



box that he needed an accommodation in accordance with the Americans with Disabilities Act (ADA). The Division of Administrative Services approved his request and on the test date, the appellant was to be provided with the opportunity to get up and move approximately every 30 minutes and time would be stopped during any such breaks.

In an appeal filed on February 27, 2019, the appellant explains that he was not able “to utilize the afforded extra time allotment to me during the testing . . . Due to the 30-minute video restriction, which was in place and other unforeseen issues throughout the testing process[,] I tried adjusting to the neck discomfort I was experiencing during the test, which resulted in not having enough time to finish the administered test properly.” He further explains that there was another police officer from his department in his test room and he “felt very uncomfortable utilizing the extra time, for [I was] concerned that this officer would go back to my Department and disclose my ADA accommodation. Therefore, it altered my decision to request my extra time in order to decrease the discomfort in my neck as it progressed. In addition to the aforementioned, by default it appears to be some form of a breach of confidentiality. As a result, I felt embarrassed and uncomfortable, which increased my anxiety and cause[d] me to be unable to concentrate and complete the exam in a comfortable state of mind both physically and emotionally. Consequently, these conditions forced me to blindly rush through the exam to avoid leaving too many questions unanswered.” He contends that after completing the test, he attempted to file an appeal at the test center “but due to the same [Police Officer] ending up at the same table completing his appeal, I could not mention the inability to use my ADA accommodation because I didn’t want this officer to know my additional reasons for the appeal . . .” He asserts that he “felt uncomfortable being placed in [a classroom] with the general population and didn’t want to be singled out among the other examiners along with the fact that another police officer from my Department was present in the same testing room. I was greatly concerned that he would later disclose my disability to various co-workers who were not previously aware of my disability.” He notes that he was not “advised that I would [be] moved to a general population classroom until 48 hours before my exam was to take place, (this change I feel was unfair) . . .”

## CONCLUSION

*N.J.A.C.* 4A:4-6.4 states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the exam. It is noted that all monitors for the subject exam were provided with the same set of instructions and they were directed to read the instructions to the candidates as written. In this regard, the monitor instructions provide, after check-in is completed and prior to the test administration, in pertinent part:

Any objections to the manner in which the examination was administered must be made in writing immediately following the completion of the examination by completing a Comment or an Appeal of Civil Service Commission Examination Form prior to leaving the examination center. This form can be obtained from the Center Supervisor. No appeal relating to the manner in which the examination was administered shall be permitted after the test date.

In *In the Matter of Kimberlee L. Abate, et al.*, Docket No. A-4760-01T3 (App. Div. August 18, 2003), the court noted that “the obvious intent of this ‘same-day’ appeal process is to immediately identify, address and remedy any deficiencies in the manner in which the competitive examination is being administered.”

In the matter at hand, F.L.’s appeal of the sufficiency of his accommodation is untimely and is dismissed solely on those grounds. As noted previously, the subject exam was administered on February 23, 2019 and F.L. filed an appeal regarding test validity.<sup>4</sup> However, he subsequently filed the subject appeal on February 27, 2019. F.L. asserts that he was unable to include his concerns regarding his ADA accommodation at the examination site because another officer from his department was “at the same table completing his appeal, I could not mention the inability to use my ADA accommodation because I didn’t want this officer to know my additional reasons for the appeal.” As such, it is not clear from the record why F.L. did not choose to indicate on his appeal form that he had additional issues but due to privacy concerns, he would submit further information at a later date or why he did not wait for the other candidate to leave the table or the test center and then include his accommodation concerns in his appeal filed at the test center. Furthermore, F.L. concedes in his untimely appeal that he was advised that he would be in a general population classroom “48 hours before my exam was to take place.” In other words, the appellant was cognizant he was going to be tested in a classroom with the general population **prior to the test administration date.** In this regard, F.L. does not provide any evidence that he raised any objections to being placed in a room with the general test taking population prior to taking the test. It is noted that in an email from F.L. to the Division of Information and Logistics after the test administration date, F.L. inquires, “Although I didn’t ask at the time, would you happen to know why I was relocated from [the] ADA Accommodations room to [the] general population [room]?” Therefore, his appeal of this matter is untimely. However, the following is being provided for informational purposes only.

