



ADMINISTRATIVE PROCEDURE

CATEGORY: School District, Nondiscrimination

SUBJECT: Nondiscrimination on the Basis of Disability,
Employees/Applicants

A. PURPOSE AND SCOPE

1. To outline administrative procedures governing implementation of the Americans with Disabilities Act (ADA).
2. **Related Procedures:**
 - Equal Opportunity in Employment 0100
 - Agency Complaints Alleging Discrimination 0120
 - Individuals with Exceptional Needs 4230
 - Employee Personnel Files 7100
 - Employee Complaints Alleging Harassment or Discrimination 7110

B. LEGAL AND POLICY BASIS

1. **Reference:** Board policies A-3000, I-1050, I-1360, I-1700, I-1800, and I-5500; Americans with Disabilities Act of 1990; 42 US Code §12101 *et seq.*; Rehabilitation Act of 1973; 29 US Code §794 *et seq.*; 25 Code of Federal Regulations §35.101 *et seq.*; 45 Code of Federal Regulations §84.1 *et seq.*
2. **Americans with Disabilities Act (ADA).** Consistent with Board policies, and in compliance with the Americans with Disabilities Act (ADA), no qualified person with a disability shall, on the basis of disability, be subjected to discrimination in recruitment or employment under any program or activity receiving federal financial assistance. Obligation to comply with this policy is not obviated or alleviated by state or local law, or by the terms of any collective bargaining agreement. This policy applies to:
 - a. Recruitment, hiring, placement, promotion, tenure, demotion, transfer, layoff, compensation, fringe benefits, or any other term, condition, or privilege of employment.
 - b. Preschool, elementary, secondary, and adult educational services.
3. The **Rehabilitation Act of 1973** provides similar requirements for both students and employees. The Student Services Division is responsible for administration of educational policy. (Administrative Procedure 4230)
4. **Dissemination of Policy.** Continuing steps shall be taken to notify all applicants, employees, and employee organizations of the district's policy of nondiscrimination on the basis of disability.

C. GENERAL

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the Human Resource Services Division.
2. **Definitions.**
 - a. **Handicapped person or individual with a disability** is a person who:

- (1) Has a physical or mental impairment that substantially limits one or more major life activities,
- (2) Has a record of such impairment, or
- (3) Is regarded as having an impairment (28 Code of Federal Regulations §35.104).

The individual should be able to provide documentation supporting the statement of disability.

- b. **Major life activities:** Those basic activities that the average person in the general population can perform with little or no difficulty. Specifically, major life activities include functions, such as caring for oneself, performing manual tasks, walking, hearing, seeing, breathing, speaking, learning and working (28 Code of Federal Regulations §35.104)
- c. **Qualified individual:** A person who is able to perform the essential functions of the job with or without reasonable accommodation.
- d. **Essential functions of the job:** The fundamental duties of the job are defined by two primary considerations:
 - (1) Whether the employee is required to perform the function, and
 - (2) Whether removing the function would fundamentally change the job.
- e. **Reasonable accommodation** may include any or all of the below, unless it would impose undue hardship on the employer:
 - (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities
 - (2) Job restructuring
 - (3) Part-time or modified work schedule
 - (4) Reassignment to a vacant position for which a person is qualified
 - (5) Acquisition or modifications of equipment or devices
 - (6) Appropriate adjustments or modifications of examinations, training materials, or policies
 - (7) The provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
- f. **Undue hardship:** An action requiring significant difficulty or expense. Employers need not take actions that are unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.
- g. **Supervisor:** (for purposes of this procedure)

- (1) For school personnel, the principal or site administrator.
 - (2) For all other district organizational units, the person who signs the employee's performance evaluation as evaluator.
- h. **Coordinator of compliance** with laws and regulations governing harassment or nondiscrimination as applied to employees is the Chief Human Resources Officer.

