
2K

Action

Public Hearing

Proposed Addition to Title 5 of the California Code of Regulations Pertaining to the Handling of Applications from Qualified Individuals with Disabilities

Executive Summary: This agenda item proposes the addition of section 80002.1 to Title 5 of the California Code of Regulations to clarify how applications from qualified individuals with disabilities who request reasonable accommodations will be handled by the Commission.

Recommended Action: Staff recommends that the Commission adopt the proposed regulations pertaining to the handling of applications from qualified individuals with disabilities as amended in this item and instruct staff to prepare a 15-day notice.

Presenter: Tammy A. Duggan, Consultant, Certification Division

Strategic Plan Goal

I. Educator Quality

- b) Develop, maintain, and promote high quality authentic, consistent educator assessments and examinations that support development and certification of educators who have demonstrated the capacity to be effective practitioners.

Proposed Addition to Title 5 of the California Code of Regulations Pertaining to the Handling of Applications from Qualified Individuals with Disabilities

Introduction

This rulemaking action proposes the addition of Section 80002.1 to Title 5 of the California Code of Regulations to clarify how applications from qualified individuals with disabilities who request reasonable accommodations will be handled by the Commission.

Rationale for the Proposed Addition of Section 80002.1:

Subsection (b) of Government Code section 12944 reads, “It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual’s mental or physical disability or medical condition.” The terms “medical condition,” “mental disability,” and “physical disability” are defined in subsections (i), (j), and (m), respectively, in Government Code section 12926.

Although the cited Government Code requires licensing boards to provide reasonable accommodations to qualified individuals with disabilities, the statute does not clarify how requests for reasonable accommodation are handled. The proposed addition of section 80002.1 to Title 5 of the CCR will clarify that Commission staff will be responsible for evaluating applications from individuals who request reasonable accommodations due to a disability. Specifically, the applications for reasonable accommodation will be evaluated by staff in the Certification Division who will determine 1) whether the applicant has submitted sufficient medical documentation to demonstrate a limitation based on a mental or physical disability or medical condition and 2) whether the request for accommodation is reasonable.

Objectives and Anticipated Benefits of the Proposed Regulations

The objective of the proposed addition is to clarify how applications from qualified individuals with disabilities who request reasonable accommodations will be handled by the Commission.

The Commission anticipates that the proposed addition will promote fairness and prevent discrimination by ensuring applications from qualified individuals with disabilities who request reasonable accommodations are evaluated properly by staff in the Certification Division. The Commission does not anticipate that the proposed regulations will result in an increase in openness and transparency in government, the protection of public health and safety, worker safety, or the environment, the promotion of social inequity, or an increase in openness and transparency in business.

Documents Incorporated by Reference: None

Documents Relied Upon in Preparing Regulations: None

Disclosures Regarding the Proposed Actions

The Commission has made the following initial determinations:

Mandate to local agencies or school districts: None.

Other non-discretionary costs or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.

Cost to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of the Government Code: None.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statement of the Results of the Economic Impact Assessment [Govt. Code § 11346.5(a)(10)]: The Commission concludes that it is (1) unlikely that the proposal will create any jobs within the State of California; 2) unlikely that the proposal will eliminate any jobs within the State of California; 3) unlikely that the proposal will create any new businesses within the State of California; 4) unlikely that the proposal will eliminate any existing businesses within the State of California; and 5) unlikely the proposal would cause the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Action: The Commission anticipates that the proposed addition will promote fairness and prevent discrimination by ensuring applications from qualified individuals with disabilities who request reasonable accommodations are evaluated properly by staff in the Certification Division.

The Commission does not anticipate that the proposed regulations will result in an increase in openness and transparency in government, the protection of public health and safety, worker

safety, or the environment, the promotion of social inequity, or an increase in openness and transparency in business.

Effect on small businesses: The proposed regulations will not have a significant adverse economic impact upon business. The proposed regulations pertain only to the handling of applications from qualified individuals with disabilities who request reasonable accommodations.

Notice of Proposed Rulemaking Mailing List and Responses

Mailing List

- Members of the Commission on Teacher Credentialing
- California County Superintendents of Schools
- Credential Analysts at the California County Superintendents of Schools Offices
- Superintendents of Selected California School Districts
- Deans and Directors at the California Institutions of Higher Education with Commission-approved programs
- Credential Analysts at the California Institutions of Higher Education with Commission-approved programs
- Presidents of Selected Professional Educational Associations

Also placed on the Internet at <http://www.ctc.ca.gov>.

