

Rule 104 - Testing Accommodations.

- A. Application Deadline for Testing Accommodations.** An applicant who claims a disability and who seeks an accommodation to sit for the Uniform Bar Examination shall submit a request for the accommodation with supporting evidence by the application filing deadline for the relevant Uniform Bar Examination administration unless the disability occurs between the application filing deadline and the relevant Uniform Bar Examination administration.
- B. Consideration of Testing Accommodation Requests.** Requests for testing accommodation are considered on a case-by-case basis. To qualify for accommodation, the requesting applicant must submit evidence sufficient to satisfy the Board or its designee that:
1. the applicant is otherwise qualified to sit for the Uniform Bar Examination;
 2. the applicant suffers from a disability;
 3. the disability limits the applicant's ability to demonstrate, under standard testing conditions, that the applicant possesses the knowledge, skills, and abilities tested on the Uniform Bar Examination;
 4. the disability is permanent or long-term;
 5. the disability has a current substantial impact on the applicant. A mere submission of a medical diagnosis of impairment is insufficient to qualify the applicant for accommodation; and
 6. the requested accommodation must address only a disability the law recognizes and must be tailored to address the disability as it relates to the Uniform Bar Examination testing conditions. The requested accommodation may not give the applicant an advantage over other applicants, but must permit the applicant to perform "on a level playing field" with other applicants.

Requests for accommodations will be considered by the Board or its designee based on the information submitted by the applicant and other information as may be reasonably available to the Board. Taking into account the resources available to it, the Board may, but is not required to, seek the assistance of experts on the particular request for accommodation.

The Board may require the applicant to provide additional information relating to the claimed physical or mental impairment and prior testing accommodations received, and may require the applicant to submit to examination by a qualified professional designated by the Board in connection with the applicant's requested testing accommodation.

C. Appeal of Board Decision. The Board’s decision on whether to grant the requested accommodation or to offer an alternative accommodation is final. An applicant may petition for relief from the Board’s decision by petitioning the Montana Supreme Court.

D. Subsequent Accommodation Requests. Applicants who retake the Uniform Bar Examination shall submit “Form 1: Applicant Request for Test Accommodations” each time they apply for the Uniform Bar Examination, even if they previously requested and were granted accommodations by the Board. It is not necessary to resubmit supporting evidence that was submitted with a previous request if the applicant sat for the Uniform Bar Examination within the preceding three years and:

- (1) is requesting the same accommodation that was previously granted; and
- (2) has had no material changes in the physical or mental impairment for which the previous accommodation was granted. New supporting evidence is required if there is any change in the requested accommodation. An update to prior medical evidence assessing the applicant’s current functional limitations and ongoing need for accommodation is required if the nature of the applicant’s impairment changes. The Board may require an update to prior evidence in all cases in which it determines that the prior evidence is insufficient to establish the applicant’s current level of impairment and need for accommodation.

E. Definitions.

1. “Accommodation” means an adjustment to or modification of the Uniform Bar Examination testing conditions that addresses the functional limitations related to the applicant’s disability without:
 - a. fundamentally altering the nature of the Uniform Bar Examination or the Board’s ability to determine through examination whether the applicant possesses the necessary knowledge, skills, and abilities to pass the Uniform Bar Examination;
 - b. imposing an undue burden on the Board;
 - c. compromising the security of the Uniform Bar Examination; or
 - d. compromising the validity of the Uniform Bar Examination.
2. “Disability” means a disability under the Americans with Disabilities Act of 1990 (ADA), which defines a person with a disability as a person with a physical or mental impairment that substantially limits one or more major life activity that is of central importance to daily life.
3. “Qualified” professional means a licensed physician, psychiatrist, or other health care provider who has comprehensive training in the field related to the applicant’s disability.

4. “Substantially limits one or more major life activity” means the physical or mental impairment prevents or severely restricts the applicant from performing or engaging in activities that are of central importance to most persons’ daily lives.

F. Breastfeeding — Related Requests. Although breastfeeding is not a disability as defined above, and is not to be considered one for purposes of granting accommodations, the Board will afford breastfeeding applicants accommodations in a manner consistent with public policy and law. Any breastfeeding applicant seeking such an accommodation shall submit a letter request for breastfeeding accommodation to the Bar Admissions Administrator by the filing deadline for the relevant Uniform Bar Examination administration stating the type of accommodation desired. The applicant need not submit the request for breastfeeding accommodations on the form otherwise required for a disability-based accommodation. A doctor’s statement need not be submitted with the request but may be asked for by the Board at a later date. The request for breastfeeding accommodations should include documentation of the child’s date or expected date of birth. Individual accommodations may vary, in the Board’s discretion, depending upon each applicant’s request or circumstances and whether such accommodations are medically necessary for the health of the applicant or the infant. The types of accommodations that may be granted by the Board include but are not limited to the following:

1. Permission to bring to the exam and store at the testing site necessary medical equipment and supplies, including a breast pump, storage supplies and a cooler;
2. A private or semi-private location with an electrical outlet, if requested, to breastfeed or express breast milk. A semi-private location is defined as one that is located away from other applicants, except other applicants who are also breastfeeding or expressing milk; and
3. Stop-the-clock breaks up to 15 minutes per each three-hour testing period to be used solely for the purpose of breastfeeding the infant or breast pumping, if existing breaks are insufficiently frequent for an individual’s circumstances.

Such requests may be granted only when the infant is under the age of 12 months at the time of the exam.

The Board’s decision on whether to grant the requested accommodation or to offer an alternative accommodation is final. An applicant may petition for relief from the Board’s decision by petitioning the Montana Supreme Court.