

PERSONNEL

Americans with Disabilities Act: Reasonable Accommodation Requests

A. Commitment to nondiscrimination

The School Board is committed to assuring equal employment opportunity and equal access to services, programs and activities for persons with disabilities. It is the policy of the School Board to provide reasonable accommodation(s) to a qualified person with a disability to enable such person to perform the essential functions of the position for which he/she is employed or is applying for employment.

The School Board complies with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). This Regulation applies to all employment practices and actions. It includes, but is not limited to, recruitment, the job application process, hiring, training, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, and promotions. ~~Employees or applicants with disabilities may request reasonable accommodations. This Regulation applies to both temporary and permanent disabilities.~~

1. When an applicant with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, he or she will be given the same consideration for employment as any other applicant. Applicants who pose a direct threat to the health, safety, or well-being of themselves or others in the workplace when the threat cannot be eliminated by reasonable accommodation will not be hired.
2. The School Board will reasonably accommodate a qualified employee with a disability so that he/she can perform the essential functions of a job unless doing so causes a direct threat to these individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation or if the accommodation creates an undue hardship to the School Board. If a reasonable accommodation cannot be made, the employee will be placed on leave until an organizational decision has been made concerning the employee's immediate employment situation.
3. Individuals who are currently using alcohol or drugs illegally are excluded from coverage under this regulation.

B. Purpose

The purpose of this Regulation is to assist the School Board to:

1. Assure equal employment opportunities and practices;
2. Provide equal opportunities for participation in education and training programs;
3. Enhance the retention and upward mobility of qualified employees with disabilities; and
4. Ensure equal accessibilities to procedures for swift and judicious resolution of complaints arising out of this Regulation.

The Department of Human Resources is responsible for implementing this Regulation, including the resolution of reasonable accommodation, safety/direct threat, and undue hardship issues.

C. Key terms

Below listed is a summary of certain key terms to assist employees and applicants in understanding this Regulation. However, the Americans with Disabilities Act (ADA) sets forth specific statutory definitions of a number of key terms for determining whether an employee has a qualified disability for which a reasonable accommodation must be made under the ADA. The School Board is bound to abide by all laws and regulations that are applicable at the time of the request for a reasonable accommodation under this Regulation.

1. **“Disability”** - Under the ADA, a disability is:
 - a. a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - b. a record of such an impairment; or
 - c. being regarded as having such an impairment.
2. **“Major Life Activities”** is a term which includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
3. **“Major Bodily Functions”** is a term which includes physical or mental impairment such as any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. Also covered are any mental or psychological disorders, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
4. **“Substantially Limiting”** - In accordance with the Americans with Disability Act Amendments Act (“ADAAA”) final regulations, the determination of whether an impairment substantially limits a major life activity requires an individualized assessment, and an impairment that is

episodic or in remission may also meet the definition of disability if it would substantially limit a major life activity when active. Some examples of these types of impairments may include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder and schizophrenia. An impairment, such as cancer that is in remission but that may possibly return in a substantially limiting form, is also considered a disability under EEOC final ADAAA regulations.

e.5. “Direct Threat” is the significant risk to the health, safety, or well-being of an individual or others.

~~2. “Regarded as having such an impairment” means that an individual has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity; however, it shall not apply to impairments that are transitory and minor.~~

~~3. “Transitory impairment” is an impairment with an actual or expected duration of six (6) months or less. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:~~

~~a. medication, medical supplies, equipment, or appliances, low vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;~~

~~b. use of assistive technology;~~

~~c. reasonable accommodations or auxiliary aids or services; or~~

~~d. learned behavioral or adaptive neurological modifications.~~

~~The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. As used in this paragraph, the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and the term “low vision devices” means devices that magnify, enhance, or otherwise augment a visual image.~~

~~4.6. “Essential Job Functions”-these are the essential job duties that an employee must be able to perform with or without a reasonable accommodation. Usual characteristics of the essential functions of a job are time spent, consequences of error, skill or expertise involved, and the availability of other employees. For the purposes of this Regulation, consideration shall be given to the School Division’s judgment as to what functions of a~~

job are essential, if a written and up to date description exists, and the actual functions and duties of the job.

5.7. “Reasonable Accommodation”-this is any change or adjustment to a job or work environment which allows an employee with a disability to perform the essential functions of a job. Typical accommodations include, but are not limited: to job restructuring, reassignment, and equipment and furniture modifications.

