



# Bay Consortium Workforce Development Board

**Policy Number: 18-02**

**Effective Date: August 3, 2018**

**Title: Accessibility and Reasonable Accommodation Policy**

## PURPOSE

The policy on accommodations and accessibility ensures that every Workforce Innovation and Opportunity Act (WIOA) participant receives quality services. This policy outlines steps to ensure nondiscrimination and equal opportunity in the Bay Consortium Workforce Development Board's (BCWDB) Career Works Virginia Centers/American Job Centers (AJC) and the reasonable accommodations required to effectively serve individuals with disabilities.

## BACKGROUND

WIOA assigns responsibilities at the local, State and Federal levels to ensure the oversight of the AJC system that enhances the range and quality of workforce development services that are accessible to all individuals seeking assistance. WIOA stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services. It prohibits discrimination based on race, color, national origin, sex, gender identity, age, disability, religion, political affiliation or belief, or participant status.

## POLICY

The BCWDB considers individuals with disabilities an important element of diversity and ability within the AJCs. Individuals with disabilities must be treated with respect and give customer-centric services within both the universal AJC offerings, as well as within WIOA and other BCWDB programmatic offerings.

No individual is to be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in any program or activity, funded in whole or in part under WIOA, due to race, color, religion, sex, gender identity, national origin, age, disability, or political affiliation or belief.

Program operators must use the same processes for all customers, including individuals with disabilities. The program operator will also make reasonable modifications in 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.

## **ENSURING NONDISCRIMINATION**

The following actions should be taken to ensure nondiscrimination of individuals with disabilities:

- Ensure BCWDB AJCs are American with Disabilities Act (ADA) compliant and equipped with auxiliary aids and accommodations. This should include a list of currently available assistive technology devices and services within the centers available for individuals.
- Ensure individuals are aware of compliance through use of signs or other means of visibility. "Equal Opportunity is the Law" must be prominently displayed within the AJCs and made available in other formats as requested.
- Ensure individuals are aware of the ability to receive reasonable accommodations. Notice of the availability and right to receive reasonable accommodations must be posted.
- Rejection of all job orders from any employer that specifies it will not accept applications from individuals with disabilities or from applicants with a certain disability. Under the law, individuals with disabilities must be referred for the same range of positions as any other qualified customer.
- Maintain confidentiality and not disclose disability-related or other medical information about an individual to an employer or partnering organization unless the job seeker has requested the disclosure on their behalf.
- Incorporate information on accommodations and rights of all individuals, including individuals with disabilities, in orientations.
- Refrain from stereotyping individuals with disabilities when evaluating their skills, abilities, interests and needs.
- Periodically review eligibility criteria for services or training to eliminate elements that may screen out individuals with disabilities (unless criteria is directly related to specific training or services and is essential), such as
- Measurable Skills Gain level requirements to access services that may unnecessarily prevent individuals with intellectual, cognitive or development disabilities from accessing services.

Program operators are subject to the following provisions of law:

- Section 188 of the Workforce Innovation and Opportunity Act, which prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief and requires that reasonable accommodations be provided to qualified individuals with disabilities in certain circumstances.
- Section 504 of the Rehabilitation Act, which prohibits discrimination against individuals with disabilities by recipients of Federal financial assistance.
- Title I of the Americans with Disabilities Act, which prohibits discrimination in employment based on disability.

- Title II of the Americans with Disabilities Act, which prohibits State and local governments from discriminating on the basis of disability.
- Section 427 of the General Education Provisions Act, which requires recipients to ensure equitable access to, and participation in, certain programs run by the U.S. Department of Education.

## **DISCLOSING DISABILITIES**

Individuals may or may not choose to disclose that they have a disability. The individual does not have to document a disability to register at the AJC or to receive universal services.

Staff should only ask individuals if they have a disability if this question is asked of all customers using the AJC or program and for data collection purposes, or for customer service and satisfaction improvements. Staff may ask individuals whether they are able to perform the essential functions of a job, training, or activity, but should not directly ask if an individual has a disability.

