

BOSTON HOUSING AUTHORITY
REASONABLE ACCOMMODATION POLICY



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CHAPTER 1: INTRODUCTION

1.1 General statement of policy

This policy sets forth the Boston Housing Authority's ("BHA") guidelines for providing Reasonable Accommodations ("RAs") to BHA Applicants, Voucher Holders, Participants, and Residents with disabilities¹ when such Accommodations may be necessary to provide them with an equal opportunity to use and enjoy BHA housing units, common areas, activities, and programs ("BHA housing and programs"). This policy explains the framework used to determine whether a person is eligible for an RA, and whether a given Accommodation is reasonable and necessary. It also explains the rights of Applicants, Voucher Holders, Participants, and Residents, and the obligations of BHA throughout the RA request process.

These guidelines are not intended to be an exhaustive compilation of rules or policies governing BHA's handling of RA requests. If any conflicts exist or arise between this policy and guidance issued by the U.S. Department of Housing and Urban Development ("HUD"), or existing or future statutes, regulations, or other legal requirements at the state, federal, or local level, BHA will adhere to the other requirements. A list of controlling laws is provided in Chapter 14.

1.2 Individuals referenced in this policy

This policy references the following individuals (whether heads of households or their authorized household members) who may be in need of an RA due to a disability:

- **Applicants:** Individuals who are applying/have already applied to one of BHA's housing programs.
- **Voucher Holders:** Individuals who are holding an unexpired voucher from a state or federal program administered by BHA's Leased Housing Division (such as "Section 8" or "MRVP"). They become "Participants" (see below) upon execution of a Housing Assistance Payment ("HAP") Contract.
- **Participants (or "Leased Housing Participants"):** Individuals assisted under the federal or state voucher or non-voucher programs administered by BHA's Leased Housing Division. Leased Housing programs include the "Section 8," "Section 8 Mod Rehab," "Section 8 PBV," and "MRVP" programs.
- **Residents (or "Public Housing Residents"):** Individuals lawfully residing at any of BHA's public housing developments.

¹ For purposes of this policy, the preferred term, "disability," includes the term "handicap" within its scope.

This policy will use the term “**Client**” when guidance applies to Applicants, Voucher Holders, Participants, and Residents alike.

1.3 Non-retaliation/discrimination policy

BHA will not discriminate or take any retaliatory action against a Client who has requested an RA on the basis of a disability, or who has assisted or encouraged any other person to make a request.

Additionally, BHA will not discriminate or take any retaliatory action against a Client who has exercised his/her right of internal appeal, filed an administrative agency complaint, or sought judicial review regarding an RA request, or who has assisted or encouraged another person to do so, or who has assisted in the investigation of an RA claim.

1.4 Notification of reasonable accommodation rights

BHA will notify all Clients on an initial and continuing basis of their right to request RAs. The situations and circumstances in which written notice of RA rights will be given include but are not limited to the following:

- When an Applicant first applies for housing.
- When an Applicant is notified of his/her briefing session.
- When a Resident is notified of his/her annual Tenant Status Review.
- When a Participant is notified of his/her annual recertification.
- When a Client is notified of a private conference or informal hearing.
- When a Client is notified of an adverse action.

CHAPTER 2: GENERAL OVERVIEW

This Chapter provides a basic overview of the RA process. More detail may be found in the Chapters that follow.

2.1 What is a Reasonable Accommodation and what purpose does it serve?

An RA is 1) a change, exception, or adjustment that BHA can make to its rules, policies, practices or procedures, or 2) (for purposes of this policy) a *physical* modification² to a public housing

² Physical modifications are known as “reasonable modifications” under the law. This policy will use the term “reasonable accommodation” to cover physical changes as well.

Resident's unit or common area which may be necessary to provide a Client with a disability an equal opportunity to use and enjoy BHA housing and programs.

Clients may seek an RA at any time. BHA will only decide whether to grant or deny an RA after undertaking the analysis described in the following pages.

2.1.1 Leased Housing Participants and physical modifications

While this policy applies when Leased Housing Participants ask BHA to alter its policies, rules, and practices as an RA, it does not apply to Participants' requests for *physical* changes to their units or changes to their landlords' policies, rules, and practices.³ Please see Section 6.2 for information on how BHA may be able to assist when a private landlord is not able to accommodate a Participant at his/her current unit.

2.2 Examples of Reasonable Accommodations

The following is a list of examples of RA requests:

- A Resident or Applicant with a disability that prevents him or her from climbing stairs requests a unit located on a first floor or in an elevator-equipped building.
- A Resident or Applicant with a disability that makes walking and standing difficult requests grab bars for his/her unit's bathroom (Resident) or a unit with such features (Applicant).
- A Resident or Applicant with a mental disability that makes travel on public transportation difficult requests a unit close to his/her service provider who he/she visits on a frequent basis.
- A Resident with a mental disability who disrupts his/her neighbors when off of his/her medication requests that the BHA not seek an eviction in exchange for an agreement to follow a treatment plan that will prevent further disruptions.
- A Voucher Holder with a disability requiring the use a wheelchair requests extra time to use a Section 8 mobile voucher because he/she is having difficulty finding a wheelchair-accessible apartment.
- A Voucher Holder with a disability requests a higher payment standard for his/her Section 8 mobile voucher because he/she is having difficulty locating an apartment that meets his/her disability-related needs within the limits of the regular payment standard.

³ For additional information on the responsibilities and rights of Leased Housing Participants and landlords in such situations, please review the Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Modifications under the Fair Housing Act, which is available at <http://www.hud.gov/>.

- A Client with a hearing impairment requests that BHA provide a sign language interpreter for a meeting, private conference, or hearing with BHA staff.
- A Client who cannot attend a meeting, conference, or hearing due to a disability requests that BHA allow the meeting to be conducted at an alternative time or location, or by alternative means such as telephone or email exchanges.
- A Client who has difficulty writing due to a disability requests that a BHA staff member assist him or her with filling out a required form.
- An Applicant with a disability that makes keeping appointments difficult misses a screening appointment for this reason and requests that he or she not be removed from the waitlist and instead be given another opportunity to attend.
- An Applicant with items on his/her CORI that would lead to a finding of ineligibility, but which resulted from a then-untreated disability, requests that BHA find him/her eligible because he/she is now being treated and can provide evidence that the acts are unlikely to happen again.

