

South Central Workforce Development Board (SCWDB)



POLICY: ACCESSIBILITY AND REASONABLE ACCOMMODATIONS POLICY

EFFECTIVE DATE: JULY 1, 2016

POLICY NUMBER: 2016-11

SUBJECT: ACCESSIBILITY AND REASONABLE ACCOMMODATIONS POLICY

PURPOSE:

The purpose of this policy is to implement the requirements of Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and the implementing regulations pertaining to the provision of reasonable accommodations, making reasonable modifications to policies, practices, and procedures and the provision of auxiliary aids and services to qualified individuals with disabilities. Qualified individuals with disabilities will be given a meaningful opportunity to participate in and benefit from aid, benefits, services, or training, including career services and support services. This includes the adoption of effective communication strategies for applicants, participants, and the general public with a wide range of physical, perceptual, communication and cognitive abilities.

The objective is to ensure that access is a reality for all persons interested in participating in programs, projects and activities contracted through the South Central workforce system, including persons with disabilities.

The policies pertaining to reasonable accommodation/reasonable modification/auxiliary aids and services apply to qualified individuals with disabilities in regard to:

- Registration and orientation.
- Initial screening, assessments, and testing.
- Service delivery, including career services, training services, and support services.
- Continuous improvement.

Accommodations should occur on a timely basis. If not reasonable or if filling the request would cause undue hardship, documenting due diligence is required as specified elsewhere in this policy.

EFFECTIVE DATE: July 1, 2016

ACTION REQUIRED:

Within 15 days of the receipt of this policy it is the recipient's (e.g., vendors, partners) responsibility to ensure all staff are informed of the policy and to create an internal process to ensure accountability.

BACKGROUND:

The Workforce Innovation and Opportunity Act (WIOA) stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services. Title I of WIOA assigns responsibilities at the local, State and Federal levels to ensure the creation and maintenance of an American Job Center (AJC) system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance. It prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain non-citizens. Although gender identity is not an explicitly protected basis under the applicable federal laws, discrimination based upon gender identity, gender expression, and sex stereotyping has been interpreted to be a form of prohibited sex discrimination, including under laws that apply to federally financially assisted employment, training, and education programs and activities.

As set forth in the regulations (29 CFR Part 38) implementing Section 188 of WIOA, there is an obligation to assure fair and equitable access to all services, programs and facilities for members of both sexes, various racial and ethnic groups, individuals in differing age groups, and individuals with disabilities. Any entity that receives financial assistance under Title I of WIOA is a recipient obligated to ensure nondiscrimination and equal opportunity. Locally, this includes the one stop operator, service providers, training vendors, and subrecipients. This policy is directed toward ensuring that the programs, services and facilities of the South Central workforce delivery system are accessible to all, including individuals with disabilities.

POLICY:

No individual is to be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any program or activity, funded in whole or in part under WIOA, because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

With regard to aid, benefits, services, and training, all vendors providing services will provide reasonable accommodations to qualified individuals with disabilities who utilize WIOA career and training services and WIOA youth program services unless providing the accommodation would cause undue hardship.

The vendor will also make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless making the modifications would fundamentally alter the nature of the service, program, or activity. The need for an accommodation/modification shall not adversely affect the consideration of a qualified individual with a disability for aid, benefits, services, and training. In those situations where the vendor believes that the proposed accommodation/modification would cause undue hardship/fundamental alteration in the nature of the program, the vendor has the burden of proving that the accommodation/modification would result in such undue hardship/fundamental alteration. If an accommodation/modification would result in undue hardship/fundamental alteration, the vendor will nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, and training that is provided by the vendor. If an accommodation would result in undue hardship, the vendor will give the individual with a disability the option of providing the accommodation.

REASONABLE ACCOMMODATION, REASONABLE MODIFICATION, AND AUXILIARY AIDS AND SERVICES

Accommodations, modification, providing effective communication, and auxiliary aids and services will hereinafter be referred to as “accommodations”.

Auxiliary Aids, Services and Assistive Technology

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I program or activity, a recipient must furnish appropriate auxiliary aids or services where necessary. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability. Primary consideration means honoring the choice unless the agency can demonstrate that another equally effective means of communication is available, or that using the means chosen would result in a fundamental alteration in the service, program, activity, or undue financial and administrative burdens.

Taking steps to ensure effective communication: All staff will take steps to ensure that communications with individuals with disabilities are as effective as communications with others.