If it appears that an 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. If the individual indicates that an accommodation is not needed, no further inquiries about the disability may be made. The individual's response must determine the Job Center's/program's actions.

If the individual discloses a disability, staff must inform the individual that:

- Providing information about one's disability is voluntary;
- The information will be kept confidential as provided by law;
- Refusal to provide the information will not subject the individual to adverse treatment; and
- The information will only be used in accordance with the law.

For WIOA Title I services, individuals with disabilities do not need to verify a disability to be served; however, it would benefit the individual to provide documentation of the disability to receive priority of service and to receive connections to additional resources. If individuals with disabilities request accommodations on any testing for service delivery purposes, documentation of the disability will be required. Additionally, some discretionary grants may require individuals with disabilities to show documentation of their disability for eligibility purposes.

Specific information on disabilities gathered for program eligibility purposes, including medical information gathered, must be kept confidential and maintained in a separate, secure file that is only available to authorized individuals. 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.

## **REASONABLE ACCOMMODATIONS**

Reasonable accommodations, modification, providing effective communication, and auxiliary aids and services will hereinafter be referred to as "reasonable accommodations." A reasonable accommodation is a change in the way the program is administered that enables an individual with a disability to receive benefits, services and training equal to those provided to individuals without disabilities.

Program operators providing services will provide reasonable accommodations to qualified individuals with disabilities who utilize WIOA career and training services and WIOA youth program services to ensure equal access and opportunity.

The policies pertaining to reasonable accommodations 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, and
- Continuous improvement.

Program operators must not place a surcharge on an 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.

## **TYPES OF ACCOMMODATIONS**

There are many forms of reasonable accommodations. Staff and the individual with a disability should work together to identify the most effective reasonable accommodation for that individual. Determining the most reasonable accommodation should be done as quickly as possible to avoid delaying access to services.

### **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 or Title III program or activity, the program operator must furnish appropriate auxiliary aids or services, including effective means of communication, where necessary. In determining what type of auxiliary aid or service is appropriate and necessary, program operators 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 accommodation 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.

A non-exhaustive list of auxiliary aids and services can be found in 29 CFR S 38.4, and includes:

- Qualified interpreters, note-takers, 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/ITs), video telephones, or video remote interpreting devices), 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.

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

#### Facility Accessibility

BCWDB AJC's must be ready and welcoming for when persons with disabilities seek services, and as such, advance preparatory actions must be taken. Specific information on ADA accessibility guidelines for buildings and facilities is provided at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>. Facility accessibility pertains to AJCs and any location where AJC staff provide service delivery.

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.

### **REQUESTS FOR ACCOMMODATIONS**

The BCWDB requires that all service providers ensure that requests for accommodations are taken seriously and that receipt of accommodations is easy, user-friendly, and treated in a respectful and timely manner.

The individual does not need to use the term "reasonable accommodation" when seeking assistance. A request can be made before services are received or after a customer has already begun to receive the

services for which the accommodation is requested. The request for accommodations may be made by a family member, friend, or other representative on their behalf. However, staff should directly verify with the customer agreeance with the request.

When a person with a disability makes a request for a reasonable accommodation to any of the program operators' representatives, the program operator is required to respond to that request. 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.

#### Requesting Documentation for Accommodations

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, or
- The disability is apparent.

#### Documentation for Testing Accommodations

Assessment and testing will be based upon the nature of the disability or special need and can include, but are not limited to:

- Braille Test Edition
- Large Print Edition
- Repeated Directions
- Assistive Technology
- Answers Recorded
- Extended Time/Adjusted Time
- Communication Assistance

For testing accommodations, documentation of disability must provide a comprehensive evaluation, a specific diagnosis, and objective evidence of a substantial functional limitation. The diagnostic report must include specific recommendations for accommodation(s), as well as a detailed explanation of why each accommodation is recommended. The evaluator(s) must describe the impact the diagnosed disability has on a specific major life activity as well as the degree of recommendations with specific test results or clinical observations. This evaluation must be made by a qualified professional whose credentials are appropriate to the disability. The name, title, and professional credentials (e.g., degrees, areas of specification, license or certification, employment) should be clearly stated in the documentation.

