability and the date on which a request is submitted, the State Bar may determine that the changing nature of a disability requires that the applicant submit a new request nearer the examination date or that a decision regarding the request be deferred."



This is vague and ambiguous. It contradicts other rule requirements to submit a request for testing accommodations as early as possible. I am concerned this rule will be abused by staff to avoid making a determination on an applicant's request. What steps are in place to prevent this rule from being abused. **It should not be applicable to applicants with permanent disabilities.**

#### **Rule 4.86 Subsequent requests for testing accommodations**

Under section (B), it states an applicant who is permanently disabled may request the same accommodations.

This appears to allow those with permanent disabilities a streamlined process to request accommodations on a subsequent exam. However, under **Testing Accommodations-High Level Framework State Bar of California staff policy and procedures Attachment C section 1. (A) 1, 2.** will actually require applicants with permanent or severe physical or learning disabilities to endure more extensive scrutiny, causing them to spend unreasonable time, money and effort to repeatedly prove they are permanently disabled.

- I. A. 2. Notwithstanding 1.A.1., applicants will be required to provide documentation to demonstrate exceptional need (as described in 1.A.9 below) if: a.) The prior approval of 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.

This staffing policy is discriminatory against those who have the most severe disabilities and is unfair and there is no reasonable justification for requiring this internal policy. It is not specifically addressed in the proposed rule modifications, however it will significantly and unfairly target those exam applicants with the most severe disabilities. It is insulting to say that only those who are blind deserve an accommodation of additional time or a private testing room. The staff is proposing this policy change to save money.

It is also discriminatory and unreasonable to identify or label requests of additional time or a private testing room as an "Exceptional Testing Accommodation." What rational basis was used for the development of this policy? What justification was given to target those with the most severe needs?

Those requesting additional time or a private testing space are being subjected to unreasonable and prejudicial requirements in violation of ADA.

It is not only requiring them to have professional or medical testing repeated to demonstrate a permanent disability, but they are being required to go far above and beyond what other disabled exam applicants and nondisabled exam applicants are being required to do.

There is no justification for adopting or implementing this policy, except to discourage disabled applicants from applying for testing accommodations. Additional time or a private room is NOT an unreasonable request nor does it harm the integrity of the exam. These applicants are monitored closely by a proctor who sits/stands within feet of them the entire testing period. The ONLY reason this proposal is being suggested is to prevent disabled applicants from receiving testing accommodations, to reduce costs or reduce the amount of staff time needed for these exam applicants.

Even the Social Security Administration does not require extensive testing or documentation every few years for those with permanent disabilities.

I have assisted many bar exam applicants obtain the testing accommodations based on a permanent and severe disability. For each applicant a staff made significant and repeated mistakes processing the application requests.

The improper implementation of policies and procedures by staff directly impacted me over the last 5 years on 3 different bar exam testing dates. I had to withdraw from taking the exam on two occasions because of the missteps of staff, yet I did not receive a refund of my application fee. It was their mistake and not mine, but I paid the high price for their clerical errors. Not only did I miss an opportunity to take the exam, I lost my application fees. Their errors may now require me to seek out professional testing again so I can obtain the same testing accommodations as I was previously granted by the Bar Examiners staff. How is this reasonable? I am happy to sit down and explain step by step the errors made by the staff and how it directly affected my ability to sit for the exam.

My initial application to the California Bar Examiners for testing accommodations was granted without any issues because I spent almost \$10,000 on professional testing, and dozens of hours gathering the necessary documentation. Given the Bar Examiners staff approved my accommodations for permanent physical and learning disabilities, I should not have to submit extensive documentation again. The professional testing and reports submitted with my request for testing accommodations were done within months of my initial application. The testing was done for the sole purpose of obtaining my testing accommodations for the bar exam.

It was also the third time I had professional testing and medical documentation completed as an adult. I have significant permanent physical and learning disabilities that will never improve. If anything, they will decompensate further. Therefore, requiring me to obtain another round of professional and medical testing is unreasonable. I believe the changes being requested are designed to intentionally prevent me and others with severe disabilities from passing the bar exam. The California Bar Examiners claims to be actively increasing diversity and inclusivity, yet their own internal policies are designed to do nothing except create additional barriers to keep those of us who have permanent physical and learning disabilities from being able to practice law.

If the California State Bar Examiners do not want people with permanent and severe disabilities to become attorney's then the California Bar Examiners should reach out to all of the law schools in California and discourage them from granting testing accommodations to their disabled law students. It is unacceptable and discriminatory that California Bar Examiners are adopting policies that effectively will create barriers for disabled law school graduates from having the same or similar testing accommodations for the bar exam that they were granted during law school.

Ask yourself why the staff are pushing for the adoption of these proposed modifications? What purpose will it serve? How will the implementation of these changes directly impact those with the most severe disabilities? Sit with a dozen of those applicants who have experienced the frustrating and draining process of applying for testing accommodations.

#### **Suggested modification for Rule 4.86:**

If an exam applicant, with **permanent disabilities** was previously granted testing accommodations for the California Bar Exam; and their accommodations were based on professional testing and medical documentation completed within 5 years of the date of the initial request. All subsequent request(s) for testing accommodations should be granted without limitations as long as the applicant attest they are still disabled and the accommodations are still necessary. Applicants with permanent physical and learning disabilities should not have to endure rigorous and expensive testing, or arrange for costly and unnecessary medical examinations for a subsequent test.