3. **Nondiscrimination in Employment Practices.**

- a. All decisions concerning employment must be made in a manner that ensures that discrimination on the basis of disability does not occur, and that decisions do not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.
- b. Pre-employment inquiries may not be made as to whether an applicant is disabled, or as to the nature or severity of a disability, with minor exceptions such as inquiry required solely to determine remedial action obligations connected with employment, and with the provision that such information is being requested on a voluntary basis and will be kept confidential.
- c. Pre-employment physical examinations may be given prior to an employee's entrance for duty provided that all entering employees in designated job classifications are subjected to such an examination. An offer of employment may be conditioned on results of a medical examination if such conditions apply to all applicants for employment in designated job classifications, and the results of an examination are used in accordance with the intent of the policy on nondiscrimination.
- d. Other employment practices subject to nondiscrimination on the basis of disability include:
 - (1) Recruiting, advertising, and processing of applications for employment; employment criteria and tests.
 - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, return from layoff, and rehiring.
 - (3) Rates of pay or any other form of compensation; changes in compensation.
 - (4) Job placements, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - (5) Leaves of absence, sick leave, or any other leave.
 - (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient.
 - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities; selection for leaves of absence to pursue training.

- (8) Employer-sponsored activities, including social or recreational programs.
 - (9) Any other term, condition, or privilege of employment.
4. **Confidentiality of Information.** Information about the medical condition or history of an applicant shall be collected and maintained on separate forms kept in separate confidential files that are segregated from personnel files, except that supervisors may be informed regarding restrictions on work or duties of persons with disabilities and regarding necessary accommodations (Administrative Procedure 7100). First aid and safety personnel may also be informed, where appropriate, if a condition might require emergency treatment.
5. **Reasonable Accommodation.** Federal regulations require that districts make reasonable accommodation to physical or mental limitations of an otherwise qualified applicant or employee with a disability unless it can be demonstrated that an accommodation would impose an undue hardship on the operation of a program. Reasonable accommodation may include:
- a. Making facilities used by employees readily accessible to and usable by persons with disabilities.
 - b. Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, provision of readers or interpreters, and other similar actions.
6. **Program Accessibility.** Each program or activity when viewed in its entirety must be accessible to persons with disabilities.
- a. Methods used to make programs accessible to employees with disabilities may include changes such as alteration of existing facilities, architectural changes in new construction that meet accessibility standards published by the American National Standards Institute, redesign of equipment, and relocation of offices. It is not necessary to make each existing facility accessible and usable by disabled persons; the "reasonable accommodation" rule applies.
 - b. **Notification.** The existence and location of accessible facilities shall be publicized on a continuing basis for the benefit of all interested persons, including persons with impaired vision or hearing.
7. **Requests for Reasonable Accommodation.**
- a. **Requests from applicants who are not employees.** If an applicant requests reasonable accommodation, the Human Resource Services Division shall require the applicant to document the fact that he/she has a disability as defined by the ADA and is therefore entitled to reasonable accommodation. The applicant is required to provide documentation from an appropriate professional (e.g., a doctor or rehabilitation counselor) stating that he/she has a disability. The district must provide reasonable accommodation only to individuals who are protected under the ADA statute. The applicant must also provide documentation concerning his/her functional limitations for which reasonable accommodation is requested.
 - b. **Requests from district employees.**

- (1) Any employee may initiate a request for reasonable accommodation by submitting a written request including the Accommodation Intake Packet (Attachment 1) and medical documentation supporting the request to the Human Resource Services Division.
- (2) If an incomplete packet or written request is received that does not include the required forms and documentation, the Human Resource Services Division will contact the employee to obtain any required forms or documents, or if additional information is needed to process the request.
- (3) The Human Resource Services Division will engage in an interactive process that involves dialogue with the employee requesting accommodations and will document in writing all conversations and meetings.
- (4) A review panel will convene to determine appropriate action/accommodations. All accommodations and actions must be communicated to the employee in writing. The Human Resources Services Division should verify that all accommodations are provided and reviewed as necessary.

8. Responsibilities.

a. **Chief Human Resources Officer** is responsible for:

- (1) Dissemination of this procedure and applicable policies.
- (2) Districtwide coordination of compliance regarding employees.
- (3) Maintenance of records documenting compliance.

D. IMPLEMENTATION (See Section C.)

E. FORMS AND AUXILIARY REFERENCES

1. Accommodation Intake Packet, available from the Human Resource Services Division (Attachment 1)

F. REPORTS AND RECORDS

1. All records are confidential and are kept by the Chief Human Resources Officer, or designee.

G. APPROVED BY



General Counsel, Legal Services
As to form and legality

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H. ISSUED BY

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Chief of Staff