Tally of Responses

As of January 24, 2019 the Commission had received the following written responses to the public announcement:

Support

- 1 organizational opinion
- 1 personal opinion

Opposition

- 1 organizational opinion
- 1 personal opinion

Written Response Representing Organization in Support

Susan Fernandez, Support Services Manager, Orange County Department of Education

Written Response Representing Individual in Support

Jenny Teresi, Credential Services Administrator, Riverside County Office of Education

Written Response Representing Individual in Opposition

Dale L. Brodsky, Attorney, Beeson, Tayer & Bodine

Comments:

I am writing in response to Coded Correspondence No. 18-05, which seeks to add section 80002.1 to Title 5 of the California Code of Regulations, pertaining to the Commission's handling of applications by qualified individuals with disabilities or medical conditions. The purpose of the letter is to submit public comment and to suggest a revised version of the proposed regulation (see below).

The Commission's treatment of credential applicants with disabilities has been of particular interest to me since 2015, when I first advocated on behalf of an individual with a disability whose application for a Variable Term Waiver Speech-Language Pathology Services credential had been denied. The matter was resolved and the Commission has taken laudable steps to address issues raised by the individual. It now please me greatly that the Commission is intent on adopting a reasonable accommodation policy, and I want to do what I can to ensure that the regulation provides effective guidance to the public and all stakeholders.

Generally, agencies promulgate regulations which are necessary to implement, interpret, or make specific the law that an agency enforces or administers, or to govern the agency's procedure. (Gov. Code § 11342.600.) To be effective, regulations must provide clarity and guidance as to the meaning of laws that impact people's lives. To that end, I urge the Commission to develop a regulation that accurately describes and clarifies the parameters of an applicant's right to reasonable accommodation.

The suggested, revised version embedded in this letter incorporates standards and procedures that are widely recognized under a number of state and federal laws, including the Fair Employment and Housing Act (FEHA), Government Code sections 12000 (*sic*) *et seq.*; Education Code section 220; the Unruh Civil Rights Act, Civil Code sections 51 and 52; and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. sections 12131 *et seq.*, and regulations interpreting the ADA. Most important is section 12944 of FEHA, which makes it unlawful for any licensing board in California to require an examination or establish qualifications that adversely impact individuals on bases protected by FEHA, and further requires licensing agencies to provide reasonable accommodation for those with disabilities or qualifying medical conditions. In its entirety, section 12944(b) imposes this unqualified directive: "It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individuals' mental or physical disability or medical condition."

As you will see, my suggested revision addresses both the right of individuals with disabilities to reasonable accommodation and elaborates on the authority of the Commission to grant or deny a request for reasonable accommodation. First, I have added language to clarify that unless the applicant's request is promptly approved, the Credentialing Division ("Division") must conduct an individualized assessment and engage in an interactive process. (*See, e.g.*, Gov. Code § 12940(n); 2 CCR §§ 11068(a), (e), and (i).) Second, I suggest providing more guidance than simply stating that the Division may "approved or deny" a request for reasonable accommodation by an individual with a disability or medical condition. Instead, the regulation

should clarify that the Division must give preference to an applicant's requested accommodation, but it may approve a different accommodation so long as it is equally effective. And, while affirming the Division's authority to deny reasonable accommodation, the regulation should also provide guidance, consistent with the ADA, that reasonable accommodation will be denied only if it "would fundamentally alter the nature of the public entity's service, program, or activity." (See, 28 CFR § 35.130(b)(7), interpreting Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*; U.S. Department. (*sic*) of Justice Technical Assistance Manual, II-3.600.) Third, I have added a provision ensuring the confidentiality of medical records. In the credentialing context, individuals with disabilities may be reluctant to request reasonable accommodation if they believe their personal medical information will be shared with a school district, for example. This addition provides guidance to the public that is consistent with other privacy statutes, including the Confidentiality of Medical Records Act, Civil Code sections 56 *et seq.*, and the Information Practices Act of 1977, Civil Codes sections 1798 *et seq.*

Using the Commission's proposed section 80002.1 as a starting point, I suggest retaining the first sentence of the Commission's current proposal, deleting (strike-through) the next sentence, and adding text (underline) as follows:

§ 80002.1. Request for Reasonable Accommodation by Applicant: Qualified Individual with a Disability or Medical Condition; Confidentiality

(a) An individual applying for a credential, as defined in Education Code Section 44002, who has a mental disability, physical disability, or medical condition as defined in Government Code Section 12926, may request a reasonable accommodation pursuant to subsection (b) of Government Code Section 12944. ~~Requests for reasonable accommodation shall be approved or denied following an evaluation by the Certification Division.~~ Upon receipt of a request for reasonable accommodation from an individual with a disability or medical condition, the Certification Division ("Division") shall promptly approve the request unless, after conducting an individualized assessment and engaging in an interactive process with the applicant, the Division determines that there is an alternative, equally effective reasonable accommodation. The Division shall give preference to the applicant's requested accommodation. The Division may deny reasonable accommodation only if it would fundamentally alter the nature of the Commission's services, programs, or activity.

(b) All materials submitted in support of requests for reasonable accommodation shall be kept strictly confidential and shall not be disclosed to any third party unless required by law or with the applicant's express written permission.