2.3 The interactive process

Before deciding on a Client's request for an Accommodation, BHA must engage in an "interactive process" with the Client. This non-adversarial process is based on communicating with the Client about his/her needs in a cooperative and solution-oriented manner. During the interactive process, BHA may seek additional information about the nature of the request, as well as verify the needs of the Client from reliable third parties. The interactive process also allows the BHA and Client to discuss alternative Accommodations when a Client proposes an Accommodation that the BHA thinks may be burdensome, unreasonable, or ineffective in addressing the concerns at issue.

2.4 Who pays for a Reasonable Accommodation?

If BHA grants an RA, it is responsible for the cost. BHA will not require Clients to pay extra fees or deposits as a condition of receiving an RA.⁴ In addition, BHA is responsible for any costs associated with determining whether to grant an RA during the interactive process.

⁴ Note that if Leased Housing grants an increased payment standard as an RA for a Participant, the Participant's rent share may increase.

CHAPTER 3: ANALYZING A REASONABLE ACCOMMODATION REQUEST

BHA considers a number of factors when deciding whether to grant a request for an Accommodation. BHA must determine if a Client is eligible for an RA, whether the requested Accommodation may be necessary to provide an equal opportunity to use and enjoy BHA housing and programs, and whether or not the Accommodation is reasonable.

BHA will review requests on a case-by-case basis. It will not consider whether allowing an Accommodation for one Client would cause others to request the same.

3.1 Who is eligible for a Reasonable Accommodation?

In order to be eligible for an RA, a Client must be an “otherwise qualified individual with a disability.” As stated in Section 1.2, the Client does not need to be the head of household to be eligible for an RA; an authorized household member may be eligible as well.

3.1.1 What is a “disability”?

For RA analyses, a disability is a “physical or mental impairment that substantially limits one or more major life activities.” This definition has three key parts:

- **“Physical or mental impairment:”** Some examples of this are diseases and conditions, such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus (HIV) infection, intellectual disabilities, emotional illness, drug addiction⁵, and alcoholism.
- **“Substantially limits:”** The limitation caused by the mental or physical impairment is “significant” or “to a large degree.”
- **“Major life activity:”** An activity of central importance to daily life. Some examples are seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking.

3.1.2 Who is “otherwise qualified”?

An “otherwise qualified individual with a disability” is a person with a disability who is able to meet essential BHA housing eligibility requirements and comply with essential program requirements *with or without* an RA. Some examples of essential program requirements are:

⁵ Excludes addiction caused by current, illegal use of a controlled substance. See 3.7.1 for more information.

completing required certifications in a timely manner, not disturbing one's neighbors' peace and quiet enjoyment, paying rent on time, and maintaining one's unit in accordance with sanitary code requirements.

This part of the definition becomes an issue when a Client is having difficulty meeting eligibility requirements or complying with program requirements due to a disability. In such situations, he/she may seek an RA that allows him/her to do so. For example, if a Resident is struggling with housekeeping in his/her apartment due to a mental or physical disability to the point where the unit's condition poses health and safety risks, BHA may forgo an eviction action against the Resident if he/she agrees to allow a third-party to come help him/her with learning housekeeping skills (or with the actual housekeeping itself) as an RA.

See Chapter 5 for situations in which this concept becomes very important.

3.2 There needs to be a relationship (“nexus”) between the disability and the Accommodation requested

There must be an identifiable relationship⁶ between a Client's disability and a requested Accommodation showing that the Accommodation may be necessary to provide the Client with an equal opportunity to use and enjoy BHA housing or programs.

In other words, a requested Accommodation needs to help lessen or eliminate difficulties to program participation or enjoyment *caused by the disability*. These difficulties may be physical, such as when a disability makes it difficult for a Resident to open his/her apartment door, leading to a request for an automatic door opener. These difficulties can also be related to policies and practices, such as when Participant's disability leads to a program violation, leading to a request that the BHA not proceed with termination if the Participant provides sufficient evidence of an effective plan to prevent the violation from recurring.

In the above two examples, the Client is requesting something that will help put him/her in the same position as someone who does not have his/her disability and therefore provide equal opportunity. The Resident requests an automatic door opener so that he/she can have the same unit accessibility of a person without his/her disability. The Participant requests that he/she be given another chance to comply with the program requirements and remain housed because a person without his/her disability would not have violated the requirements in the first place.

If no such relationship between a Client's disability and requested Accommodation can be identified, BHA will deny the Accommodation.

⁶ The legal term for this relationship is “nexus.”

3.3 Accommodations must be “reasonable” to be granted

BHA is not required to grant an Accommodation unless it is reasonable. If an Accommodation would 1) pose an “undue financial or administrative burden” for BHA or 2) result in a “fundamental alteration” in the nature of BHA’s program, it is considered unreasonable.

3.3.1 What is an “undue financial or administrative burden”?

A determination of burden takes into account BHA’s currently available resources.

Factors to be considered include:

- The financial and administrative resources of BHA and the cost of the Accommodation in terms of both;
- The benefits the requested Accommodation would provide the Client; and
- The availability of other Accommodations that require less financial and administrative resources but would still meet the Client’s needs.

If there are multiple Accommodations that would meet a Client’s needs, BHA may select the least burdensome. If only one Accommodation would meet a Client’s needs but it is burdensome, BHA will comply with it to the extent it can do so without creating an undue financial and/or administrative burden.

3.3.2 What is a “fundamental alteration”?

An Accommodation requires a fundamental alteration of BHA’s program if it would cause the agency to act outside of its primary purpose as a provider of subsidized housing. For example, requests that BHA provide resources for child care, nursing services, or other services not directly related to housing/rental assistance would require fundamental alterations of BHA’s program and therefore not be reasonable.

Requests that require BHA to operate contrary to the requirements placed upon it by law or regulation would be also be considered fundamental alterations. For example, if a Voucher Holder requests to be able to lease up a unit that would require him/her to pay more than 40% of his/her monthly adjusted income as an RA (because he/she needs to live in that particular unit due to a disability), that request would be denied because HUD strictly forbids approving initial leases that require that much payment.⁷

⁷ In such situations, an RA request to increase the payment standard, if supported by appropriate documentation and approved by the Leased Housing Division, might resolve the situation.

