

LOS ANGELES COMMUNITY COLLEGE DISTRICT

ADMINISTRATIVE REGULATION B-32

TOPIC: Reasonable Accommodation for Employees with Disabilities

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I. INTRODUCTION

The purpose of this Administrative Regulation is to establish procedures by which the Los Angeles Community College District will provide reasonable accommodation to all employees with disabilities within the meaning of Americans with Disabilities Act (“ADA”), the California Fair Employment and Housing Act (“FEHA”) and/or Sections 503/504 of the 1973 Rehabilitation Act. These procedures supplement relevant personnel policies and collective bargaining agreements, and should be read in conjunction with those provisions. The procedures apply for employees covered by the ADA, FEHA and/or Section 504 of the 1973 Rehabilitation Act.

Separate from the ADA process, there is a process for any employee who is injured at work and becomes disabled either permanently or temporarily. This is managed by the Workers’ Compensation Unit. Information about this process and the forms required can be found on the District’s Intranet.

II. PROCEDURES

A. General Principles

- 1) When an employee becomes unable to perform the essential job functions of the currently-held position as a result of a covered disability, whether permanent or temporary, the District will engage in efforts at reasonable accommodation that will allow the employee to perform the essential job functions of her/his position. The College or Educational Service Center (ESC) will explore reasonable accommodation options when an employee requests accommodation, or there is evidence that an employee may need accommodation due to a covered disability. Under the ADA and FEHA an employer must provide a reasonable accommodation to

the known physical or mental limitations of a qualified employee with a disability unless the accommodation would impose an undue hardship on the organization.

- 2) Accommodation options will be considered in discussions with the employee.
- 3) The process prescribed herein applies to all current District employees (probationary, permanent status, at will or by employment contract).
- 4) An employer does not have to make an accommodation for an individual who is not otherwise qualified for a position.
- 5) Generally, it is the obligation of an individual with a disability to request a reasonable accommodation.
- 6) The District is not required to lower quality or performance standards, provide personal use items (such as glasses, personal mobility devices or personal hearing devices), create a new position or displace (lay-off or bump) other employees. No accommodation is required if the essential functions of the job cannot be performed, if the employee poses a direct threat to himself/herself, co-workers or the public, or if the accommodation would create an undue hardship for the District. The employee is still expected to perform the job at the established standard work performance levels for which he/she was hired and the employee will be evaluated accordingly.

B. Definitions

- 1) The "ADA Coordinator" shall be the person designated by the applicable location's President or Deputy Chancellor.
- 2) "Good Faith Interactive Process" shall mean the process for engaging in an appropriate exchange with an employee for consideration of potential accommodations, as required by state and federal law.
- 3) "Manager" shall mean the supervising President, supervising Vice President, or at the Educational Services Center, the Chancellor or Deputy Chancellor, or their designee(s).

III. GOOD FAITH INTERACTIVE PROCESS

- A. The Good Faith Interactive Process, Defined. The Good Faith Interactive Process is the way in which employees and management arrive at a reasonable accommodation, where possible.

- B. Starting the Process. When the disability or the need for accommodation is obvious (e.g., wheelchair use, blindness), the employee's Manager should inquire whether the employee has a need for assistance. If the disability or the need for accommodation is not obvious, it is the responsibility of the employee to inform the Manager that an accommodation is needed in order to perform the essential job functions, or to receive equal benefits and privileges of employment. The employee does not have to formally notify the Manager in writing. A request for assistance or indication by the employee that some corrective measure may need to be taken can be made verbally, as well as in writing.
- C. Right of Privacy in Medical Condition. An employee should not be asked whether he/she has a disability or any other question about his/her medical condition. However, in keeping with the spirit of the interactive process, an employee who is struggling to adequately perform should be asked if there is any type of assistance that might enable the employee to better perform his/her essential job functions along with other material describing employee support resources.
- D. Initiating a Request. The employee shall use the Employee Accommodation Request Form to help clarify his or her specific abilities and limitations as they relate to the essential job functions, and to share the employee's preferences with regard to accommodations.
- 1) If the Manager is able to easily provide the accommodation, he/she should discuss the accommodation with the employee and document the informal meeting.
 - 2) In all other cases when a disability precludes an employee from performing one or more essential job functions, the Manager, ADA Coordinator and employee should begin the good faith interactive process.
 - 3) If the need for more information about the employee's work restrictions or limitations is needed, the Manager and/or the ADA Coordinator may ask the employee if he/she can provide more information on the Employee Accommodation Request form than was previously submitted.
 - 4) If after getting additional information from the employee, the need for an accommodation or the actual work restrictions are unclear, the Manager and/or the ADA Coordinator may give the employee a Licensed Health Care Provider Questionnaire Form to be completed by the employee's health care provider.
 - 5) The ADA Coordinator will schedule a good faith interactive meeting with the employee. The ADA Coordinator, the Manager and the

