The School Board of Broward County, Florida
Equal Educational Opportunities/ADA Compliance Department

AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008

Reasonable Accommodation Procedure



The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, genetic information, marital status, national origin, race, religion, sex or sexual orientation. The School Board also provides equal access to the Boy Scouts and other designated youth groups. Individuals who wish to file a discrimination and/or harassment complaint may call the Assistant Director, of the Equal Educational Opportunities/ADA Compliance Department & District's Equity Coordinator/Title IX Coordinator at 754-321-2150 or email eeo@browardschools.com.

Individuals with disabilities requesting accommodations under the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), may call the Equal Educational Opportunities/ADA Compliance Department at 754-321-2150 or email eeo@browardschools.com.

AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008

In accordance with the Americans with Disabilities Act Amendments Act, The School Board of Broward County, Florida, must make a reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability unless it can show that the accommodation would cause an undue hardship to its operation.

Qualified Individual with a Disability

For the purposes of providing a **reasonable accommodation**, a person is a "qualified individual with a disability," as defined by the Americans with Disabilities Act when he/she has a physical or mental impairment that **substantially** limits one or more major life activities, and is able to perform his/her job with or without reasonable accommodation. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Reasonable Accommodation

A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Actions that fall within the concept of "reasonable accommodation" range from purchasing equipment to modifying policies or relocating space. Common types of accommodations include:

making facilities used by employees readily accessible and usable; restructuring jobs; allowing part-time or modified work schedules; acquiring or modifying equipment; and providing readers or interpreters.

In accordance with the Equal Employment Opportunity Commission Enforcement Guidance, "Reassignment to another position will be considered **Only** when an accommodation is not possible in an employee's present job or when an accommodation in the employee's present job would cause an undue hardship." In addition, an employer is **not** required to create a new job or to "bump" another employee from a job in order to provide a reasonable accommodation; nor is an employer required to promote an individual with a disability to make such an accommodation. If reassignment is the accommodation, the employee will be given a "reasonable amount of time" in which to seek alternate employment with the District. The employee must be qualified for, and able to perform the essential functions of the **vacant** position with or without reasonable accommodation.

In addition, an employer is only obligated to make an accommodation only to the **known** limitations of an otherwise qualified individual with a disability. In general, it is the responsibility of the employee with a disability to inform the employer that an accommodation is needed. However, an employee does not have to use the term "reasonable accommodation" but must let the Principal/Department Head or immediate Supervisor know that some adjustment or change is needed to do a job because of the limitations caused by a disability.

HOW TO RESPOND TO A REASONABLE ACCOMMODATION

NOTE: This procedure must be utilized prior to requesting an examination by a physician.

This procedure does not replace other procedures such as the one utilized when an employee is currently on or returns from a Worker's Compensation injury. When an employee requests other medical leave benefits, these requests should continue to be handled through the appropriate channels.

When an employee requests an accommodation, the Principal/Department Head or immediate Supervisor must email the employee the link to access the ADA application at: www.browardschools.com/EEO.

The employee must complete the online ADA application within 10 working days of the date the email was sent to them by their administration/administrator.

Once received, the EEO/ADA Compliance Department will contact the Principal/Department Head or immediate Supervisor for input. If necessary, a meeting with the employee, the Principal/Department Head or immediate Supervisor and the EEO/ADA Compliance Department will be scheduled.

Any medical information to process an ADA request for accommodations must be requested only by the Department of EEO/ADA Compliance.

Within 30 days of receiving all relevant documents, including information from the employee's physician or health care specialist, the EEO/ADA Compliance Department will inform the Principal/Department Head and employee of its findings and recommendations.

Questions about this process should be addressed to the EEO/ADA Compliance Department at 754-321-2150.

REASONABLE ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT (ADAAA) OF 2008

1. How will a supervisor know when an employee is requesting a reasonable accommodation under the ADA?

When an employee requests an ADA accommodation, the individual or his/her representative must let the supervisor know that she/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, the employee does not need to mention the ADA or use the phrase "reasonable accommodation."

Example A: I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing.

Example B: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under her desk in her office.

Example C: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, the employee's statement is insufficient to put the employer on notice that he/she is requesting reasonable accommodation. This does not link his need for a new chair with a medical condition.

2. May someone other than the individual with a disability request a reasonable accommodation on behalf of the individual?

Yes, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.

Example A : An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.

3. An employee has been out of work for six months. The employee's doctor sends the employer a letter, stating that the employee is released to work, but with certain work restrictions or "light duty." Should this be considered a request for reasonable accommodation?

