

WORKFORCE SOLUTIONS

G R E A T E R D A L L A S

Policy Number: CM0410	RE: Reasonable Accommodation
Date Issued: 11-15-10 Rescind policy – Customer Service 05-07	Effective Date: 11-16-05

Reasonable Accommodation

Background

20 CFR directs recipients of federal funding to adopt reasonable accommodation procedures.

Policy



The Board and its subcontractors will implement Reasonable Accommodation procedures as outlined at 29 CFR 37, noting that an individual is not required to accept any accommodation offered, per 29 CFR 37.7(O)(1). Procedures are attached.

Action Required

This policy should be distributed to all affected staff.

Contact

Inquiries regarding this policy should be directed to Randal Wier, Vice President, Quality Systems at 214.290.1046.

Approved for Content:	
	11-15-10
Signature	Date
	11-15-10
President's Signature	Date

Reasonable Accommodation Policies and Procedures for Serving Customers who have Disabilities

Background

The Board provides universal access to programs and services for customers with disabilities. The Board upholds the highest standards of non-discrimination and the provision of equal opportunity to all customers of its basic services, expanded services and financial aid. The Board and its offices will adhere to and be able to provide information concerning the requirements of federal and state disability laws. These policies are written to establish local procedures and are not intended to supersede any other applicable laws, regulations, or organizationally specific requirements. Local contractor policies contain these same mandates and can provide additional protections to customers with disabilities.

These policies are written to comply with the following:

- *Section 188 of the Workforce Investment Act (WIA) and the implementing regulations found in 29 Code of Federal Regulations (CFR) Part 37;*
- *Americans with Disabilities Act (ADA) of 1990, which prohibits employers and social service agencies from discriminating against qualified individuals with physical or mental disabilities on any basis;*
- *Section 504 of the Rehabilitation Act of 1973, as amended, and the implementing regulations found in 29 CFR Part 32, which prohibits discrimination against persons with a physical, sensory or mental disability in programs receiving or benefiting from federal financial assistance; and*
- *Texas State law for accessibility requirements.*

The Board does not discriminate against individuals or classes of individuals on the basis of a physical, mental, or sensory disability when providing assistance, benefits, and services. No customer shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied services, access to services or programs and/or facilities, in the administration of, or in connection with, any such program or activity financially assisted in whole, or in part under the WIA or in connection with partnering agencies, or employers on the basis of disability.

The need to provide a reasonable accommodation or modification will not be a factor in the selection of a participant for program participation, or for any opportunity which may have an impact on the customer's career development.

Description of Requirements

1. The Board is, and will remain, compliant with all applicable disability nondiscrimination laws, including the ADA; the relevant portions of Section 188 of WIA and its implementing regulations found in 29 CFR Part 37; Section 504 and the implementing regulations found in 29 CFR Part 32; and other applicable laws.
2. The Board sites shall remain architecturally barrier free.
3. All services offered shall be available at no cost and welcoming to all qualified customers, regardless of disability.
4. Customers should be assumed to be experts in understanding their disability and the specific needs based on that disability, unless otherwise indicated by facts pertaining to that individual customer.
5. The Board will provide reasonable accommodations and modifications for customers with disabilities and will comply with all applicable accessibility requirements. Reasonable accommodations and modifications must be effective in meeting the needs of the individual customer. Those needs should be determined through an informal, interactive process of communication with the customer.
6. Under the law, customers who ask for an adjustment or change related to a medical condition are considered to have requested a reasonable accommodation or modification. A requested accommodation is unreasonable if providing it would result in undue hardship, and a requested modification is unreasonable if providing it would fundamentally alter the nature of the service, program, or activity. To be considered "reasonable," an accommodation need not be the most expensive accommodation available, as long as it is effective in meeting the needs of the individual customer with a disability.
7. All customers are welcome to bring a professional or personal support person and/or attendant to help them access workforce center services with the exception of assistance with testing. The offices are generally not required, though they may choose to do so, to provide personal devices such as wheelchairs; individually prescribed devices, such as eyeglasses or hearing aids; readers for personal use and study; or services of personal nature, such as assistance with eating, toileting, or dressing. The workforce center offices will provide assistance that will help a particular customer with a disability to receive equal benefits from the program or activity, to compete fairly in educational and work settings, and in general, to insure equal opportunity. Assistance during testing will be determined on a case-by-case basis with consideration for reliability factors and validity of the test results. Where a particular test cannot be used to provide an accurate measure of the knowledge, skills, and/or abilities of a particular customer, an alternative to that test will be provided.

Procedures

1. Communication Aids

The Board takes advance actions to ensure that communication with individuals with disabilities is as effective as communication with others. The following communication aids are available for anyone requesting them upon verbal request, without requiring documentation:

Computers

- Screen magnification software
- Screen reading software (JAWS)
- Adjustable height computer tables
- Large screen computer monitors
- "Expert Mouse" trackballs

Telephones

- TTY phone
- Telephone handset amplifier

Printed Material

- Large print

2. Reasonable Accommodations and Modifications

Customer Request

Customers with accommodation or modification needs seeking workforce services may direct their request to workforce center staff. If the accommodation or modification is not readily available or requires additional consideration to determine whether an undue hardship or fundamental alteration would occur, the request will be forwarded to the Center manager, or other appropriate person, who will engage in an interactive process with the customer requesting the accommodation or modification and who will make an individual determination about the request.

Documentation

When the disability and/or the need for accommodation is not obvious, staff may ask the customer for reasonable documentation about his/her disability and functional limitations.