Exception: If the applicant's bar exam testing accommodations were granted based on another exam, such as MPRE or law school accommodations.

#### **Rule. 4.88 State Bar Response to request testing accommodations.**

"(B) Within sixty days of a request for testing accommodations having been deemed complete... "

However there is no clear definition of what a staff member would deem an application to be complete. If there is a missing signature or if a staff member can't read a section of the application, will they first make an attempt to obtain clarification, or will they simply mark the application incomplete and send it back to the exam applicant. What policy or guidelines will be established to ensure a staff member doesn't wrongfully reject an application because of minor defects?

(C) A notice of denial of a request for testing accommodations    This section does not provide a time frame of when an applicant would be notified their request was denied. This is vague and ambiguous and offers no clear guidance to an applicant and will not ensure they have reasonable time to correct any defects in the paperwork.

Sincerely,

Shirleen Claiche

Please postpone the adoption of the proposed rule modifications until you had time to actually meet with a dozen applicants who experienced significant delays and errors by staff. Also meet with those with severe physical and learning disabilities and see how these modifications will negatively impact their lives.

## TITLE 4. ADMISSIONS AND EDUCATIONAL STANDARDS

## DIVISION 1. ADMISSION TO PRACTICE LAW IN CALIFORNIA

## Chapter 7. Testing Accommodations

## Rule 4.80 Eligibility for testing accommodations

Applicants with disabilities are granted reasonable testing accommodations provided that they ~~are capable of demonstrate ing~~ that they are otherwise eligible to take an examination and, in accordance with these rules, they

- (A) have submitted an approved Application for Registration;
- (B) submit a ~~petition request~~ for testing accommodations on the State Bar's forms with the required documentation;
- (C) establish to the satisfaction of the State Bar the existence of a disability that prevents them from taking an examination under standard testing conditions; that testing accommodations are necessary to address the functional limitations related to their disabilities; and the testing accommodations sought are reasonable and appropriate for their disabilities; and,
- (D) separately apply for the examination for which testing accommodations are requested.

*Rule 4.80 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.*

## Rule 4.81 Testing accommodations in general

- (A) ~~Petitions Requests~~ for testing accommodations are processed on a case-by-case basis.
- (B) The State Bar makes its best effort to process requests ~~petitions~~ for testing accommodations expeditiously but does not process ~~requests petitions~~ that are incomplete.
- (C) Time limits in testing accommodations rules are solely to expedite the processing of ~~requests petitions~~ and are not jurisdictional. The State Bar may extend them for good cause.
- (D) An examination application fee is not refunded if a request for testing accommodations is denied.

*Rule 4.81 adopted effective September 1, 2008; amended effective September 1, 2019.*

## Rule 4.82 Definitions

These definitions apply to the rules on and ~~requests~~ ~~petitions~~ for testing accommodations.

- (A) A “disability” is a physical or mental impairment that causes functional ~~limitations in~~ one or more ~~of an applicant’s~~ major life activities, and limits an applicant’s ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination.
- (B) A “physical impairment” is a physiological disorder or condition or an anatomical loss affecting one or more of the body’s systems.
- (C) A “mental impairment” is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.
- (D) 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 that they do not
  - (1) compromise the security or validity of an examination or the integrity ~~of~~ 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.
- (E) 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.
- (F) A “disability accommodations expert” is a qualified professional designated by the State Bar to make recommendations regarding an applicant’s testing accommodations request.

*Rule 4.82 adopted effective September 1, 2008; amended effective September 1, 2019.*

#### **Rule 4.83 Guidelines for testing accommodations**

- ~~(A) — The State Bar publishes guidelines for documenting the need for testing accommodations based on learning disabilities and attention deficit/hyperactivity~~

~~disorder, including testing required to establish the existence of the disability and the reasonableness of the accommodations requested.~~

~~(B) — The State Bar may publish guidelines for other disabilities accommodated on past examinations.~~

The State Bar shall adopt and make public guidelines outlining the process for establishing the need for testing accommodations. The guidelines shall provide an explanation on how accommodations on past exams are taken into consideration along with a description of the documentation requirements. The State Bar may post guidelines for granting accommodations for other health-related conditions.

*Rule 4.83 adopted effective September 1, 2008; amended effective September 1, 2011* Rule 4.84 When to file a petition for testing accommodations

**Rule 4.84 When to submit a request ~~file a petition~~ for testing accommodations**

- (A) A request ~~Petition~~ for testing accommodations is not an application for a bar examination. ~~Filing one does not constitute filing the other or initiate its processing.~~ An applicant must separately apply for an examination.
- (B) An applicant is encouraged to submit a request ~~for file a Petition~~ for testing accommodations as far in advance as practicable. Testing accommodations requests are processed in the order received. To allow sufficient processing time, general applicants are encouraged to submit their requests ~~petitions~~ at least by the beginning of their last year of law study and attorney applicants no later than six months prior to the examination they wish to take. If an applicant waits until the final ~~examination~~ application deadline for a particular examination to request ~~petition for~~ testing accommodations, it is possible that processing will not be completed or there will be insufficient time to respond to a request for additional information, or to request or process a request for review ~~applicant will not be able to complete all required or available procedures~~ prior to administration of the examination.
- (C) A ~~Petition Request~~ for testing accommodations must be complete and received ~~receipt must be~~ 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.