3.4 Devices and services not provided as Reasonable Accommodations

BHA is not required to provide Clients with disabilities with personal or individually-prescribed devices, such as wheelchairs, prescription eyeglasses, or hearing aids, or to provide services of a personal nature, such as assistance in eating, toileting, or dressing.

3.5 Verifying disabilities and the effectiveness of Accommodations

As an initial matter, BHA will assume that a Client is an expert on his/her own disability and any appropriate Accommodations. Unless BHA can identify specific reasons for doing otherwise, it should accept the Client's judgment that an Accommodation is needed and that the Accommodation proposed for meeting those needs is the most appropriate.

BHA is entitled by law, however, to obtain reliable disability-related information that:

- 1.) Is necessary to verify that the Client meets the definition of a person with a disability;
- 2.) Describes the needed Accommodation; and
- 3.) Shows the relationship between the person's disability and the need for the requested Accommodation.

3.5.1 What type of information may BHA *not* request?

BHA may not request the following when verifying the need for an RA:

- A Client's specific medical diagnosis or the details of treatment;
- Information regarding the nature and severity of a Client's disability, unless such information is needed to determine if a requested Accommodation is necessary and/or appropriate; or
- A Client's medical records.

If both a Client's disability and need for a requested Accommodation are obvious or otherwise known to BHA, it may not request additional information regarding either. If the Client's disability is known or readily apparent to BHA, but the need for a requested Accommodation is not, BHA may only request information necessary to evaluate the need.

3.5.2 Who may provide verification?

A Client can usually personally provide information verifying whether he/she meets the definition of a person with a disability. For example, a Client may present a Disabled Parking Placard, provide proof that he/she receives disability benefits, or give a credible statement.

Additionally, a doctor/medical professional, social worker, member of a peer support group/non-medical service agency, or other reliable third-party who is in a position to know about the Client's disability may also provide verification of his/her disability and need for an RA.

3.5.3 BHA requests for additional information from a Client will be in writing and provide a reasonable deadline for responding

When evaluating a request, if BHA determines it requires additional information from the Client to reach a decision, BHA will make best efforts to inform the Client in writing within twenty (20) calendar days of receiving the request. The letter will clearly identify the needed information, explain why it is needed, and suggest examples of appropriate information sources. BHA will not deny an RA request due to a lack of sufficient information without first reaching out to the Client in this way.

Any written requests for additional information will provide a reasonable deadline for providing it. The deadline will be at least twenty (20) calendar days from the date of the letter.

3.5.4 BHA will inform a Client if a third party is contacted and does not respond

In certain cases, the Client will authorize BHA to directly contact a third-party verifier. If BHA attempts to contact a third-party and the third party does not respond within a reasonable amount of time, BHA will inform the Client in writing of this and will give the Client an opportunity to obtain the information from the third party him/herself. The deadline will be at least twenty (20) calendar days from the date of the writing.

3.6 Meetings regarding Reasonable Accommodation requests

If a BHA staff member believes meeting with a Client about his/her request would help with evaluating it, the staff member will inform the Client in writing of the proposed meeting as soon as practicable and identify the issue(s) to be discussed. The Client may also request a meeting with a staff member if he/she feels it would be useful in evaluating an RA request. Any meetings held concerning a Client's request for an RA will be held in a location accessible to the Client.

3.7 Clients who are not entitled to RAs

Disability law specifically excludes certain categories of individuals from its protection and rejects certain statuses as disabilities:

3.7.1 Clients who currently illegally use controlled substances

A Client who *currently* and *illegally* uses controlled substances, as defined by state and federal law, is not entitled to an RA if that use is the sole basis for the request.

Whether or not use is "current" is determined on an individualized basis. BHA will make a determination based on whether use has occurred recently enough to justify a reasonable

person's belief that a person's illegal drug use is current or that continuing use is a real and ongoing problem.

Recovery from substance abuse could, however, qualify as a disability and therefore be a basis for an RA request if the Client is not currently engaged in the illegal use of a controlled substance as described above.

3.7.2 Clients whose tenancies pose a direct threat to the health and safety of others or would result in substantial physical damage to the property of others

Disability law does not protect a Client from eviction, program termination, or findings of ineligibility if his/her tenancy or participation poses a "direct threat" as a result of a disability, *unless* the threat can be eliminated by an RA. A Client's tenancy is considered a direct threat if it would:

- 1.) Pose a significant risk of substantial harm to the health or safety of other individuals; *or*
- 2.) Result in substantial physical damage to the property of others.

BHA will determine whether a Client poses a direct threat by relying on an individualized assessment based on reliable objective evidence such as current conduct or a recent history of overt acts, rather than generalized assumptions, subjective fears, and/or speculation. BHA will consider the following factors:

- The nature, duration, and severity of the risk of injury;
- The probability that injury will actually occur; and
- Whether an RA would eliminate the direct threat.

BHA has a right to seek evidence that a Client does not pose a direct threat. BHA may therefore request that the Client document how circumstances have changed since threatening behavior occurred so that he/she no longer poses a direct threat. In evaluating a recent history of overt acts, BHA will take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat.

3.8 Mitigating circumstances and Reasonable Accommodation requests

There are situations in which a Client, facing an adverse action by the BHA (such as a finding of ineligibility or allegations of lease/program enforcement violations⁸, or the missing of a deadline for

⁸ More information on RA requests related to findings of program ineligibility, lease violations, and program violations may be found in Chapter 5.

requesting a hearing), has the ability to present evidence of mitigating circumstances under BHA policy.⁹ This does not prevent a Client from also requesting an RA.