6.8. “Undue Hardship”-this is an accommodation which would be unduly costly, extensive, disruptive, or would substantially alter operations. Such accommodations need not be provided. Nevertheless, please note that the School Division does have the obligation to explore and locate other suitable accommodations which would not constitute undue hardship if possible.

7.9. “Light Duty”-the School Division will continue its procedure of requiring that employees be able to perform the essential duties of their position. With the exception of the temporary alternate duty assignments available in Worker Compensation cases, there are no enduring "light duty" assignments.

8.10. “Qualified individual”- means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

D. Requests for reasonable accommodations

An employee or applicant, who because of a disability, could with assistance perform the essential functions of the position, may submit a request for reasonable accommodation using ADA Form 1 to the Office of Employee Relations in the Department of Human Resources. Upon receipt of ADA Form 1, ~~that Department~~Employee Relations will verify the information provided by the employee or applicant by forwarding an ADA Form 2 to the health care provider(s) identified on ADA Form 1.

The School Division may seek technical assistance from a medical professional, rehabilitation agencies or disability constituent organizations in determining how best to address an individual's specific request. In addition, the School Division may determine that the evaluation provided by the employee or the applicant is inadequate to make a determination and, at its own cost, may require that the employee or the applicant be evaluated by a health care provider.

Within fifteen (15) business days of the receipt of all ADA Form 2s and based on the information received on those forms, ~~the Chief Human Resources Officer~~the Director of Employee Relations and other appropriate School Division personnel will consult with the employee or the applicant regarding the request for accommodation. A written response will be provided to the employee or the applicant regarding whether the requested reasonable accommodation can be provided, whether another reasonable accommodation can be provided, or whether providing the requested reasonable accommodation would constitute an undue hardship for the School Division and therefore cannot be provided.

E. Appeal of decision

Should an employee find the response unsatisfactory, ~~the grievance procedure in School Board Regulation 4-4.1 may be used to seek redress. Should an applicant find the response unsatisfactory,~~ the employee or applicant may file an appeal within fifteen (15) business days of receipt of the response to the Chief Human Resources Officer (CRHO) or designee. ~~The appeal should be filed with the Superintendent.~~ The Superintendent~~CHRO~~ or designee ~~(other than the Chief Human Resources Officer)~~ will review the appeal and may undertake further investigation before rendering a decision regarding the ~~applicant's~~ appeal. The CHRO~~Superintendent~~ or designee will provide a written decision regarding the appeal ~~to the applicant~~ within thirty (30) business days of receipt of the appeal. This Regulation shall be construed to protect the substantive rights of interested persons to meet appropriate due process standards and to ensure that the School Board complies with the ADA and its implementing regulations. The decision of the CHRO, or designee, will be final.

F. Right to ~~A~~alternative ~~R~~remedies

Nothing in this Regulation precludes the complainant from seeking other legal remedies including filing complaints with other agencies or pursuing civil or criminal remedies. The right of a person to a prompt and equitable resolution of the complaint filed herein shall not be impaired by the person's pursuit of other remedies such as the filing of the ADA complaint with other appropriate federal, state, or local agencies or the filing of a lawsuit in state or federal court. Use of this procedure is not a prerequisite to the pursuit of other remedies.

G. Retaliation or false accusations prohibited

Persons who use this procedure for good faith complaints will not be retaliated against by the School Board or School Division staff. The School Board directs that appropriate action be taken against any person who retaliates against another person for reporting alleged discrimination or participating in related proceedings. Persons who knowingly file false discrimination complaints and any person who gives false statements or evidence in a related proceeding shall be subject to discipline ~~or other appropriate action. Students may be subject to discipline up to and including suspension or expulsion. School Board employees may be subject to discipline~~ up to and including dismissal. Volunteers, nonemployee agents of the School Board or visitors/invitees may be subject to measures up to and including exclusion from School Board property, buses, communication systems and school sponsored events.

H. Maintenance of files

The ~~ADA Coordinator~~Office of Employee Relations, Department of Human Resources shall maintain the files and records of the School Board relating to the complaints filed pursuant to this Regulation for a period of three years after the resolution or as otherwise required by applicable law or regulation. All documentation submitted or collected pursuant to this Regulation will be held in the strictest of confidence and kept separate from personnel records.

Documentation and reports from medical exams will be used solely to assist the School Division in making an informed decision about the employee's request for an accommodation.

Legal Reference

The American with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, *et seq.*, as amended.

Approved by Superintendent: October 8, 1998

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