

HAWAII BOARD OF BAR EXAMINERS
POLICY ON APPLICANTS WITH DISABILITIES

(Approved by the Hawaii Board of Bar Examiners on September 23, 1998)

(Approved by the Supreme Court of Hawaii on October 7, 1998)

I. POLICY

It is the policy of the Hawaii Board of Bar Examiners (“Board”) to administer the bar examination in a manner that does not discriminate, on the basis of disability, against a qualified applicant with a disability.

An applicant who is otherwise eligible to take the Hawaii bar examination may file a request for non-standard testing accommodations if, by virtue of a disability, the applicant cannot demonstrate under standard testing conditions that the applicant possesses the essential skills and aptitudes deemed necessary by the Supreme Court of Hawaii and the Board for admission to the practice of law in Hawaii.

II. VOLUNTARY DISCLOSURES OF DISABILITY

Any applicant for the Hawaii bar examination may voluntarily disclose to the Board that the applicant has a disability as hereinafter defined. No applicant need disclose to the Board that the applicant has a disability unless the applicant is requesting non-standard testing accommodations.

III. DEFINITIONS

For the purpose of this policy, the following definitions shall apply:

- A. “Disability” shall mean any of the following:
1. a physical or mental impairment that substantially limits one or more of the major life activities of the applicant and that substantially limits the ability of the applicant to demonstrate, under standard testing conditions, that the applicant possesses the essential skills and aptitudes deemed necessary by the Supreme Court of Hawaii and the Board for admission to the practice of law in Hawaii;
 2. a record of having such an impairment; or
 3. being regarded as having such an impairment.

- B. “Physical impairment” shall mean any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organ, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
- C. “Mental impairment” shall mean any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- D. “Non-standard or reasonable testing accommodations” shall mean an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant’s disability without doing any of the following:
 - 1. Fundamentally altering the nature of the examination or the Board’s ability to determine through the bar examination whether the applicant possesses the essential skills and aptitudes deemed necessary by the Supreme Court of Hawaii and the Board for admission to the practice of law in Hawaii;
 - 2. imposing an undue burden on the Board;
 - 3. compromising the security of the examination;
 - 4. compromising the integrity, the reliability, or the validity of the examination.

IV. REQUEST FOR NON-STANDARD TESTING ACCOMMODATIONS

- A. A request for non-standard testing accommodations shall be on the forms prescribed by the Board and shall consist of all the following:
 - 1. a statement of the applicant, including a description of the applicant’s disability and the non-standard accommodations requested;
 - 2. a certificate of the applicant’s medical or psychological authority. The cost of obtaining professional certification including the certificate from medical and/or psychological authority shall be borne by the applicant;

3. a certificate from any educational institution, employer, or other testing organization that provided non-standard accommodations to the applicant while the applicant attended the educational institution or was employed by the employer, or took other examinations;
 4. an authorization for release of records from the applicant's medical and/or psychological authorities for the purpose of determining whether the applicant has a disability as defined herein and whether non-standard or reasonable accommodation is appropriate.
- B. The applicant may file any additional documentation in support of the request.
- C. A request for non-standard testing accommodations for an examination shall be filed as part of the applicant's application by the deadline in Rule 1.
- D. All forms necessary to complete a request for non-standard testing accommodations shall be available from the Supreme Court Board of Bar Examiners.
- E. An applicant who becomes disabled after timely filing his/her application may request non-standard testing accommodations after the deadline if: (1) the applicant's application for the Hawaii bar examination is complete in all other respects; and (2) the applicant promptly submits a written request for non-standard testing accommodations; written certified medical documentation of the need for the non-standard accommodations that provides the nature and extent of the disability, the date the disability arose, and the non-standard testing accommodations requested.
1. The ADA Committee or its designee (Committee) shall consider emergency requests on a case-by-case basis using the guidelines set forth in this policy.
 2. Decisions on emergency request shall be made as soon as practicable and shall be communicated in writing to the applicant as soon as practicable. The Committee may deny an emergency request if there is insufficient time remaining before the examination to make a determination on the merits or to provide appropriate accommodations without prejudice to the request for non-standard accommodations being carried over to the next regularly scheduled bar examination.

V. DECISIONS ON REQUEST FOR NON-STANDARD ACCOMMODATIONS

A. Procedures for Review of Requests

1. The Committee in consultation with the Application Review Committee, shall review all requests for non-standard testing accommodations filed in accordance with this policy. Incomplete requests or requests that otherwise do not comply with the requirements of this policy may be rejected for consideration by the Committee. The Committee may request an applicant to submit additional information in support of the applicant's request. The Committee may seek the assistance of a medical, psychological, or other authority designated by the Committee in reviewing a request.

The Committee may request the applicant to undergo an independent medical and/or psychological examination at the Board's expense.

2. The Committee's decision on a request shall be in writing and sent to the applicant by certified mail to the address provided by the applicant on the request. The committee's denial or modification of a request shall include a statement of the reasons for denial or modification. The Committee shall also provide the applicant with a copy of the written report of any expert it consulted in reviewing the request and a copy of any independent medical examination performed at the request of the Committee.
3. An applicant may request a hearing on the Committee's denial. Hearings may be conducted by telephone conference call at the request of the applicant or the Committee.

B. Standards for Decision on the Merits

1. The Committee shall grant a request and provide non-standard testing accommodations to an applicant if it finds all the following:
 - a. the applicant is a qualified applicant with a disability who is otherwise eligible to take the bar examination;
 - b. the non-standard testing accommodations are necessary to ameliorate the impact of the applicant's disability;
 - c. the non-standard testing accommodations are reasonable accommodations.

2. The Committee shall determine what non-standard testing accommodations are reasonable. The Committee may provide accommodations different from those requested by the applicant if the Committee determines that the accommodations provided will effectively ameliorate the impact of the applicant's disability. If an applicant is permitted to dictate answers for the essay portion of the examination, those answers shall be transcribed by the personnel selected solely by the Committee for that purpose and the cost of the transcription shall be borne by the Board.

VI. CONFIDENTIALITY

All requests for non-standard testing accommodations, supporting documentation, and information developed by the Board with respect to the requests shall remain confidential in accordance with Rule 1.3(f)(5) of the Rules of the Supreme Court of the State of Hawaii.