If a Client requests both an RA and presents evidence of mitigating circumstances in such situations, BHA will review the mitigating circumstances first in case doing so makes an RA review (which would likely be more complex) unnecessary. For example, a Client may miss an appeal with BHA's Department of Grievances and Appeals ("DGA") due to being hospitalized as a result of a disability. The Client may request another appeal date as an RA because he/she only missed the original date due to a disability. At the same time, he/she has also presented evidence of mitigating circumstances: he/she missed the appeal because of being hospitalized, regardless of the medical reasons. In such a situation, DGA may take into consideration the hospitalization and grant a new hearing without needing to go through a full RA analysis.¹⁰

Note that when a Client both requests an RA and presents evidence of mitigating circumstances during a DGA hearing/appeal, the Hearing Officer will not address the mitigating circumstances until the final decision.

CHAPTER 4: HOW TO REQUEST A REASONABLE ACCOMMODATION

4.1 There is no official way to request an accommodation but the Client, or his/her representative, must make the request

BHA is obligated to provide an RA only if the Client, or a person acting at the Client's request, requests one. To request an RA, a Client does not need to mention any law, this policy, or use any specific words, such as "reasonable accommodation." The Client must make the request, however, in a manner that a reasonable person would understand it to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability. For example, if a Resident is facing eviction for an action that he/she committed due to a disability and simply says at a private conference, "I was off my medication at the time," this would be enough to start the interactive process.

A Client with a disability does not need to personally make the RA request; the request can be made by a family member or someone else acting on his/her behalf. BHA may request that the third

⁹ For more information on the consideration of mitigating circumstances, please consult BHA's Admissions and Continued Occupancy Policy ("ACOP") and Leased Housing Administrative Plan for Section 8 Programs ("Leased Housing Admin. Plan").

¹⁰ Note that a department may still request some form of verification of alleged mitigating circumstances, but the information requested will likely be much simpler than that potentially requested during an RA review (in this example, DGA would simply want proof of the hospitalization).

party provide BHA with proof of having the Client's permission or legal authority to assist in such matters.

4.2 Using BHA's forms to request a Reasonable Accommodation

BHA will make forms available for RA requests but a Client does *not* need to use them to make a request. These forms will include the **Request for Reasonable Accommodation** (to be filled out by the Client) and the **Certification of Need** (to be filled out by a third-party for verification purposes). While not required, these forms may make the RA process faster and simpler for both the Client and BHA.

BHA will have forms specifically tailored for Applicants and Residents and another set for Leased Housing Voucher Holders and Participants. They will be available online at www.bostonhousing.org and at the following locations:

- Applicants may pick up forms from the Occupancy Department, Leased Housing Department, or BHA Housing Service Center.
- Residents may pick up forms from their development's Management Office.
- Voucher Holders and Participants may pick up forms from the Leased Housing Department or their Leasing Officers.

Clients who require assistance in reading, filling out, submitting, or understanding BHA's RA forms may contact the same individuals/departments listed above or may contact BHA's Reasonable Accommodation Coordinator. Spanish and Chinese guide versions of the Request for Reasonable Accommodation forms will be made available upon request and may also be found online at www.bostonhousing.org.

CHAPTER 5: REASONABLE ACCOMMODATION REQUESTS RELATED TO FINDINGS OF PROGRAM INELIGIBILITY, LEASE VIOLATIONS, OR PROGRAM VIOLATIONS

5.1 Applicants: Requests related to a finding of program ineligibility

If an Applicant is found ineligible for BHA housing and this was ultimately due to a disability, he/she may submit an RA request to the Occupancy or Leased Housing Department.¹¹ For example, an Applicant who is found ineligible for failing to meet an eligibility requirement may request an accommodation that would help him/her meet the requirement, or an Applicant who missed a screening

¹¹ Depending on which department is doing the screening.

appointment or failed to provide necessary information may request another opportunity to be screened or supply the information, respectively.

BHA will not take final action on an eligibility determination until a final decision has been made on the RA request, unless the Applicant is determined to be ineligible based on other grounds as well that are not related to a disability and cannot be addressed by an RA.

5.2 Residents and Participants: Requests related to lease and/or program violations

When a Resident or Participant alleges that a lease and/or program violation was the result of a disability, BHA will determine whether it is reasonable to believe that the violation is unlikely to recur if it provides the requested Accommodation. For example, a Resident whose treatable, yet untreated, disability caused lease violations may ask BHA to forgo evicting him/her in exchange for keeping to a treatment plan that will eliminate the risk of such violations. If BHA concludes, based on objective information, that a proposed Accommodation is unlikely to resolve the lease or program violation, it will deny the Accommodation.

5.2.1 How requests related to lease/program violations are handled

When a Resident requests an RA related to a lease violation *before* being served with a summons and complaint for an eviction action, BHA will first review the request to determine if the Accommodation will enable the Resident to comply with the terms of the lease.

If a Resident requests the Accommodation *after* the service of a summons and complaint, BHA will expeditiously address the request in conjunction with the housing court action. Depending on the individual situation, this could include attempting to resolve the RA through a court agreement, seeking the use of housing court resources to assist a Resident with becoming lease compliant, or other approaches.

If a Leased Housing Participant requests an RA after receiving a Notice of Proposed Termination, BHA will decide on the request before holding a termination hearing. For information on Participant RA requests first made during termination hearings, please see Chapter 10.

5.3 What if a Client requests an Accommodation that is unreasonable or refuses an Accommodation related to a finding of program ineligibility, lease violation, or proposed termination?

If a Client requests an Accommodation in the context of a finding of program ineligibility, lease violation, or proposed termination, and it is determined to be ineffective or unreasonable, BHA will propose alternative Accommodations, if they exist, to resolve the matter.

For example, if a Resident with a hearing disability has continuously disrupted the peace and quiet enjoyment of his/her neighbors with a loud TV and asks at his/her private conference to simply not be evicted as an Accommodation, this would not resolve the noise problem. Such a request would be denied. The BHA might instead propose forgoing a court action if the Resident agrees to use headphones in the future when watching TV.

While a Client may always refuse such a proposed RA related to a finding of program ineligibility, lease violation, or proposed termination, BHA may thereafter move forward with enforcing the program requirements. This may include removing a client from housing waitlists, eviction, or program termination.

5.4 When a Client provides information regarding a disability but the relationship to the underlying BHA action is not clear

If a Client mentions having a disability in the context of a finding of ineligibility, eviction, or program termination, but no clear relationship exists between that disability and the situation under review, BHA will ask the Client to explain why he/she brought up the disability and ask whether it is the Client's intent to request an RA before deciding the underlying matter. In determining the Client's intent, BHA staff will explain the concept of an RA in plain language.