Furnishing Auxiliary aids and services: All staff will furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of: basic career services offered to the general public and the WIOA Title I financially assisted programs or activities.

Providing appropriate signage: All staff will ensure that interested individuals can obtain information as to the existence or location of accessible services, activities, and facilities, including the provision of appropriate signage at the primary entrances to its inaccessible facilities.

A list of auxiliary aids and services can be found in 29 CFR § 38.4, and includes:

- Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;
- Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;
- Acquisition or modification of equipment or devices; and
- Other similar services and actions.

A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures associated with providing auxiliary aids, services, or assistive technology, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I.

This obligation does not require a recipient to provide personal devices, such as wheelchairs; prescribed devices, such as prescription eyeglasses or hearing aids; or readers for personal use or study.

If an individual with disabilities elects not to participate in an available separate or different program or service, and instead chooses to participate in available WIOA Title I financially assisted programs and activities, the obligations regarding auxiliary aids, services, and assistive technology still apply.

Facility Accessibility

In order to be ready and welcoming when persons with disabilities seek services, advance preparatory actions must be taken. Specific information on ADA accessibility guidelines for buildings and facilities is provided at <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>. Some areas to particularly note include:

- Signage
- Accessible Counters
- Automatic and Power-Assisted Doors
- Accessible Restrooms
- Accessible Workstations
- Obstacle Free Entrance
- Space in Waiting Room for People Using Wheelchairs
- 32-inch Clear Opening on Door
- 36-inch Clear Path of Travel

The above is only a sampling of considerations. Accessibility is an on-going process.

NOTICE OF THE AVAILABILITY and RIGHT TO RECEIVE REASONABLE ACCOMMODATIONS

All contractors/vendors must post notice of the availability of reasonable accommodations. This notice should be directed to registrants, applicants, participants, and applicants for employment/employees, subrecipients, and the public. The notice shall include that it is a qualified individual's right to receive reasonable accommodations.

RECEIVING REQUESTS FOR ACCOMMODATIONS

When a person with a disability makes a request for a reasonable accommodation to any of the vendors' representative, the vendor is required to respond to that request. All staff will be able to recognize such a request and initiate a response to that request through the proper decision making procedures. Request for accommodations, modifications, and/or effective communication are requests that include the following two elements:

- A request for an adjustment or assistance; AND
- An indication that the request might be related to a medical condition or disability.

A request can be made after a customer has already begun to receive the services for which the accommodation is requested. Requests may also be made by a third party such as a relative, friend, counselor or job coach. This is particularly likely when a customer's disability might make it difficult for the individual to make the request independently. However, staff must directly verify with the customer an agreement with the request.

INQUIRIES ABOUT DISABILITY

If it appears that a qualified individual with a disability may need an accommodation, staff may ask the individual if he or she can participate in a specific aid, benefit, service, or training with or without an accommodation. The individual's response must determine the Center's/program's actions.

If the individual indicates that an accommodation is not needed, no further inquiries about the disability may be made. For data collection purposes necessary for customer service and satisfaction improvements, staff may ask job seekers if they have a disability ONLY if this question is asked of all customers using the Center/programs. Job seeking customers must be informed that disclosure is voluntary.

REASONABLE ACCOMMODATION / MODIFICATION TO SERVICE DELIVERY

Staff will provide appropriate assistance to individuals with disabilities so that they can effectively benefit from WIOA career and training program services.

RESPONSIBILITIES OF INDIVIDUALS WITH DISABILITIES AND VENDOR STAFF TO PROVIDE REASONABLE ACCOMMODATIONS, MODIFICATIONS AND AUXILIARY AIDS AND SERVICES

All staff will be able to communicate the responsibilities of both the staff and the qualified individual with disability and act accordingly in collecting information in order to provide accommodations.

NOTICE OF NEED FOR ACCOMMODATIONS

A qualified individual with a disability seeking reasonable accommodations, modifications, auxiliary aids and services must inform staff on a timely basis of a need for such accommodation and must submit, upon request, to the Center or program any reasonable and necessary medical documentation.

NOTICE OF RIGHT TO FILE A GRIEVANCE/COMPLAINT

Individuals who believe that they have been discriminated against because the vendor failed to provide accommodations/modifications may file a complaint with the Equal Opportunity Officer. Information on how to file a complaint will be publicly posted and available in alternative formats.

