

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED

REASONABLE ACCOMODATION HEARING OFFICER TRAINING MATERIALS

A copy of the Reasonable Accommodation in Housing Guidelines (“RAHG”) can be obtained from the Intranet for your review. The RAHG, along with Federal regulations, governs the review and hearing process. Please refer to the RAHG frequently to ensure that you are familiar with the process.

Copies of the Section 8 Reasonable Accommodation Grievance Procedure and Reasonable Accommodation Grievance Procedure (collectively Grievance Procedure) can be obtained from the Intranet for your review.

I. Definitions:

A. A Person With a Disability:

A person with a disability is one who:

- (1) Currently has a physical or mental impairment that substantially limits one or more major life activities; or
- (2) Has a record of such an impairment; or
- (3) Is regarded as having such impairment.

B. Reasonable Accommodation:

A reasonable accommodation is a modification or change DHA can make to its procedures, rules or to the person’s apartment or to a public/common area which would provide an otherwise eligible person with a disability an equal opportunity to participate in, or benefit from, DHA housing programs, provided that the change does not pose an undue financial and administrative burden to DHA or result in a fundamental alteration of its programs.

An accommodation is not reasonable, simply because the individual is disabled. The accommodation must be reasonable and there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

C. Equally Effective:

The term “equally effective” is not intended to produce an identical result or level of achievement for a person with a disability, as a person without a disability. Instead, it is intended to give a person with a disability an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement.

D. Grievance:

A grievance is any dispute an Individual may have with DHA concerning the 504 Coordinator’s decision regarding the Individual’s request for reasonable accommodation.

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED

E. Hearing Officer:

A person selected to hear reasonable accommodation grievances and render a decision with respect thereto. The Hearing Officer shall be an employee of DHA appointed by DHA. Such employee shall be specially trained to hear and decide grievances concerning requests for reasonable accommodation.

II. Introduction:

It is the Housing Authority of the City and County of Denver's ("DHA") policy to provide a reasonable accommodation in housing for individuals with disabilities where a reasonable accommodation is necessary to provide them with an equal opportunity to participate in, or benefit from, DHA housing programs. This policy is in furtherance of DHA's goal of providing affordable housing to low-income persons regardless of disability and in compliance with applicable federal, state, and local law.

Applicable law requires that DHA grant a request for an accommodation when:

1. An individual, or member of their household, is a qualified individual with a disability.
2. The requested reasonable accommodation or an alternative accommodation is necessary because of the disability, and will provide an equal opportunity to participate in, or benefit from, DHA housing, programs, services or activities. In most cases, DHA requires that a Health Care Provider¹ provide information regarding why the requested accommodation is necessary for the qualified individual with a disability to have an equal opportunity to participate in, or benefit from DHA housing, programs, services or activities. DHA will not simply grant an accommodation because the individual is disabled.
3. The requested accommodation, or an alternative accommodation is reasonable in that it will not impose an undue financial and administrative burden on DHA, or would not require a fundamental alteration in DHA's housing programs; and
4. Neither the individual, nor members of the household, falls into any of the exceptions precluding protection under the relevant anti-discrimination and housing laws.

III. Evaluation of a Request for Accommodation:

It is the responsibility of an individual with a disability to request an accommodation.

¹ Medical records cannot be used to determine whether the requested accommodation is reasonable or not.

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED

The individual has the burden to show (a) that the accommodation is necessary, (b) is likely to enable the individual to comply with the lease or is necessary to afford such person(s) equal opportunity to participate in, or benefit from DHA's housing programs, and (c) that the individual will accept the necessary assistance.

If more than one (1) accommodation will satisfy the needs of the person with the disability, DHA has the option to select the accommodation, which is most convenient and cost effective for DHA. A reasonable accommodation is not a personal preference. In choosing among available options, DHA will give priority to the methods that will provide the individual benefits and services in the most integrated setting appropriate. In terms of housing, this means that the housing provided to disabled individuals is not separate or unnecessarily segregated.

DHA has the burden to show that the requested accommodation would result in an undue hardship. An undue hardship is a significant or undue financial and administrative burden. DHA is not required to provide an accommodation that will require a fundamental alteration in the nature of DHA's housing programs.

IV. Procedures Governing The Grievance Hearing:

A Formal Grievance Hearing shall apply to grievances of the 504 Coordinator's decision regarding an individual's request for reasonable accommodation.