employee's immediate supervisor should be in attendance at the meeting, and given a copy of the notice. The employee is allowed to bring a representative to the meeting, which may be his/her union representative or another person of his or her choice. If the employee plans to have legal representation at the meeting, he/she must advise the Manager and/or the ADA Coordinator prior to the meeting or the meeting will be cancelled until District legal counsel can be present.

E. Implementation

- 1) If the Manager, in consultation with the ADA Coordinator, determines that an employee-requested accommodation is reasonable, the accommodation should be implemented as soon as possible. The District does not have to provide the accommodation preferred by the employee or his/her health care provider.
- 2) Consistent with College and District practices, the Manager may agree to an accommodation for essential functions, and to accommodation for, or elimination of, non-essential functions. This agreement should be documented.

F. Ongoing Process. The good faith interactive process and determination of reasonable accommodation(s) is an ongoing process. An appropriate accommodation at one point in time may need to be reassessed if:

- 1) The original accommodation was a temporary or short-term disability accommodation, that is, it was intended for a specifically defined purpose and time period which has elapsed;
- 2) The position duties change;
- 3) The environment changes;
- 4) The employee indicates that a new accommodation may be necessary; or
- 5) Other factors suggest that a new accommodation is needed and it is time to re-initiate the good faith interactive process.

G. Determination that the Proposed Accommodation(s) is Unreasonable

- 1) If it is decided that a proposed accommodation is unreasonable or presents an undue hardship, the Manager and/or the ADA Coordinator should re-initiate the Good Faith Interactive Process with the employee to try to arrive at a mutually agreeable alternative to the originally proposed accommodation.
- 2) If an employee is unable to perform the essential functions of his/her job even when provided reasonable accommodations, the employee may be placed on involuntary illness leave in keeping with appropriate District procedures.

IV. DISPUTE RESOLUTION PROCESS

- A. Right of Appeal. If the employee is dissatisfied with the outcome of the good faith interactive process, the employee may file an appeal with the District's ADA Compliance Administrator. The employee must use the ADA Accommodation Appeal Form.
- B. ADA Accommodation Appeal Process
- 1) Within 15 calendar days after receipt of the appeal, or as soon thereafter as practical, the ADA Compliance Administrator or designee will meet with the employee to discuss the appeal and possible resolutions.
 - 2) Within 15 calendar days after the meeting, the ADA Compliance Administrator or designee will respond in writing, and, where appropriate, in a format accessible to the employee, with a final resolution of the appeal.
 - 3) All written appeals received by the ADA Compliance Administrator and responses from that office will be retained by the District for at least three years.
 - 4) If the employee is unable to resolve the issue through the ADA Accommodation Appeal process, discrimination complaints should be addressed to the District's Office of Diversity Programs.

Original Issue Date: February 10, 2014

Initiated by: ADA Compliance Administrator

Dates of Changes:

References:

California Education Code sections 87789; 88190-88195, 88198-88199

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)

American with Disabilities Act of 1991 (42 U.S.C. § 12100 et seq.; 20 U.S.C. § 1681 et seq.)

ADA Amendments Act of 2008 (42 U.S.C. § 12101 et seq.)

California Fair Employment and Housing Act (Gov. Code § 12940 et seq.)

California Constitution, Art. 1, § 1

California Family Rights Act (CFRA) (Gov. Code § 12495)

CalPERS Disability Retirement (Gov. Code § 21153)

Family Medical Leave Act (29 U.S.C. § 2601 et seq.) and corresponding California law

Board Rules, Chapter XV, Rules 15001 and 15003