- (D) Depending on the nature of a disability and the date on which a request petition is submitted filed, the State Bar may determine that the changing nature of a disability requires that the applicant submit file a new request petition nearer closer to the examination date or that a decision regarding the request petition be deferred.

*Rule 4.84 adopted effective September 1, 2008; amended effective November 14, 2009; previously amended effective July 22, 2011; amended effective September 1, 2019.*

#### **Rule 4.85 Initial Request Petition for testing accommodations**

- (A) An applicant with a qualified disability seeking testing accommodations must submit file a request Petition for Testing Accommodations on the State Bar's Request for Testing Accommodations form.
- (B) A request for testing accommodations is considered complete upon receipt of all required forms and any supporting documentation. A request may be deemed incomplete if the required forms are incomplete or filled out incorrectly, or if the State Bar does not receive documentation sufficient to substantiate an applicant's need for testing accommodations. A request that is incomplete by the deadline shall not be processed for that examination.
- (C) An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request is processed on the basis of information submitted. shall be withdrawn by the State Bar as incomplete.
- (D) In addition to the request Petition for testing accommodations, an qualified applicant seeking testing accommodations must also provide may also be required to submit documentation from one or more qualified professionals, including the required form with the petition the specific specialist verification forms the State Bar determines are appropriate to verify the applicant's disability(ies) and need for testing accommodations.
- ~~(E) If a law school has provided testing accommodations, a qualified applicant must submit the petition with the designated State Bar form, completed by a law school official or legal education supervisor.~~
- ~~(F) If another state has provided accommodations for its bar examination, a qualified applicant must submit the petition with the designated State Bar form, completed by an official responsible for testing accommodations.~~
- (E) If an applicant is requesting the same or equivalent accommodations previously approved by another testing agency entity or another state bar has provided accommodations for its examination, a qualified the applicant may be is required to submit the petition with a copy of the accommodations notice.



~~(F) — A Petition for Testing Accommodations is considered complete only upon receipt of all required forms that have been completed according to instructions. A petition that is incomplete by a final examination application deadline is not processed for that examination.~~

(F) An applicant who requests the same or equivalent accommodations based on prior accommodations approved within the past five years must certify that they are still experiencing the same functional limitations caused by the disabilities for which the accommodations were previously approved.

*Rule 4.85 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.*

#### **Rule 4.86 Subsequent ~~requests~~ ~~petitions~~ for testing accommodations**

- (A) Testing accommodations are not automatically extended upon failure of an examination but must be requested for a subsequent examination any time before the examination application deadline.
- (B) An applicant who is permanently disabled may ~~request petition for~~ the same accommodations ~~rather than submit an entirely new petition~~. A request for the same accommodations subsequent petition must be made in accordance with the State Bar's requirements.
- (C) An applicant who has a temporary disability or who seeks different accommodations than those previously granted must ~~submit file~~ a new ~~Petition request~~ for Testing Accommodations by the application final filing deadline if filed in connection with a particular administration of an examination.

*Rule 4.86 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective September 1, 2019.*

#### **Rule 4.87 Emergency ~~requests~~ ~~petitions~~ for testing accommodations**

- (A) An applicant who becomes disabled after a final examination application filing deadline may submit a request file a Petition for testing accommodations, which must include the forms required by Rule 4.85, with a request that it be considered as an emergency request. Petition. This rule does not apply to requests for testing accommodations for disabilities that existed before the final deadline for an examination application, whether or not they were diagnosed or a visit to a treating professional could be arranged. Documentation explaining the nature, date, and circumstances of the emergency must be submitted filed with the request. petition.
- (B) The State Bar must receive the request and supporting documentation Receipt of the petition and supporting documentation must be at least ten 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. This rule does not apply to disabilities that existed before the final deadline for an examination application, whether or not they were diagnosed or a visit to a treating professional could be arranged.~~

*Rule 4.87 adopted effective September 1, 2008.*

**Rule 4.88 State Bar response to request ~~Petition~~ for testing accommodations**

- (A) An applicant who has ~~submitted filed~~ a ~~Petition request~~ for testing accommodations in accordance with these rules ~~shall be~~ is notified in writing within thirty days of receipt when additional information is required. ~~The request for testing accommodations is deemed incomplete if the applicant fails to provide the additional information requested by the deadlines set forth in Rule 4.84(C), and within sixty days when the petition is granted, granted with modifications, denied, or action is pending.~~
- (B) ~~Within sixty days of a request for testing accommodations having been deemed complete, the State Bar will notify the applicant in writing if the request is granted, granted with modifications, denied, or action is pending. If a complete petition is filed at least six months before the examination for which testing accommodations are sought, the applicant may expect a final determination at least a month before the examination.~~
- (C) ~~With the consent of the petitioner, the State Bar or a consultant may confer with a specialist who has treated the petitioner.~~
- (C) A notice of denial of a ~~request~~ Petition for testing accommodations or a notice of approval with modifications ~~ed grant shall~~ state the reasons for the denial or modifications, ~~and advises the petitioner of any right to appeal.~~ The notice ~~will~~ may include a report from a disability accommodations expert designated by the State Bar explaining why the requested accommodations were modified or denied, and advising the applicant of the right to request a review. ~~an excerpt of a consultant's evaluation.~~

*Rule 4.88 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective September 1, 2019.*

**Rule 4.89 Applicant response to modified grant or denial ~~proposed modification or request for information~~**

~~An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request is processed on the basis of information submitted.~~

- (A) An applicant notified that a request for testing accommodations has been denied or approved with modifications may request a review. The request must be submitted no more than ten days after the date of the notice of denial or modified grant. The applicant may submit supporting documentation with the request for review.