For example, if a Participant discloses having a disability while meeting with his/her leasing officer about a proposed termination and there does not appear to be a direct relationship between the disability and the reason for the proposed termination, BHA will ask why the disability is being raised and whether or not an RA is being requested (and what that would mean). BHA will not summarily conclude that there is no connection between the disability and the proposed RA; it will instead ask the Client for more information.

CHAPTER 6: REASONABLE ACCOMMODATION TRANSFER REQUESTS¹²

6.1 Residents: Requesting a transfer as a Reasonable Accommodation

A Resident may seek a transfer to another BHA unit as an RA. For example, a Resident may come to need a wheelchair-accessible unit or have a family member with a mental or physical disability that requires an additional bedroom. RA transfer requests may be made at the Management Office of the development where the Resident lives.

Transfer requests are reviewed by the Transfer Review Committee (“TRC”), which determines whether to approve or deny the request using the analysis outlined in this policy. The Transfer Process Coordinator will promptly notify Residents of TRC’s decisions. In addition, any Resident who has requested an RA transfer may contact the Transfer Process Coordinator for a status inquiry. The Coordinator will reply within 5 business days.

If a Resident requests a transfer as an RA but does not meet BHA’s transfer eligibility requirements as described in Chapter 7 of the ACOP, the Director of Occupancy or his/her designee will consider waiving some or all of these requirements in accordance with the Waiver Provisions of Chapter 10 of the ACOP and the decision will be included in the final transfer decision sent to the Resident.

6.2 Leased Housing Participant requests to change units

Leased Housing Participants in tenant-based voucher programs who wish to move from their current units must bring their request to move to the attention of their landlords and leasing officers. The BHA cannot unilaterally terminate a lease and subsidy arrangement between a Participant and landlord as an RA.¹³

If a Participant is in the Section 8 Project-Based Voucher (“PBV”) program, he or she may be eligible to move to another PBV unit that meets his/her disability-related needs.¹⁴

If a Section 8 PBV or Moderate Rehabilitation landlord is unable to accommodate a Participant’s needs at the current unit (and in the case of the PBV program, no other unit is available that meets the

¹² A more detailed overview of the procedures and general eligibility requirements for all transfer requests may be found in the BHA’s ACOP.

¹³ A Participant should consult the Leased Housing Admin. Plan for information on the steps he/she must take when terminating a lease in order to keep his/her subsidy after moving.

¹⁴ See Chapter 15 of the Leased Housing Admin Plan for more information on Participants moving from a non-accessible PBV unit to an accessible PBV unit.

needs), the Participant may be eligible to be added to the waitlist for a tenant-based Super Priority Voucher.¹⁵

CHAPTER 7: COMMUNICATION-RELATED REQUESTS

7.1 Auxiliary aids and other assistance for communication

BHA will provide appropriate auxiliary aids and other assistance for clients requesting communication-related RAs (for example, qualified sign language and oral interpreters, readers, use of taped materials).

7.2 Formatting and presentation of documents

BHA will make all communications with Clients available in a format that accommodates their disability-related needs if doing so may be necessary as an RA. Examples of such RAs include:

- Providing Clients with visual impairments with large-print documents.
- Meeting with Clients with cognitive disabilities to go over complex documents.
- Assisting Clients with disabilities that impact writing by helping them fill out any necessary forms.

7.3 Format and location of meetings

BHA will format and schedule Client meetings, conferences, and hearings in a manner that accommodates their disability-related needs if doing so may be necessary as an RA. Examples of such RAs include:

- Having a meeting by telephone or changing its location to one that is more comfortable for a Client with agoraphobia.
- Changing the time of day at which a private conference is to be held for a Client with diabetes so that it is better timed with his/her dialysis schedule.

Third parties may also attend meetings, conferences, and hearings to assist a Client with a disability as discussed below in Section 7.5

¹⁵ See Chapter 3 of the Leased Housing Admin Plan for more information on the issuance of Super Priority Vouchers in such situations.

7.4 Telecommunications with the deaf and hard of hearing

When BHA communicates by phone with Clients with hearing impairments, it will use telecommunication devices for the deaf/teletypewriter (“TDD/TTY”) services or other effective communications systems.

7.5 Assistance from third-party representatives

A third-party representative (for example, an advocate, friend, family member or service provider) may do any of the following with authorization from the Client:

- 1.) Act on the Client’s behalf in dealing with BHA with regard to an RA request (including filling out and submitting the Request for Reasonable Accommodation form); or
- 2.) Assist the Client at any meetings, conferences or interviews; and
- 3.) View all documents in the Client’s BHA files which relate to his/her RA request.

Upon the request of a Client, BHA will also send copies of any future BHA notices to an authorized third-party representative as well as the Client.

7.6 Extensions when there are delays in providing effective communication

If a Client requests an extension of any deadline because of a BHA-caused delay in providing effective communication (for example, if the BHA does not procure a sign interpreter in time), such a request will be approved.

CHAPTER 8: REQUESTS RELATED TO LIVE-IN PERSONAL CARE ATTENDANTS

BHA allows Clients to have live-in Personal Care Attendants (“PCA”s) as an RA.¹⁶ Once a live-in PCA is approved and added to a Client’s household, BHA will approve the Client for an extra bedroom *if*:

- 1.) The additional bedroom is requested; and
- 2.) The additional bedroom is warranted based on the resulting household composition.

For example, the addition of a significant other as a PCA may not warrant an additional bedroom absent additional circumstances.

¹⁶ BHA’s policy regarding PCAs for Residents and Public Housing Applicants can be found in BHA’s ACOP. The PCA policy for Leased Housing Applicants and Participants can be found in the Leased Housing Admin. Plan.

CHAPTER 9: DECISIONS ON REASONABLE ACCOMMODATION REQUESTS

9.1 Decisions on RAs: Timing and format

9.1.1 When will the BHA issue a decision?

Decisions on RA requests will be issued no later than thirty (30) calendar days from the date the BHA receives sufficient information from a Client to make a decision. The BHA will make all efforts to issue RA decisions as quickly as possible.