Thank you very much for taking action to promulgate a regulation that will provide must needed guidance and for giving me an opportunity to assist you in this important undertaking.

Response:

Commission staff agrees with Ms. Brodsky that additional language would help clarify the proposed addition of 5 CCR section 80002.1. The original language proposed by the Commission has been amended to incorporate Ms. Brodsky's suggestions with the following exceptions:

- The second sentence in the original proposed language for which deletion was recommended has remained, as the sentence is required to clarify the division of the Commission that will be responsible for processing requests for reasonable accommodation.*
- The word "promptly" related to the Commission's approval of a reasonable accommodation request is not included as the Commission has 50 days to process an application from the date of receipt (reference Education Code section 44350 and 5 CCR section 80043); and*
- The word "strictly" related to the confidentiality of materials submitted to support a reasonable accommodation request is not included as the conditions under which the materials may be disclosed is clearly defined.*
- The word "may" related to the circumstances under which the Commission will deny a reasonable accommodation. The word "shall" is used instead to clarify that if a reasonable accommodation request will alter the fundamental nature of the Commission's services, programs, or activity, then said accommodation request will be denied.*

Written Response Representing Organization in Opposition

Laura P. Juran, Chief Counsel, California Teachers Association (CTA)

Comments:

On behalf of the California Teachers Association ("CTA"), I write in response to the Commission on Teacher Credentialing's ("CTC's") consideration of adding Section 80002.1 to the California Code of Regulations.

CTA applauds the CTC for seeking to add a regulation that clarifies how the CTC will handle credential applicants' request to obtain reasonable accommodations for their disabilities and medical conditions. However, CTA does not believe that the proposed regulation, in its current form, contains the specificity or detail needed to provide sufficient clarity and guidance to the public on this important issue.

Thus, CTA urges the CTC to expand the proposed regulation to address matters including: (1) minimum information the applicant should provide with the request to the Certification Division for purposes of receiving an individualized assessment; (2) clarification that the CTC will approve the request if it makes requisite findings that the applicant is a qualified individual with a disability, the requested accommodation is reasonable, and the requested accommodation will not fundamentally alter the nature of the CTC's services, program, or activity; (3) a provision preserving the confidentiality of any medical records provided to the CTC; and (4) a provision addressing whether and how a Certification Division's decision can be appealed to the Commissioners (including any deadline for submitting such an appeal).

CTA believes that addressing the four items above in the proposed regulation would provide helpful, clarifying guidance to the public and thus render the regulation more effective than it would be in its current form. While we support the CTC's interest in promulgating a regulation that specifies how it will handle requests for reasonable accommodations, we respectfully submit that the regulation should provide further detail regarding that process.

Thank you for considering CTA's views on this important topic.

Response:

The recommendations (2) and (3) made by CTA are very similar to the recommendations made by Ms. Brodsky and the language proposed by Ms. Brodsky addressing the two recommendations has been added. The proposed language has been further amended to address recommendations (1) and (4) made by CTA.

Based on the recommendations made by Ms. Brodsky and CTA, the original text for the proposed addition of 5 CCR section 80002.1 has been amended for consideration by the Commission. The additional language is displayed in double-underline.

Staff Recommendation

Staff recommends that the Commission adopt the proposed regulations pertaining to the handling of applications from qualified individuals with disabilities, as amended in this item, and instruct staff to prepare a 15-day notice.

**CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 8. COMMISSION ON TEACHER CREDENTIALING**

§ 80002.1. Request for Reasonable Accommodation by Applicant: Qualified Individual with a Disability or Medical Condition; Confidentiality

(a) An individual applying for a credential, as defined in Education Code Section 44002, who has a mental disability, physical disability, or medical condition as defined in Government Code Section 12926, may request a reasonable accommodation pursuant to subsection (b) of Government Code Section 12944. The applicant shall provide reasonable medical documentation confirming the existence of the disability or medical condition and the need for reasonable accommodation. Requests for reasonable accommodation from an individual with a disability shall be approved or denied following an evaluation by the Certification Division (Division). Upon receipt of a request for reasonable accommodation from an individual with a disability or medical condition, the Division shall approve the request unless, after conducting an individualized assessment and engaging in an interactive process with the applicant, the Division determines that there is an alternative, equally effective reasonable accommodation. The Division shall give preference to the applicant's requested accommodation. The Division

shall deny reasonable accommodation only if it would fundamentally alter the nature of the Commission's services, programs, or activity.

(b) All materials submitted in support of a request for reasonable accommodation shall be kept confidential and shall not be disclosed to any third party unless required by law or with the applicant's express written permission. Where the applicant appeals the decision of the Division, review of these materials by the Commission shall be pursuant to paragraph (2) of subsection (c) of Government Code Section 11126 and Section 80516.

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44002, Education Code and Sections 11126(c)(2), 12926 and 12944, Government Code.