- (B) 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 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 adopted effective September 1, 2008.*

**Rule 4.90 ~~Committee~~ Review of denied or modified request petition**

- ~~(A) — An applicant notified that a Petition For Testing Accommodations has been denied or granted with modifications may request a review by the Committee. The request must be submitted within ten days of the date of the denial or modified grant or some other reasonable period established by the Committee.~~
- (A) Upon receipt of the request for review submitted pursuant to rule 4.89, the Director of Admissions may reverse the decision and approve the request or refer the decision to a disability accommodations expert designated by the State Bar for analysis of the record and recommendation as to the disposition of the request. The disability accommodations expert shall not have participated in the evaluation of the applicant's initial request for testing accommodations. The analysis shall be de novo based solely on the written record; the applicant shall not be permitted to present oral testimony. 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 future administration of the examination.
- (B) After ~~evaluating~~ reviewing the request for review, written record, and supporting documentation, and the disability accommodations expert's analysis and recommendation, the Director of Admissions may withdraw the prior decision and grant the accommodations requested, modify the prior decision, or affirm the prior decision.
- (C) ~~If~~ The Director of Admissions' decision on a request for review is final and shall not be subject to further review by the State Bar. ~~does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original petition and supporting documentation provided by the applicant and the Director of Admissions. Oral argument is not permitted. The review must be conducted in closed-session either at a regular meeting or one specially convened. The Committee delegates decision-making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.~~

*Rule 4.90 adopted effective September 1, 2008; amended effective September 1, 2019.*

**Rule 4.91 Confidentiality of Petitions for Testing Accommodations**

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

*Rule 4.91 adopted effective September 1, 2008.*

**Rule 4.92 False or misleading information in requests ~~Petition~~ for testing accommodations**

False or misleading information in a request ~~Petition~~ 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 adopted effective September 1, 2008.*

**Rule 4.93 Committee of Bar Examiners oversight**

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

**State Bar of California  
Testing Accommodations Framework<sup>1</sup>**

**I. Requests for Approval of Prior Testing Accommodation(s)**

**A. Prior Testing Accommodation(s) Approved for: First Year Law Students' Exam (FYLSX), California Bar Exam (CBX), Legal Specialization Exam (LSX) or Multistate Professional Responsibility Exam (MPRE)**

1. Except as specified in I.A.2, the requested accommodation(s), or the equivalent accommodation(s) offered by the State Bar<sup>2</sup>, **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)**:
    - i. Most recently approved for the MPRE; or
    - ii. Most recently approved among the following exams: FYLSX, CBX, or LSX; or
    - iii. If the most recent approval of accommodation(s) for the MPRE was based on a past temporary disability: for the most recently approved accommodation(s) for the MPRE (within the past 5 years) for which accommodation(s) were based on a permanent disability; or
    - iv. If the most recent approval of accommodation(s) for the FYLSX, CBX, or LSX was based on a past temporary disability: for the most recently approved accommodation(s) among the FYLSX, CBX, or LSX (within the past 5 years) for which accommodation(s) were based on a permanent disability.
  - c. The applicant provides **proof of the prior approval** of accommodation(s) (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 exam for which the applicant is requesting accommodation(s); and
  - e. The applicant certifies 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 in II.A.9 below) if:

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<sup>1</sup> This Framework is currently undergoing plain language editing. Upon completion of that editing the framework will be in final status.

<sup>2</sup> The State Bar does not offer certain types of accommodations approved by other testing entities, such as stop-the-clock breaks. If the applicant was approved for 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.

- a. The prior approval of 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.

**B. Prior Testing Accommodation(s) 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 accommodation(s), or the equivalent accommodation(s) offered by the State Bar<sup>3</sup>, **shall be granted if**:
  - a. The accommodation(s) were approved **within the past five years**; and
  - b. The applicant has **not subsequently taken the FYLSX, CBX, LSX, or MPRE**, or has **not subsequently been approved for, or denied, accommodation(s) for the FYLSX, CBX, and/or MPRE<sup>4</sup>**; and
  - c. The request is for the **same (or lesser) accommodation(s)**:
    - i. Most recently approved among the following exams: a bar exam in another U.S. jurisdiction, LSAT, GRE, GMAT, MCAT, DAT, SAT I, SAT II, ACT, or GED; or
    - ii. If the most recent approval of accommodation(s) for a bar exam in another U.S. jurisdiction, LSAT, GRE, GMAT, MCAT, DAT, SAT I, SAT II, ACT, or GED was based on a past temporary disability: for the most recently approved accommodation(s) among a bar exam in another U.S. jurisdiction, LSAT, GRE, GMAT, MCAT, DAT, SAT I, SAT II, ACT, or GED (within the past 5 years) for which accommodation(s) were based on a permanent disability.
  - 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 exam for which the applicant is requesting accommodation(s); 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 in II.A.9 below) if:
  - a. The prior approval of 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 Accommodation(s)**

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<sup>3</sup> See, fn 1, *supra*.