9.1.2 All decisions will be in writing

All RA approvals and denials will be in writing. If an RA request is approved or conditionally approved, the letter will describe:

- 1.)** The Accommodation to be provided;
- 2.)** Any terms, conditions, or performance expectations subject to the Client's agreement; and
- 3.)** The date for implementation, which shall be as soon as practicable and, except as explained in the approval notice, no later than thirty (30) days from the date of decision.

If BHA denies or partially denies a request for an RA, the letter shall explain the reasoning for the decision.

9.1.3 All decisions will advise of appeal rights

All written decisions on requests, whether approvals or denials, will advise Clients of any right to appeal to DGA along with the deadline for exercising those rights and shall state that the Client also has the right to file a fair housing complaint with HUD, the Massachusetts Commission Against Discrimination, the City of Boston's Office of Fair Housing & Equity, or in court.

9.2 Denials of Reasonable Accommodation requests and the Reasonable Accommodation Review Committee

If an Occupancy, Leased Housing, Operations, or DGA staff member reviews an RA request and believes it should be denied in whole or in part, that decision must be reviewed by a designee of the head of that department (unless the staff member is the designee). If the designee decides to go forward with the denial, partial denial, or alternative Accommodation, he/she will draft a proposed letter to the Client informing him/her of the decision. Before sending, the proposed letter, along with all

supporting documentation and information supporting the decision, will be submitted to the Office of Civil Rights (“OCR”) for review.

To undertake this review, OCR will maintain a four-member Reasonable Accommodation Review Committee (“RARC”) consisting of the Director of Civil Rights, Reasonable Accommodation Coordinator, a designee of the Director of Civil Rights, and a designee of the Administrator. To assist with review, the RARC will meet as necessary with representatives from all BHA departments responsible for the proposals. It will then decide whether to approve, remand, or reverse the proposed decision.

If the proposed decision is found deficient in any manner, the RARC will inform the designee of its rationale for not allowing it to be issued. Any decision that has been re-written at the request of the committee will be re-reviewed by the RARC prior to issuance.

Note that if DGA reviews another department’s RA denial that has already been reviewed by the RARC, the DGA decision will not receive further RARC review. Additionally, proposed denials that result from RA requests that arise within the context of a court case¹⁷ will not be reviewed by the RARC. They will be resolved within the context of the litigation and the decision on the RA may ultimately be left to the judge.

CHAPTER 10: REASONABLE ACCOMMODATIONS AND APPEALS

10.1 Appealing Reasonable Accommodation decisions

If BHA denies a Client’s request for an RA or offers an alternative RA with which the Client is not satisfied, the Client may request a hearing from DGA within twenty (20) days of the date of the decision. DGA shall use best efforts to hold the hearing within 30 days of the request.

Please note that the nature and extent of DGA review available to a Client depends on whether he/she is an Applicant, Resident, or Participant.¹⁸

¹⁷ For summary process cases this means the summons and complaint has been served, and for other civil actions it means the complaint has been filed with the court.

¹⁸ For more information on DGA review, please see the ACOP (Public Housing Applicants), the Leased Housing Admin. Plan (Leased Housing Applicants and Participants), and the Tenant Grievance Procedures (Public Housing Residents), which is accessible here: <https://www.bostonhousing.org/en/Departments/Grievances-and-Appeals/For-Public-Housing-Residents/Tenant-Grievance-Procedures.aspx>

10.1.1 Failed internal appeals do not remove offers of accommodation

If BHA offers a Client an alternative accommodation that he/she does not like, and the Client wishes to appeal it, he/she may do so without losing the right to accept the accommodation if BHA prevails at the appeal. This is also the case when BHA proposes an accommodation to resolve a lease/program compliance issue or finding of ineligibility and the Client rejects the accommodation but wants to appeal the accommodation and/or appeal/grieve the underlying matter: the Client may accept the proposed accommodation if he/she loses the appeal/grievance.

10.2 Requests first made at hearings or appeals

At times, a Client may request an RA for the first time during a hearing or appeal. If the request relates to how the hearing is being conducted, the Hearing Officer or Panel will address the request. If the request relates to the underlying reason for the hearing, the Director of DGA or his/her designee will decide whether the decision should be sent back (“remanded”) to the original department for further interactive process and review.

10.3 Implementation of an Accommodation when a denial is overturned

If DGA decides an RA request should have been granted, the department or public housing development that originally denied it shall implement the RA no later than thirty (30) days from the receipt of the DGA’s written decision. If implementation may require more time, the relevant department must explain in writing to the Client why this is the case and when implementation can be expected in accordance with the general policy.

10.4 Options when there is no further review available within BHA

Clients who have exhausted their appeal rights within BHA regarding an RA decision have the right to file a fair housing complaint with HUD, the Massachusetts Commission Against Discrimination, the City of Boston’s Office of Fair Housing & Equity, or in court.

CHAPTER 11: CONTACTS FOR FURTHER ASSISTANCE

11.1 General

Clients may always seek assistance from the departments reviewing their RA requests. BHA will also employ a Reasonable Accommodation Coordinator (“RAC”), who will report to the Director of Civil Rights.

11.2 The Reasonable Accommodation Coordinator

11.2.1 General role

The RAC will be responsible for overseeing the implementation of this policy and for coordinating BHA’s efforts to comply with the various provisions of federal, state and local law governing RAs in housing. The RAC will be available to BHA Clients as well as staff to answer questions and assist with issues regarding RA requests. The RAC shall also continually work with the various departments of the BHA to develop procedures to better track and monitor the agency’s processing of RA requests.

The RAC does not issue RA decisions but is available for advice to the BHA staff who do. As discussed above, however, the RAC is a member of OCR’s RARC, and will have input on whether proposed RA denials, partial denials, and alternative Accommodations should go forward.

BHA will notify all Clients on an initial and continuing basis of the availability of the RAC and provide them with his/her contact information.

11.2.2 Addressing concerns and complaints

Where the RAC believes that certain corrective action is necessary, he/she will directly advise BHA staff involved or make a recommendation to the Director of Civil Rights who will in turn advise the staff.