*N.J.A.C.* 4A:4-2.14(a) provides that otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request on the examination application and, upon receipt, the Civil Service

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<sup>4</sup>As indicated above, F.L.’s appeal regarding the validity of the subject test, which he filed at the test center, was addressed in *In the Matter of Melvin Jumper, et al., Police Sergeant* (CSC, decided March 24, 2021).

Commission shall make *reasonable* accommodation<sup>5</sup> where appropriate and notify the candidate of the arrangements. It is noted that on the application for the subject examination, candidates could select if they required any auxiliary aid or reasonable accommodation to take the test. If a candidate selected that he or she needed an accommodation, he or she was contacted before the test and provided with a Special Accommodations Request form. This form consists of two sections: Section 1, which is to be completed by the candidate, requires the candidate to indicate the accommodation(s) he or she is seeking; and Section 2, which is to be completed by a doctor or child study team, requires the doctor or child study team to provide a diagnosis and indicate recommended accommodation(s). Thus, candidates and/or their doctors or child study team must specify the accommodation(s) that they are seeking on the form. In this regard, the form advises candidates that “without this information, we will not be able to provide reasonable accommodations for you.”

With regard to F.L.’s concern that there was “some form of breach of confidentiality,” at the outset, it is noted that the Division of Information and Logistics further indicated that the appellant’s Special Accommodations Request form did not indicate that privacy was a concern. In addition, F.L. had another opportunity to indicate his privacy concerns at the test center by seeking out the Center Supervisor of the testing facility to privately discuss his needs. In this regard, it is noted that there is no record of the appellant complaining of this issue to the Center Supervisor or examining staff. If a problem existed, F.L. was in the best position to raise the issue at the test center when a remedy could have been provided. Without any information from the appellant regarding his privacy concerns on the Special Accommodations Request form or at the test center on the exam administration date, it was impossible to identify and address his needs.

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<sup>5</sup> The Americans with Disabilities Act (ADA), 42 U.S.C.A. sec. 12101, *et seq.*, requires that a “reasonable accommodation” be provided to a qualified individual. Under the ADA, the term “reasonable accommodation” means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See* 29 C.F.R. § 1630.2(o) (1999). The ADA does not provide the “correct” answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 C.F.R. § 1630.2(o) and 29 C.F.R. § 1630.9.

It is further noted that while F.L. does not indicate what breach of the ADA he believed occurred, it is noted that the ADA provides that medical information, with limited exceptions, is considered confidential. *See* 42 U.S.C.A. sec. 12112 (d) and 29 C.F.R. § 1630.14. In this regard, a request for a reasonable accommodation may be considered medical information subject to the ADA's confidentiality requirements.<sup>6</sup> As noted on the Special Accommodations Request form, "Any information regarding your ADA accommodations will be kept confidential and retained in a separate file at the Civil Service Commission." It is noted that a candidate's accommodation information or documentation is not sent to the test site. In addition, room monitors do not announce to the room or other candidates whether a candidate is receiving an accommodation. Furthermore, it is not clear why F.L. associates the accommodation test room with confidentiality or privacy. In this regard, the purpose of the accommodation test room is not necessarily privacy but rather for test administration purposes. For example, if a candidate who requires a reader is placed in the general test room, this would be disruptive to the other candidates.<sup>7</sup> Moreover, F.L. does not explain how being tested in the accommodation test room would have addressed his privacy concerns. In this regard, *e.g.*, had another candidate from his jurisdiction requested and received an accommodation and had been placed in the accommodation test room with F.L., it is not clear if this would have raised privacy concerns for F.L. Again, it is emphasized that without any information from F.L. regarding this area of concern on the Special Accommodations Request form or at the test center on the exam administration date, it was impossible to identify and address his needs.

### **ORDER**

Therefore, it is ordered that this appeal be dismissed as untimely.

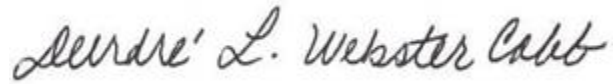
This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>6</sup> *See* <https://www.eeoc.gov/laws/guidance/fact-sheet-disability-discrimination>.

<sup>7</sup> As discussed previously, all of the candidates, except F.L., who were assigned to the accommodation test room were to be provided with a time and a half accommodation. Given the construction and timing of the test, it was not possible to test a candidate who was not receiving a time and a half accommodation in the accommodation test room.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF JUNE, 2021



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