<sup>4</sup> 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.

- a. 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):
  - i. The applicant must submit documentation **tailored** to support the greater accommodation(s).
  - ii. The State Bar shall approve the remainder of the request, if any, for the same (or lesser) accommodation(s) previously approved.
  - iii. The State Bar **shall not reevaluate whether the applicant has a covered disability** within the meaning of the ADA.
- b. If an applicant requests **additional or 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 approval of accommodation(s) was for additional testing time only):
  - i. The applicant must submit documentation **tailored** to support the additional or different accommodation(s).
  - ii. The State Bar shall approve the remainder of the request, if any, for the same (or lesser) accommodation(s) previously approved
  - iii. The State Bar **shall not reevaluate whether the applicant has a covered disability** within the meaning of the ADA.
- c. If an applicant is requesting the same or equivalent accommodation(s) on any exam specified above except for the FYLSX, CBX, or LSX, and the request is for exceptional accommodation(s) of **more than 50% additional testing time and/or a private room**, and the applicant does not have a severe visual impairment:
  - i. 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.
  - ii. The State Bar shall approve the remainder of the request, if any, for the same (or lesser) accommodation(s) previously approved.
  - iii. The State Bar **shall not reevaluate whether the applicant has a covered disability** within the meaning of the ADA.
- d. 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.

#### **D. Application of Same Testing Accommodation(s) Process**

Applicants are not permitted to use the process described in I.A. or I.B for the approval of testing accommodation(s) in such a way that results in using approved accommodation(s) from more than five years prior to approve the current request. For example, an applicant was approved for testing accommodations on the MPRE in July 2019; based on that approval, the applicant is approved for testing accommodations on the CBX in July 2023. The applicant then requests approval of the same testing accommodations approved for the July 2023 CBX for the LSX in October 2026. This

would be impermissible, as it is effectively using the accommodations granted in 2019 (more than five years prior) to seek accommodations in 2026. In such instances, 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 or 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 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 defer to documentation from a qualified professional who has made an individualized assessment of the candidate that supports the need for the requested testing accommodation(s). Where the State Bar finds that the documentation does not support the need for the requested accommodation(s), the State Bar shall supply an explanation.
  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 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. Approvals with Modifications and Denials**

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

### **IV. Request for Review**

- A. An applicant may request review of an approval with modifications or denial one time in advance of the exam for which they plan to sit if time permits.
- B. Upon receipt of a request for review, the Director of Admissions shall either reverse the decision and approve the request or refer the request for review to a different disability accommodations expert than the disability accommodations expert who recommended the initial denial or modification.
  - 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 disability accommodations 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 review process described in IV.A – C, above.

### **V. Committee of Bar Examiners Oversight**

- A. The Committee of Bar Examiners shall provide oversight to ensure consistent application of standards and processes and to monitor trends in accommodations requests, processing, and decisions. To carry out this requirement, the Committee shall receive written reports from the State Bar at least two times per year highlighting a random sample of cases in which accommodations were granted, denied, or approved with modifications, including those subject to the new 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.

## Testing Accommodations Request Form

Please read the **Testing Accommodations Instructions** before completing this form.

- ☐ Please check here if this Request is *an emergency petition under State Bar Rule 4.87* because this disability arose after the submission deadline had already passed.

### Section 1: Background Information

1. Name: \_\_\_\_\_
2. File Number: \_\_\_\_\_
3. Please select the exam you are currently requesting testing accommodations for: [Select only one.]
  - ☐ First Year Law Students' Exam (FYLSX): Month: \_\_\_\_\_ Year: \_\_\_\_\_
  - ☐ California Bar Exam (CBX): Month: \_\_\_\_\_ Year: \_\_\_\_\_
  - ☐ Legal Specialization Exam (LSX): Subject: \_\_\_\_\_ Year: \_\_\_\_\_
4. What is the nature of your disability? [Select all that apply.]
  - ☐ Visual impairment
  - ☐ Hearing impairment
  - ☐ Physical impairment
  - ☐ Psychological impairment
  - ☐ Cognitive impairment
  - ☐ Learning Impairment
  - ☐ Other: \_\_\_\_\_

## Section 2: Request for Same Accommodations Received on FYLSX, CBX, and/or MPRE

(If you did not receive testing accommodations on the FYLSX, CBX, or MPRE, skip this Section and proceed to Section 3.)

1. I received testing accommodations within the past five years for the following exams:

[Select all that apply.]