The parties shall be entitled to a fair hearing of the grievance before the Hearing Officer that shall include:

(A) The opportunity to examine before the hearing any DHA documents that are directly relevant to the requested accommodation. The individual must provide DHA with a minimum of three (3) business days' notice to review any documents, and must schedule a mutually agreeable time for the review of such documents. The individual shall be allowed to copy any such documents at the individual's expense. If DHA does not make a document available for examination upon request by the individual, DHA may not rely on such document at the grievance hearing.

(B) The right to be represented by counsel or other person chosen as the individual's representative and to have such person make statements on the individual's behalf.

(C) The right to present evidence and arguments in support of the individual's position and to controvert evidence relied on by the 504 Coordinator. The parties may bring as a witness anyone they feel will be helpful to them in the hearing process. The Hearing Officer may consider any evidence, so long as it is related to the facts and issues involved in the grievance. **NO NEW EVIDENCE MAY BE PRESENTED AT THIS HEARING WHICH HAS NOT BEEN PROVIDED DURING THE REQUEST FOR REASONABLE ACCOMMODATION REVIEW OR DURING THE INFORMAL SETTLEMENT PROCESS.**

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED

(D) A decision based solely and exclusively upon the facts presented at the hearing.

(E) All such proceedings will be recorded via audio recorder.

The Hearing Officer may render a decision without proceeding with the hearing if he/she determines that the issue has been previously decided in another proceeding.

At the hearing, the individual must first make a showing of an entitlement to the relief sought and, thereafter, DHA must sustain the burden of justifying the DHA's action or failure to act against which the complaint is directed.

The Hearing Officer shall conduct the hearing informally. Oral or documentary evidence pertinent to the facts and issues raised by the individual may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The Hearing Officer shall require DHA, the individual, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

V. Review/Hearing Guidelines

1. Hearing Officer runs the Hearing and is the authority at the Hearing.
2. Introduce yourself as the Hearing Officer.
3. Introduce DHA's 504 Coordinator (or let them introduce themselves).
4. Let the individual introduce themselves and any representatives they have with them.
5. Be sure to document the name of all individuals present including, the Hearing Officer and DHA representatives, even if the individual fails to appear. Include the individual and their representatives.
6. Take handwritten notes during the review/hearing on the forms provided. You may use additional paper if necessary.
7. Allow DHA's 504 Coordinator to present its case.
8. Allow the individual to present their case.
9. Ask any questions that you have of either DHA's 504 Coordinator or the individual.
10. Tell the individual that they will receive your decision in writing within ten (10) working days. Do not give your decision at the hearing.
11. End the hearing.
12. Do all necessary follow-up of items raised during the hearing (i.e. research Federal regulations, verify Applicant/Participant statements, review documents presented etc.). If you have general questions regarding regulations, policies, or anything else, contact Agency Counsel.

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED

13. Do not discuss specific facts of the case or any issues presented at the hearing with other DHA employees. If you have case specific questions please contact Agency Counsel.
14. Prepare a written decision, including a statement of findings and conclusions, and the reasons for these conclusions, **within ten (10) business days** after the hearing date. Copies of the decision shall be sent via U.S. Mail to the parties and their representatives by DHA

VI. Failure to Attend the Hearing:

If the individual or DHA fails to appear at the scheduled hearing, the Hearing Officer may make a determination to postpone the hearing, **not to exceed five (5) business days**, or may make a determination that the party has waived his/her right to a hearing.

Both the individual and DHA shall be notified of the determination by the Hearing Officer; provided, that a determination that the individual has waived his/her right to a hearing shall not constitute a waiver of any right the individual may have to contest DHA's disposition of the grievance in court.

VII. Decision of the Hearing Officer:

(A) The decision of the Hearing Officer shall be based only on the facts presented at the hearing, and upon applicable state and local laws and the rules and regulations of DHA and the federal government.

(B) The Hearing Officer shall only have the authority to approve or disapprove of the proposed action of DHA's 504 Coordinator. The Hearing Officer shall not have the authority to modify or amend the proposed action in any way.

(C) The Hearing Officer shall prepare a written decision, including a statement of findings and conclusions, and the reasons for these conclusions, **within ten (10) business days** after the hearing date. Copies of the decision shall be sent via U.S. Mail to the parties and their representatives by DHA.

(D) A copy of the decision shall be maintained on file by DHA.

(E) The decision of the Hearing Officer shall be binding on DHA. DHA shall take all actions, or refrain from any actions necessary to carry out the decision.