The RAC may receive complaints or other reports of non-compliance with this policy from BHA Clients, staff, advocates, or other interested persons outside BHA and will investigate such complaints promptly. The RAC will report his/her findings and any recommendations for remedial action to the Director of Civil Rights, who will take further action as necessary. These investigations are separate from the appeals process discussed above.

11.2.3 Status inquiries

Any BHA Client who has submitted an RA request other than a transfer may contact the Reasonable Accommodation Coordinator for a status inquiry. The RAC will reply within five (5) business days.

11.2.4 Access to files and information

The RAC shall have access to all files and information relevant to RA requests s/he is investigating. BHA staff must provide the RAC with such files and information within five (5) business days of his/her request for them.

CHAPTER 12: DEVELOPMENT OF PROCEDURES AND EMPLOYEE TRAINING

12.1 Development and implementation of procedures

BHA shall continue to develop and implement procedures through which individuals may request, and BHA may review, RAs. These procedures will be made accessible to all persons.

12.2 Training and informing employees of policy responsibilities

All current BHA employees shall be advised of this policy and any resulting responsibilities. BHA will also advise new employees of this policy at the start of their employment and provide them with a copy of this policy. Within twelve (12) months of adopting this policy, BHA will provide a training program for all relevant BHA management and staff. BHA will provide continuous training thereafter.

12.2.1 Training of Grievance Panel members

BHA will provide continuous trainings on RA matters to the BHA Grievance Panel members on an annual basis.

12.2.2. Trainings for other Client groups

Upon request, BHA will provide RA training for groups of Residents and Participants, including the Resident Advisory Board and Resident Empowerment Coalition.

CHAPTER 13: MANAGEMENT OF PERSONAL INFORMATION AND CONFIDENTIALITY

13.1 Management of personal information in Client files

BHA will maintain records for any Client who has requested an RA in the Client's file. Copies of the following RA-related documents will be kept pursuant to state and federal record retention requirements.

- The Request(s) for Reasonable Accommodation;
- The denial or approval notice(s);
- Any final decision(s) following an informal hearing;
- Any decision(s) of the BHA Administrator/designee;
- Any decision(s) of an outside administrative agency or a court;
- Any settlement agreements; and
- Documentation that an approved Accommodation has been implemented.

13.2 Confidentiality and use of Reasonable-Accommodation-related information

All information submitted to BHA by a Client or his/her verification sources which relates to a request for Accommodation will be kept confidential and used solely to make a determination on the RA request. This protection of confidentiality will extend to all information which relates to a Client's disability and need for Accommodation contained within a Client's files or any other BHA file with related information.

A Client's third-party representative may have access to the above information with the Client's authorization.

13.3 Employee and Grievance Panel access to confidential information

Information regarding a Client's RA request, including final decisions and any medical information provided in support of the request, will only be available to BHA employees or DGA Grievance Panel members who:

- 1.) Are directly involved in reviewing the RA request;
- 2.) Need to be aware of an approved Accommodation in order to assist with it; or
- 3.) Need access to the information in order to review a decision at a hearing or appeal.

13.4 Civil rights agencies' access to Reasonable Accommodation information

Upon request, federal, state, and local civil rights enforcement agencies will be provided with such information and documents as authorized by law.

13.5 Client access to documents related to Reasonable Accommodations

Clients are entitled to copies of all documents in their BHA files related to past or current RA request(s) in accordance with applicable law.

CHAPTER 14: LEGAL COMPLIANCE AND CONTROLLING AUTHORITY

These guidelines are not intended to be an exhaustive compilation of rules or policies governing BHA's handling of RA requests. If any conflicts exist or arise between this policy and guidance issued by the U.S. Department of Housing and Urban Development ("HUD"), or existing or future statutes, regulations, or other legal requirements at the state, federal, or local level, BHA will adhere to the other requirements.

This policy is intended to comply with the following laws, as well as state and federal case law and any governmental agency guidance.

14.1 Federal authority

- 1.)** Title VIII of the Civil Rights Act of 1968, as amended in 1988 (the Fair Housing Act, 42 U.S.C. §§ 3601-3619) ("FHA")
- 2.)** Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794) ("Section 504")
- 3.)** Americans with Disabilities Act of 1990, Title II (42 U.S.C. § 12010 et seq.), ("ADA")
- 4.)** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) ("Title VI")

The federal regulations implementing each of the above statutes are set forth in the Code of Federal Regulations as follows:

- FHA – 24 C.F.R. Part 100 et seq.
- Section 504 – 24 C.F.R. Part 8 et seq.
- ADA, Title II – 28 C.F.R. Part 34 et seq.
- Title VI – 24 C.F.R. Part 1 et seq.

14.2 State authority

- 1.) Massachusetts General Laws, Chapter 151B (the Massachusetts Housing Bill of Rights for People with Disabilities)
- 2.) Massachusetts General Laws, Chapter 93, § 103 (The Massachusetts Equal Rights Law)
- 3.) Amendment Article 114 of the Massachusetts Constitution

14.3 Local authority

- 1.) City of Boston Fair Housing Ordinance of 1982, as amended

APPENDIX

BOSTON HOUSING AUTHORITY ASSISTANCE AND SERVICE ANIMAL POLICY

1. General Statement of Policy

This policy sets forth the Boston Housing Authority's ("BHA") guidelines for how it reviews assistance and service animal-related requests from BHA Clients with disabilities. It also explains the rights of those making the requests.

These guidelines are not intended to be an exhaustive compilation of rules or policies governing BHA's handling of such requests. If any conflicts exist or arise between this policy and guidance issued by the U.S. Department of Housing and Urban Development ("HUD"), or existing or future statutes, regulations, or other legal requirements at the state, federal, or local level, BHA will adhere to the other requirements.

2. Who does this policy apply to?

This policy references the following individuals (whether heads of households or their authorized household members) who may be in need of a service or assistance animal(s):

- **Applicants:** Individuals who are applying/have already applied to one of BHA's housing programs.
- **Voucher Holders:** Individuals who are holding an unexpired voucher from a state or federal program administered by BHA's Leased Housing Division (such as "Section 8" or "MRVP"). They become "Participants" (see below) upon execution of a Housing Assistance Payment ("HAP") Contract.
- **Participants (or "Leased Housing Participants"):** Individuals assisted under the federal or state voucher or non-voucher programs administered by BHA's Leased Housing Division. Leased Housing programs include the "Section 8," "Section 8 Mod Rehab," "Section 8 PBV," and "MRVP" programs.
- **Residents (or "Public Housing Residents"):** Individuals lawfully residing at any of BHA's public housing developments.