☐ FYLSX

Accommodations approved: \_\_\_\_\_ (month) \_\_\_\_\_ (year)

☐ CBX

Accommodations approved: \_\_\_\_\_ (month) \_\_\_\_\_ (year)

☐ LSX

Accommodations approved: \_\_\_\_\_ (month) \_\_\_\_\_ (year)

☐ Multistate Professional Responsibility Exam (MPRE)

Accommodations approved: \_\_\_\_\_ (month) \_\_\_\_\_ (year)

2. Were any of those testing accommodations approved for a limited time due to a temporary disability?

☐ Yes

☐ FLSX (Approved until: \_\_\_\_\_)

☐ CBX (Approved until: \_\_\_\_\_)

☐ LSX (Approved until: \_\_\_\_\_)

☐ MPRE (Approved until: \_\_\_\_\_)

☐ No

3. I am requesting the same testing accommodations that were approved within the past five years for the following exam: [Select only one choice.]

- ☐ The most recent FYLSX I registered for or the most recent for which accommodations were approved based on a permanent disability
- ☐ The most recent CBX I registered for or the most recent CBX for which accommodations were approved based on a permanent disability
- ☐ The most recent LSX I registered for or the most recent LSX for which accommodations were approved based on a permanent disability
- ☐ MPRE or the most recent MPRE for which accommodations were approved based on a permanent disability
- ☐ I am requesting different or more accommodations. If you check this box, **please review the Testing Accommodations Instructions**, and proceed to Section 3 or 4.

4. If you checked MPRE for question 3: are the testing accommodations you received on the MPRE the same or equivalent to the testing accommodations the State Bar of California provides? **(See list in the Testing Accommodations Instructions.)**

☐ Yes

☐ No

5. Do you certify that you still have the same disability-related functional limitations that qualified you for accommodations for the test indicated in response to question 3?

☐ Yes

☐ No

6. Are you requesting more than 50 percent additional time (i.e., more than time and one-half) and/or testing in a private room?

☐ Yes (If you checked this box, and your disability is not a severe visual impairment, please review the **Testing Accommodations Instructions** and proceed to section 4.)

☐ No

If you are requesting the same accommodations you received on the MPRE, please attach proof of the accommodations approved.

Based on your answers above, this form may be nearly complete. *Stop here and review the **Testing Accommodations Instructions** for the next step.*

### Section 3: Request for Same Testing Accommodations Received on Other Exams

If you did not receive testing accommodations on a bar exam in another U.S. jurisdiction, or on the LSAT, GRE, GMAT, MCAT, DAT, SAT I or II, ACT, or GED, skip this Section and proceed to Section 4.

1. My request for testing accommodations was denied within the past five years for the following exams: [Select all that apply.]

☐ FYLSX

☐ CBX

☐ LSX

☐ MPRE

☐ I did not apply for testing accommodations for any of these exams

2. I sat for the following exams without testing accommodations within the past five years: [Select and complete all that apply.]

☐ FYLSX Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ CBX Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ LSX Subject: \_\_\_\_\_ Year: \_\_\_\_\_

☐ MPRE Month: \_\_\_\_\_ Year: \_\_\_\_\_

3. I received testing accommodations **within the past five years** for the following: [Select and complete all that apply.]

☐ A bar exam in another U.S. jurisdiction Name of Jurisdiction \_\_\_\_\_  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ Law School Admission Test (LSAT)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ Graduate Record Examinations (GRE)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ Graduate Management Admission Test (GMAT)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ Medical College Admission Test (MCAT)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ Dental Admission Test (DAT)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ SAT I or SAT II  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ American College Testing (ACT)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

☐ General Educational Development (GED)  
Accommodations approved: Month: \_\_\_\_\_ Year: \_\_\_\_\_

4. Were any of those testing accommodations approved for a limited time due to a temporary disability?

☐ Yes

☐ Bar Exam in U.S. Jurisdiction (Approved until: \_\_\_\_\_)

☐ LSAT (Approved until: \_\_\_\_\_)

- ☐ GRE (Approved until: \_\_\_\_\_)
- ☐ GMAT (Approved until: \_\_\_\_\_)
- ☐ MCAT (Approved until: \_\_\_\_\_)
- ☐ DAT (Approved until: \_\_\_\_\_)
- ☐ SAT I or SAT II (Approved until: \_\_\_\_\_)
- ☐ ACT (Approved until: \_\_\_\_\_)
- ☐ GED (Approved until: \_\_\_\_\_)
- ☐ No

5. I am requesting the same testing accommodations that were approved within the past five years for the most recent exam identified in question 3 or the same testing accommodations approved most recently based on a permanent disability:

- ☐ Yes
- ☐ No (If you checked this box, **please review the Testing Accommodations Instructions**, and proceed to Section 4.)

6. If you answered YES to Question 5, are those testing accommodations you received the same or equivalent to the testing accommodations the State Bar of California provides?

**(See list in the Testing Accommodations Instructions)**

- ☐ Yes
- ☐ No

Please attach proof of the accommodations received.

7. If you answered YES to Question 6, do you certify that you still have the same disability-related functional limitations that qualified you for accommodations for the exam referenced in Question 5?



☐ Yes

☐ No

8. Are you requesting more than 50 percent extra time (i.e., more than time and one-half) and/or testing in a private room?

☐ Yes (If you checked this box and your disability is not a severe visual impairment, please review the **Testing Accommodations Instructions** and proceed to section 4)

☐ No

Based on your answers above, this form may be nearly complete. *Stop here and review the **Testing Accommodations Instructions** for the next step.*

#### Section 4: Testing Accommodations Requested

1. Please select the testing accommodations you are requesting for the essay and written sections (essays and performance test): [Select all that apply.]