VENDORS PREPAREDNESS TO RESPOND

All staff must be informed and trained on how to proceed if an accommodation is requested.

UNDUE HARDSHIP

Requests that cannot be provided or which are believed to pose an undue burden or fundamental alteration must be reviewed by the EO Officer. The EO officer or administrative level designee are the only persons with authority to determine undue hardship/fundamental alteration on behalf of the vendors. The EO Officer or administrative level designee can make the decision that the accommodation would result in undue hardship/fundamental alteration only after considering all factors listed in the federal regulations.

WRITTEN STATEMENT OF DENIAL

A written statement of the reasons for reaching these conclusions will accompany the decision that an accommodation would result in undue hardship/fundamental alteration. The vendor will provide a copy of the statement of reasons to the individual who requested the accommodation, modification, auxiliary aid or service.

DOCUMENTATION OF REQUESTS FOR REASONABLE ACCOMMODATIONS/ VERIFYING A DISABILITY

Requesting documentation for a disability can be an impediment to expedient and customer friendly service and therefore should usually be avoided. Documentation of a disability underlying a request for an accommodation should not be requested when:

- The request for accommodation falls within the range of adjustments that staff would normally make in providing good customer service for any customer.
- The disability is apparent. However, there are some instances when such documentation may be necessary. Documentation of the disability underlying a request for an accommodation may be appropriate when:
 - The disability is not apparent AND the accommodation requested could be of benefit to an individual who does not have a disability.
 - There is reason to suspect an individual may be attempting to abuse the reasonable accommodation/modification/effective communication process to disrupt or harass the program.
 - The connection between the disability and the accommodation requested is unclear.

A written record must be made of any requests for reasonable accommodations that would require significant resources or preparation.

Written records are made in order to respond effectively to requests, provide justification for decisions about whether or not to make accommodations and/or expenditures pertaining to requests and for the continuous improvement of services to customers with disabilities.

In keeping records pertaining to requests for reasonable accommodations, all staff should insure that the documentation process does not delay or impede the provision of accommodations. Records must be kept confidential and maintained in a separate, secure file.

DECISION MAKING AUTHORITY IN RESPONDING TO REQUESTS FOR REASONABLE ACCOMMODATIONS

Any staff person will be able to provide or arrange accommodations on their own authority and initiative in the most expedient and customer friendly way possible. Providing an accommodation should take place at the lowest administrative level that has access to the necessary resources. The denial of an accommodation requires review and decision-making at the administrative level. If a staff person believes that it may be appropriate to seek documentation of a disability underlying a request for accommodation, that staff person should present the recommendation to the designated EO Officer or administrative level designee.

The EO Officer will consider the recommendation, and if appropriate, conduct the inquiry.

In providing auxiliary aids for effective communication, primary consideration must be given to the customer's preferred mode of communication, and that a decision to use some other mode must be justified by very strong programmatic consideration.

DENYING A REQUEST FOR A REASONABLE ACCOMMODATION

Factors for determining that there is no obligation to provide a reasonable accommodation

The Center or program may deny a request for a reasonable accommodation that goes beyond the scope of good customer service only on the basis of the following criteria:

- The Center/program has determined the customer does not have a disability,

- The Center/program has determined that the absence of the requested reasonable accommodation would not limit the customer's ability to have genuine, meaningful participation in and derive an equal benefit from the Center's aids, benefits, services and training, OR
- The Center/program has determined that there is no accommodation that would be effective in improving the customer's ability to have genuine, meaningful participation in and derive an equal benefit from our aids, benefits, services and training.

Undue Burden

The Center/program may limit its obligation to provide any reasonable accommodation if the provision of that accommodation would result in an undue burden or fundamental alteration. A determination of undue burden/fundamental alteration can only be made after taking into consideration the following factors:

- The nature and net cost of the accommodation or modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification
- The overall financial resources of the facility or facilities involved in the provision of the modification, including:
 - The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and
 - The effect the accommodation or modification would have on the expenses and resources of the facility or facilities
- The overall financial resources of the provider, including:
 - The overall size of the provider;
 - The number of persons aided, benefited, served, trained, or employed by the provider; and
 - The number, type and location of the provider's facilities;
- The impact of the modification upon the operation of the facility or facilities, including:
 - The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and
 - The impact on the facility's ability to carry out its mission.