A written record must be made of any requests for reasonable accommodations that would require significant resources or preparation. Records must include the name of the individual, the nature of the reasonable accommodation, and the reason for the accommodation.

In keeping records pertaining to requests for reasonable accommodations in the AJCs, all staff should ensure that the documentation process does not delay or impede the provision of accommodations. Any documentation collected for reasonable accommodation considerations in the AJC should be kept with the One-Stop Operator. Any documentation collected for reasonable accommodation considerations through WIOA Title I services should be kept in the individual's participant file.

### Responding to Requests for Accommodations

All staff members should be able to provide or arrange basic accommodations on their own initiative in the most expedient and customer friendly way possible. The AJCs are encouraged to appoint a staff member the Disabilities Coordinator; someone familiar with the ADA law and can provide consultation to staff on reasonable accommodations and effective means of communication for individuals with disabilities.

## **DENYING REQUESTS FOR A REASONABLE ACCOMMODATION**

The program operator may deny a request for a reasonable accommodation based on the following criteria:

- The program operator has determined the customer does not have a disability. The program operator 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 AJC's aids, benefits, services and training, OR
- The program operator 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.

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 Equal Opportunity (EO) Officer. The EO Officer will consider the recommendation, and if appropriate, conduct the inquiry.

Requests that cannot be provided or which are believed to pose an undue burden must be reviewed by the EO Officer. In situations where the program operator believes that the proposed accommodation would



cause undue hardship, the program operator has the burden of proving that the accommodation would result in such undue hardship. The EO officer is the only person with authority to determine undue hardship on behalf of the program operators.

The EO Officer is Steven G. Golas, BCWDB Operations Manager, and can be reached at [sgolas@baywib.org](mailto:sgolas@baywib.org) or at 804-333-4048.

#### Written Notification of Accommodation Denial

A written statement of the reasons for reaching these conclusions will accompany the decision of an accommodation denial. The program operator will provide a copy of the statement of reasons to the individual who requested the accommodation, modification, auxiliary aid or service, 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 and Department of Justice, Office of Civil Rights;
- 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, the written notice of denial must also document that all the required factors that must be considered in determining undue burden were considered and be reviewed by an attorney versed in ADA.

#### Continued Responsibility of Program Operator

After a determination of undue hardship, the program operator 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 AJCs aids, benefits, services, and training. If an accommodation would result in undue hardship, the program operator will give the individual with a disability the option of providing the accommodation. The program operator must also offer to cover the costs of the reasonable accommodation up to the limit of undue burden and to allow the customer to cover any costs above that threshold.

#### **NOTICE OF RIGHT TO FILE A GRIEVANCE/COMPLAINT**



Individuals who believe that they have been discriminated against in failure to provide accommodations, may file a complaint with the EO Officer. Information on how to file a complaint will be publicly posted and available in alternative formats.

## **MONITORING**

BCWDB acknowledges that the U.S. Department of Labor and the State of Virginia has the authority to monitor and assess compliance with accessibility and reasonable accommodation procedures for WIOA Title I programs. To ensure that policies are being followed and expectations are being met, BCWDB staff or a designee will review accessibility of facilities and services periodically to ensure compliance. It will be the responsibility of the program operator to make any corrections and to conduct an internal review if areas of concern are found.

## **DISCLAIMER**

This policy is based on BCWDB's interpretation of the statute, along with the Workforce Innovation & Opportunity Act; Final Rule released by the U.S. Department of Labor and federal and state policies relating to WIOA implementation. This policy will be reviewed and updated based on any additional federal or state guidance.