This policy will use the term "**Client**" when guidance applies to Applicants, Voucher Holders, Participants, and Residents alike.

2.1 How this policy applies to Leased Housing Participants

The BHA does not have the authority to decide whether or not a Leased Housing Participant's private landlord must allow an animal on the premises as an assistance or service

animal. It is up to the landlord to decide whether or not an animal is a service or assistance animal for such purposes.¹⁹

The BHA will, however, decide whether or not a Participant's animal is an assistance or service animal to determine if the Participant is eligible for animal-related medical deductions. See Section 8 for more information on such medical deductions.

3. Relationship to BHA's Resident pet policies

Assistance and service animals are not considered "pets," therefore, BHA's Resident pet policies do not apply to the animals discussed below and BHA may *not* do the following with regard to them:

- 1.) Require "pet deposits."²⁰ BHA does, however, retain the right to cover the costs of repairs for damage an animal causes to a dwelling unit or common area, reasonable wear and tear excepted.
- 2.) Reject them solely on the basis of breed, height, or weight.
- 3.) Prevent them from accompanying the Resident to any area of the facility where members of the public are normally allowed to go.

Note that while assistance and service animals are not considered pets, some Clients may keep pets for the reasons covered in this policy and not realize the animals may be covered by this policy. For example, a Client with a mental disability may have had a pet for years. The pet was not obtained to help alleviate the discomfort of the Client's disability by providing emotional support, but now the animal provides that important benefit. In such situations, the Client's animal could be covered by this policy even though the Client has only thought of his/her animal as a "pet."

4. What is a "service animal"?

Service animals, as defined by the Americans with Disabilities Act, are dogs²¹ that are individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. They are not primarily intended to provide emotional support, well-being, comfort, or companionship, though they may provide these benefits as well.

¹⁹ For information on options that may be available to a Participant when a landlord cannot accommodate him/her at the Participant's current unit, please see Section 6.2 of the BHA Reasonable Accommodation Policy.

²⁰ The BHA's ability to do so is found in the BHA's Pet Policy and Rules for *Family State and Federal Developments*. The BHA does not collect pet deposits in elderly/disabled developments.

²¹ Occasionally, miniature horses are used as service animals. In such cases, they are subject to an additional reasonable accommodation analysis using the factors found in 28 CFR § 35.136(i).

5. What is an “assistance animal”?

Assistance animals have a broader definition than service animals. Under the Fair Housing Act and Section 504 of the Rehabilitation Act, assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability. Examples of assistance they may provide include: guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting an individual to impending seizures, or providing emotional support to persons with a disability that creates a need for such support.²²

Assistance animals are often dogs but may be other animals as well. An animal does not need to be trained to be an assistance animal, though some may receive training.²³

6. Requests to have an animal counted as a service/assistance animal

A Resident should bring a request to have an animal counted as a service or assistance animal to his/her housing development’s manager, and a Participant should bring the request to his/her Leasing Officer. Applicants who are having their initial rent calculated should bring their request to the department screening them (either Occupancy or Leased Housing) to see if they are eligible for a medical deduction as described in Section 8 of this policy. Requests will be reviewed as follows:

6.1 Service animal review

BHA shall first determine if the animal is a service animal. To do so, it may ask:

- 1.) Is this a service animal that is required because of a disability?
- 2.) What work or tasks has the animal been trained to perform?

BHA staff may not ask the above questions if this information is already known to the BHA or when it is readily apparent or has been observed that the animal is trained to do work or perform tasks for an individual with a disability. Staff may not ask about the nature or extent of the individual’s disability.

For example, if a staff member has interacted with a Client who is always clearly being guided by a seeing-eye dog, he or she may not ask the Client the above questions as it is clear that the animal is required due to a disability and it is clear what work that the animal is doing. He or she may also not ask questions about the nature or extent of the Client’s vision impairment. The animal should be approved as a service animal.

²² They are also often referred to as “assistive,” “support,” “therapy,” or “companion” animals, and may have other titles as well.

²³ Note that while all service animals are assistance animals, not all assistance animals are service animals.

6.1.1 BHA may not request supporting documentation for service animals

BHA may not require medical documentation, require a special identification card or training documentation for the animal, or ask for a demonstration of the animal's ability to perform the work or task.

6.2 Assistance animal review

If the animal is not a *service animal*, BHA shall determine whether to allow the animal as an *assistance animal*. Requests for assistance animals are reviewed under BHA's Reasonable Accommodation Policy as requests for a Reasonable Accommodation ("RA"). Note that as with other RA requests, supporting documentation may be requested by BHA in certain situations.

7. Residents: Denials of the ability to keep animals on the premises that otherwise meet the definition for assistance or service animals

BHA may not prohibit the keeping of an assistance or service animals unless:

- 1.) The animal is out of control and its handler does not take effective action to control it; or
- 2.) The animal is not housebroken; or
- 3.) The *individual* animal (as opposed to a general animal of its breed or size) poses a direct threat to the health or safety of others, or would cause substantial physical damage to the property of others, that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices, and procedures; or
- 4.) Assistance animals only: Allowing the Resident to keep the animal would impose an undue financial and administrative burden on BHA.

8. Medical deductions for service/assistance animals

Clients may be eligible for a medical expense deduction to their rent for the upkeep costs of BHA-approved assistance or service animals depending on the medical deduction rules for the program under which they are housed or will be housed. If eligible, they will be required to provide evidence of their expenses to the BHA, such as receipts from the food purchases for his/her assistance or service animal, in order to get the deduction.

Whether or not an expense is allowed will depend on the Client's program or potential program. Please consult BHA's Admissions and Continued Occupancy Policy and Leased Housing Administrative Plan for Section 8 Programs for the specifics on when medical deductions are allowed for Public Housing Residents and Leased Housing Participants respectively.