The denial of a request for a reasonable accommodation on the basis of undue burden/fundamental alteration will require agreement by the Program Director of the pertinent vendor. After a determination of undue burden/fundamental alteration, the Center/program must still take any other action which would not result in such burden but which would improve, to the maximum extent possible, the customer's ability to participate in and benefit from the Center's/program's aids, benefits services and training. The Center/program must also offer to cover the costs of the reasonable accommodation up to the limit of undue burdens and to allow the customer to cover any costs above that threshold.

Written Notice of Denial: Any denial of a request for reasonable accommodation must be communicated to the customer in writing, and in alternate format or with other auxiliary aids for effective communication as appropriate. The written notice of denial must:

- explain the reasons for the denial;
- inform the customer of his or her rights to file a complaint with the Department of Labor Civil Rights Center;
- provide instructions for initiating such complaints. A copy of this notice of denial must be provided to the State Equal Opportunity Officer.

Additionally, if the denial is based on a determination of undue burden/ fundamental alteration, the written notice of denial must also document that all of the required factors that must be considered in determining undue burden were considered.

CONFIDENTIALITY AND DISCLOSURE

Staff must inform individuals that if they have a disability they can choose to disclose and seek reasonable accommodation, reasonable modification, and auxiliary aids and services.

Disclosure is voluntary and information regarding disability will be kept confidential.

Specific information, including medical information gathered for the purpose of determining the need and arranging for an accommodation for a qualified individual with a disability must be kept confidential and maintained in a separate, secure file that is only available to authorized individuals. Authorized individuals include managers/supervisors, EO personnel, and enforcement agencies. Medical information given to staff verbally by a person with a disability is also regarded as confidential and should not be released without written consent of the person with a disability.

DEFINITIONS

Auxiliary Aid for Effective Communication: The term "auxiliary aid for effective communication" means a technology, individual, skill, format, strategy, other means, or combination of means employed to provide effective communication.

Facility: The definition of "facility" under the ADA includes "all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fundamental Alteration: The term "fundamental alteration" means (1) A change in the essential nature of a program or activity, including aid, benefits, services, or training; or (2) A cost that a provider can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in undue burden are set out in the federal regulations implementing Section 188 of WIOA.

Undue Hardship: The term "undue hardship" means, with regard to individuals with disabilities, significant difficulty or expense incurred by a provider, when considered in light of the factors set out in the regulations implementing Section 188 of WIOA.

Individual with a Disability: The term "individual with a disability" means a person who has a disability. The term "disability" means with respect to an individual, a physical or mental impairment which substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Providing Effective Communication: The term "providing effective communication" means taking affirmative steps to insure that individuals who have hearing, speech, vision, or cognitive disabilities experience the same access to information and opportunity to express themselves that would be available to a similarly situated individual without a disability, through methods or means that are as effective in conveying the information to and/or from the individual with a disability as those employed with individuals who do not have a disability.

Qualified Individual with a Disability: The term "qualified individual with a disability" means with respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Reasonable Accommodation: The term "reasonable accommodation" means:

- Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, or training that the qualified applicant/registrant desires; OR
- Modifications or adjustments that enable a qualified individual with a disability to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to the environment where aid, benefits, services, or training are given or the customary manner in which, or circumstances under which aid, benefit, service, or training are given; OR
- Modifications or adjustments that enable a qualified individual with a disability to enjoy the same aid, benefits, services, or training as are enjoyed by other similarly situated individuals without disabilities.

EO Officer is Ms. Regina Jackson. Contact by email at riackson@elpolaw.com.

REFERENCES:

- Workforce Innovation and Opportunity Act (WIOA), Section 188;
- WIOA Regulations at 20 CFR § 679.370; 28 CFR 35 Subpart E – Communications, 28 CFR § 35.160(b)(2); 29 CFR Part 38; 31 CFR Part 60-3;
- TEGL 37-14;
- TEN 1-15; WDB Equal Opportunity and Nondiscrimination Policy;
- Americans with Disabilities Act of 1990; Rehabilitation Act of 1973, as amended, Section 504 (29 CFR 32.13); DLLR website - <http://www.dllr.state.md.us/employment/indivwithdisabilities.shtml>
- The WDB Local Workforce Development Plan

Approved:

4-19-2017
Date of WDB Approval

4-13-2017
Date of Governance
Committee Approval

Signed by:


Ron Sowell, WDB Chairman