☐ 25% more testing time (i.e., time-and-one-quarter)

☐ 50% more testing time (i.e., time-and-one-half)

☐ Assistive technology (please specify): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ Semi-private room

☐ Seating near a restroom

☐ Large-print font: 18-point font

☐ Large-print font: 24-point font

☐ Wheelchair accessibility (if table, specify height) \_\_\_\_\_

☐ Other (please specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Please select the testing accommodations you are requesting for the multiple-choice section: [Select all that apply.]

☐ 25% more testing time (i.e., time-and-one-quarter)

☐ 50% more testing time (i.e., time-and-one-half)

☐ Assistive technology (please specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Semi-private room

☐ Seating near a restroom

☐ Large-print font: 18-point font

☐ Large-print font: 24-point font

☐ Wheelchair accessibility (if table, specify height) \_\_\_\_\_

☐ Other (please specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Section 5: Statement of Need

Testing accommodations are available to applicants:

- Who have one or more disability-related functional limitation(s);
- As compared to most people in the general population;

- As the result of one or more disabilities; and
- Who are unable to access a State Bar-administered exam under standard test conditions.

**Before you complete this Section, please review the standard test conditions described in the Testing Accommodations Instructions. If you need more space to answer any of the questions below, please attach additional pages.**

1. Please provide a reasonable explanation of your disability-related functional limitation(s) as compared to how most people in the general population function in the same area(s).

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2. Please provide a reasonable explanation of how your disability-related functional limitation(s) impact your ability to access a State Bar-administered exam under standard test conditions.

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3. Please provide a reasonable explanation of why the specific testing accommodations you are requesting are necessary to ensure your access to a State Bar-administered exam.

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4. If you are requesting greater than 50 percent more testing time and/or a private room, and don't have a severe visual impairment, please provide a reasonable explanation of why 50 percent more testing time and/or a semi-private room aren't sufficient to allow you to access a State Bar-administered exam. Include all relevant information you want the State Bar to consider in determining whether you have demonstrated an exceptional need.

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## Section 6: Certification

**This form is part of the attorney admissions process. Applicants are responsible for providing complete and accurate information. Applicants who provide false or misleading information to support a testing accommodation request may receive a negative determination of their moral character.**

☐ I certify that all information provided on this form is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

If you are unable to sign this form, please have someone authorized to sign on your behalf sign and date this form in your presence.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Qualified Professional Certification Form

For the applicant: Before completing and submitting this form to your Qualified Professional, please read the **Testing Accommodations Instructions** [LINK] to confirm who qualifies as a Qualified Professional.

### Section 1: Background Information [To be completed by the applicant.]

1. Applicant Name: \_\_\_\_\_
2. Applicant File Number: \_\_\_\_\_
3. Applicant Date of Birth: \_\_\_\_\_

### Section 2: Prior Documentation of Disability [To be completed by the applicant.]

1. I am seeking testing accommodations based on psychological, cognitive, or learning disabilities:  
  
☐ Yes  
  
☐ No
2. If you answered Yes to question 1, were you examined by one or more Qualified Professionals within the past five years about this disability?  
  
☐ Yes  
  
☐ No
3. I am seeking testing accommodations based on a disability that is NOT a psychological, cognitive, or learning disability.  
  
☐ Yes  
  
☐ No
4. If you answered "Yes" to question 3, were you examined by one or more Qualified Professionals after you turned 13 years old for the disability for which you are seeking testing accommodations?  
  
☐ Yes

☐ No

5. I have the following documentation from one or more of the Qualified Professionals that examined me during the time frame identified in Questions 2 and/or 4, above [Please select all that apply. Attach that documentation to this form]:

- ☐ Previous Individualized Education Program (IEP)
- ☐ Previous Section 504 Plan
- ☐ Previous formal plan from a private school
- ☐ Previous formal plan from a workplace
- ☐ Evaluation from a Qualified Professional
- ☐ Other documentation of disability from a Qualified Professional you believe is relevant to your request

☐ I do not have any of above documentation.

6. If you have any of the documentation described in question 5: do you certify that you are currently experiencing the same disability-related functional limitation(s) described in one or more of those source documents?

☐ Yes

If you checked more than 1 box in response to question 5, please identify the document(s) to which this "Yes" response applies: \_\_\_\_\_

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☐ No

## Qualified Professional Certification Form

Applicant: Please have one or more Qualified Professionals complete Sections 3, 4, and 5 below.

Qualified Professional: Please read the attached **Testing Accommodations Instructions** [link] carefully for help in completing this form and to confirm that you qualify to complete this form. If you need more space to answer any of the questions below, **please attach additional pages**.