For many doctors and employees, the term "light duty" is synonymous with the term reasonable accommodation. Therefore, a request for "light duty" position should be considered a request for reasonable accommodation.

4. How will a supervisor know when an employee is requesting an accommodation under the ADA or FMLA leave?

If an employee indicates to his/her supervisor, "I need six weeks off to get treatment for a medical condition." This is a request for FMLA. If an employee indicates to his/her supervisor, "I need help doing my work because of a back problem." This is a request for accommodation.

5. A teacher has been determined to be a qualified individual with a disability under the ADA. The teacher is requesting a Teacher's Aide as a reasonable accommodation. May the principal provide an alternative accommodation?

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective.

6. If a supervisor has provided one reasonable accommodation, does the supervisor have to provide additional reasonable accommodations requested by an individual with a disability?

The duty to provide reasonable accommodation is an ongoing one. Certain individuals require only one reasonable accommodation, while others may need more than one. If an individual requests multiple reasonable accommodations, she/he is entitled only to those accommodations that are necessitated by a disability and that will provide an equal employment opportunity.

7. Must a supervisor withhold discipline or termination of an employee who, because of a disability, violated a conduct rule that is job related for the position in question and consistent with business necessity?

No. A Supervisor never has to excuse a violation of a uniformly applied conduct rule that is job related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

8. Must an employer provide a reasonable accommodation for an employee with a disability who violated a conduct rule that is job-related for the position in question and consistent with business necessity?

A supervisor must make reasonable accommodation to enable an otherwise qualified employee with a disability to meet such a conduct standard in the future, barring undue hardship, except where the punishment for the violation is termination. Since reasonable accommodation is always prospective, an employer is not required to excuse misconduct even if it is the result of the individual's disability. Possible accommodations include adjustments to starting times, specified breaks, and leave if these accommodations will enable an employee to comply with conduct rules.

Example : An employee with major depression is often late for work because of Medication side effects that make her extremely groggy in the morning. Her scheduled hours are from 7:00 a.m. to 3:00 p.m., but she arrives at 7:00, 7:30, 8:00 or even 8:30 on a given day. Her job responsibilities involve answering the telephones, doing payroll, work order and other clerical duties. The supervisor disciplines her for tardiness, stating that continued failure to arrive promptly during the next month will result in termination of her employment. The individual then explains that she was late because of a disability and needs to work on a later schedule. In this situation, the employer may discipline the employee because she violated a conduct standard addressing tardiness that is Job-related for the position in question and consistent with business necessity. The supervisor, however, must consider reasonable accommodation, barring undue hardship to enable this individual to meet this standard in the future.

9. When is a reassignment considered as a reasonable accommodation?

A reassignment to another position is considered only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship.

10. May a supervisor tell other employees that an individual is receiving a reasonable accommodation when employees ask questions about a coworker with a disability?

No. A supervisor may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. An employer may certainly respond to a question from an employee about what a coworker is receiving what is perceived as “different” or “special” treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer’s policy to respect employees’ privacy.

11. May a supervisor require that an employee with a disability be able to return “100%” or “full duty” before allowing the employee to return to work?

No. The terms “100%” or “full duty” may include marginal as well as essential job functions or may mean performing job functions without any accommodation. A supervisor may not require that an employee with a disability, who can perform the essential functions with or without reasonable accommodation, be able to return “full duty” if, because of the disability the employee is unable to perform marginal functions of the position or requires a reasonable accommodation that would not impose an undue hardship.

12. May a supervisor refuse to return to work or provide an accommodation for an employee with a disability, simply because it assumes, correctly or incorrectly, that the employee poses some increased risk or injury or increased liability.

No, unless the supervisor can show that the employment of this person in the position poses a "direct threat." The supervisor may not refuse to accommodate an employee who is able to perform the essential functions of the job, with or without reasonable accommodation, unless it can show that keeping the employee in the position poses a "direct threat." "Direct threat" means a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual would pose a "direct threat" cannot be based on speculation about future risk. The determination must be based on objective medical or other evidence related to a particular individual.

Example A: A supervisor may not exclude a person with a vision impairment from a job that requires a great deal of reading because of concern that the strain of heavy reading may further impair his/her sight.

NOTE: Where the psychological behavior of an employee suggest a threat to safety, factual evidence of this behavior also may constitute evidence of a "direct threat." An employee's violent, aggressive, destructive or threatening behavior may provide such evidence.