### Section 3: Current Evidence of Disability

1. Applicant Name: \_\_\_\_\_
2. Applicant File Number [to be completed by applicant]: \_\_\_\_\_
3. Applicant Date of Birth: \_\_\_\_\_
4. Qualified Professional Name: \_\_\_\_\_
5. Qualified Professional Title: \_\_\_\_\_
6. Qualified Professional License/Certification No.: \_\_\_\_\_
7. Qualified Professional Address: \_\_\_\_\_
8. Please provide a brief statement of your professional qualifications. Include your expertise in the disability(-ies) discussed in this request. (Please attach additional pages if needed)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. What is the nature of the applicant's disability(-ies) [Check all that apply]:
  - ☐ Visual impairment
  - ☐ Hearing impairment
  - ☐ Physical impairment
  - ☐ Psychological impairment

☐ Cognitive impairment

☐ Learning impairment

☐ Other: \_\_\_\_\_

10. Have you made an individualized assessment of the applicant?

☐ Yes

☐ No

11. If you answered YES to Question 10, when did you last evaluate the applicant

\_\_\_\_\_

#### Section 4: Accommodation(s) Recommended by the Qualified Professional

1. For the **written** portions of a State Bar-administered exam (i.e., essays and performance test), please select the testing accommodation(s) you are recommending that the applicant receive:

☐ 25% more time (i.e., time-and-one-quarter)

☐ 50% more testing time (i.e., time-and-one-half)

☐ Assistive technology (please specify): \_\_\_\_\_

☐ Semi-private room

☐ Seating near a restroom

☐ Large-print font: 18-point font

☐ Large-print font: 24-point font

☐ Wheelchair accessibility (if table, specify height) \_\_\_\_\_

☐ Other (please specify): \_\_\_\_\_

\_\_\_\_\_



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2. For the **multiple-choice** portions of a State Bar-administered exam, please select the testing accommodation(s) you are recommending that the applicant receive:

- ☐ 25% more time (i.e., time-and-one-quarter)
- ☐ 50% more testing time (i.e., time-and-one-half)
- ☐ Assistive technology (please specify): \_\_\_\_\_
- ☐ Semi-private room
- ☐ Seating near a restroom
- ☐ Large-print font: 18-point font
- ☐ Large-print font: 24-point font
- ☐ Wheelchair accessibility (if table, specify height) \_\_\_\_\_
- ☐ Other (please specify): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Section 5: Statement of Qualified Professional

Testing accommodation(s) are available to applicants:

- Who have one or more functional limitation(s);
- As compared to most people in the general population;
- As the result of one or more disabilities; and
- Are unable to access a State Bar-administered exam under standard test conditions.

Before you complete Section 5, please review the standard test conditions described in the Testing Accommodations Instructions.

Please use this form to provide your written statement on the applicant's need for testing accommodations. If appropriate, attach any relevant supporting documentation.

These relevant documents should verify the applicant's disability-related functional limitations. These documents should also describe the applicant's specific access needs and how those needs relate to the recommended testing accommodations recommended. Examples of this documentation can include the following:

- A relevant history;
- Standardized test data from appropriate evaluation instruments;
- A written statement describing the applicant's disability, impairment, areas of limitation, effects on activities of daily living, and testing accommodation needs.

☐ I have reviewed the standard test conditions. The recommended accommodations identified in Section 4 above are based on an understanding of how the exam would be administered under standard test conditions, in the absence of the recommended accommodation(s).

☐ Yes

☐ No

☐ Please explain the applicant's disability-related functional limitation(s) as compared to how most people in the general population function in the same area(s). For example, discuss barriers to access the applicant routinely encounters. \_\_\_\_\_

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- ☐ Please explain how the applicant's disability-related functional limitation(s) impact the applicant's ability to access a State Bar-administered exam under standard test conditions. For example, what barriers to access would you expect the applicant to face?

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- ☐ Please explain why the specific testing accommodation(s) you are recommending are necessary to ensure the applicant's access to and to help reduce specific barriers to a State Bar-administered exam. (Note: Simply naming the diagnosis is not an explanation). \_\_\_\_\_

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- ☐ If you are recommending more than 50 percent extra testing time and/or a private room, and the applicant does not have a severe visual impairment, please provide a reasonable explanation of why 50% additional testing time and/or a semi-private room are not sufficient to provide the applicant with access to a State Bar-administered exam. Include all relevant and information you would like the State Bar to consider in determining whether the applicant has established an exceptional need. \_\_\_\_\_

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☐ I certify that to the best of my knowledge all information provided on this form is true and correct.

Signature of Qualified Professional: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

## 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 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’ 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 possess expertise in the disability for which modifications or accommodations are sought.
- (H) 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 or 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 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 consultant 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) [If the staff recommendation is approved in lieu of the working group recommendation]  
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 or denied.

#### **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. The  
State Bar shall approve respects the responds to Requests for Testing Accommodations  
consistent with the timelines set out in these rules;
  - (6) The State Bar offers the same or equivalent testing accommodations; and
  - (7) The testing can be administered in three (3) days and does not require a private room. If  
the requested testing accommodations cannot be administered in three (3) days or  
requires 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.

- (D) [IF THE WORKING GROUP RECOMMENDATION IS ADOPTED BY THE CBE] This automatic approval process shall also apply to testing accommodations approved in a U.S. law school for timed examinations.

#### **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 testing that cannot be administered in three (3) days or which require a private room, the certification by a qualified professional described in subsection (B) shall include an explanation of why accommodations that allow for testing in three (3) days or fewer, or in a semi-private room, 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 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. The request 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 fourteen (14) day deadline 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 the Subcommittee on Examinations. 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 applicant may request the same testing accommodation previously granted by

the State Bar simply by certifying that the applicant has 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.