Reasonable documentation means that the Board may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. Thus, the Board, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

The Board may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, the Board should specify what types of information it is seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing the board to submit a list of specific questions to the health care or vocational professional. The Board must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.

If a person provides insufficient documentation of a disability in response to The Board's initial request, The Board may require the person to go to a health care professional of the Board's choice. However, the Board should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

As an alternative to requesting documentation, the board may simply discuss with the customer the nature of the person's disability and functional limitations. It would be useful for the Board to make clear why it is requesting information - to verify the existence of a disability and the need for a reasonable accommodation.

Under Federal disability nondiscrimination law, the Board cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the person has already provided the Board with sufficient information to substantiate that s/he has an actual, current disability and needs the reasonable accommodation requested.

If a customer's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the Board, then s/he is not entitled to reasonable accommodation. On the other hand, failure by the Board to initiate or participate in an interactive process with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

To ensure compliance with the law, efforts taken to provide accommodation should be documented.

Determining Undue Hardship or Fundamental Alteration

The Board must go through a formal process to determine whether a particular requested accommodation would cause ***undue hardship***, or a particular

requested modification would result in a ***fundamental alteration***. The required process includes the following steps:

- The Board must consider all of the factors listed in the definition of ***undue hardship*** or ***fundamental alteration***, as appropriate, before determining to deny a requested accommodation or modification. The definitions of both terms are provided in 29 CFR §37.4, as well as in the “Definitions” section of this document.
- If The Board determines that the requested accommodation will cause an ***undue hardship***, or that the requested modification would result in a ***fundamental alteration***, all of the following actions must be taken:
 - ✓ Prepare a written statement of the reasons underlying the determination;
 - ✓ Provide a copy of the statement of reasons to the person or persons who requested the accommodation or modification; and
 - ✓ Take any other actions that will *not* cause undue hardship or result in a fundamental alteration, but that will enable the person(s) with a disability to receive the aid, benefits, services, training, or employment offered by the Board, to the maximum extent possible.

Providing Reasonable Accommodation and Modifications

Reasonable accommodations and modifications involve taking individualized action at the time that a particular person with a known disability seeks to apply to or participate in a program or activity, based on that person’s *individual* needs. The Board is authorized to expend funds to provide an accommodation based on a review of the request, documentation submitted if applicable, and whether or not the request would create an undue hardship or fundamental alteration. The determination of which reasonable accommodation or modification is appropriate is based on individual circumstances relating directly to the customer.

- ***Wait Period for Decision on Reasonable Accommodation or Modification:*** Decisions requiring additional review or planning by Board staff will be made within five working days of the request. If the interactive process requires additional communication with the customer during the five-day period, that communication will take place by phone, mail, e-mail, or in person and the method of communication will be at the discretion of the customer. If a determination is made that a requested accommodation would pose an undue hardship, or a requested modification would cause a fundamental alteration, the written statement of reasons for reaching that conclusion must be provided to the customer. If the customer needs the written determination to be provided in an alternate format, the format used will be at the

discretion of the customer.

- **Request for Testing Accommodation:** Customers are responsible for requesting accommodation. If the disability and/or the need for accommodation are not obvious, the Board may request documentation, as noted above. Testing accommodation will be provided based on documentation submitted, if applicable, and whether or not the request would create an undue hardship, or a fundamental alteration of the nature of the test. However, the specific test used, in combination with appropriate accommodations or modifications, must be able to provide a valid and reliable evaluation of the knowledge, skills, abilities, and/or interests of the customer with a disability. If the nature or extent of a particular customer's disability, or the limitations of the test itself, prevent the test from providing a valid or reliable evaluation in a particular case, an alternate test or assessment tool must be offered.

All testing results/assessments are kept in the customer's confidential file in a secured area; unless the results of the test or assessment indicate that the customer was provided with accommodations for the testing/assessment process. In such cases, the test/assessment results must be stored in separate files, apart from any other information about the customer, and access to the results must be limited, as required for all medical or disability-related information about a particular individual.

- **Request for Interpreter Services:** Customers who need interpreter services can benefit from contracts with a network of community-based services have been established with local community councils in key areas of the state. These councils cooperate with the Texas Department of Assistive and Rehabilitative Services, Division for the Deaf and Hard of Hearing Services with service activities such as information and referral; interpreter services, and services to older Texans with hearing impairments. Interpreters for the deaf are available for workforce offices to assist in the delivery of services to customers with hearing impairments. TWC executes a contract annually with the Texas Department of Assistive and Rehabilitative Services, Division for Deaf and Hard of Hearing Services for the provision of interpreter services through their network of councils. To access these services, workforce offices simply contact the council serving the delivery area. *The Board also maintains a list of approved vendors. Staff may access for interpreting services.*

3. Notice and Communication

Information regarding the complaint process is made available in multiple formats to Board staff as well as customers. Posters, with both print and pictures, informing and instructing applicants on complaint procedures are posted throughout the Dallas County Workforce system to recipients, sub recipients, affiliate and co-location sites. In addition, information about how to file a complaint is available upon customer request. Board staff are provided access complaint procedures in WD Letter 18-07,

Discrimination Complaint Procedures and its attachment, Texas Workforce Solutions Discrimination Complaint Procedures.

During orientations that inform new participants, new employees, and/or the general public of WIA Title I-financially assisted programs and/or activities, the board will include a discussion of the rights under the nondiscrimination and equal opportunity provisions, including the right to file a complaint of discrimination with a recipient, TWC, or the CRC.

All Board publications must include the EO policy statement that indicates the recipient is “an equal opportunity employer/program.” Additionally, all recipient publications must include the appropriate tag lines “auxiliary aids and services are available, upon request, to individuals with disabilities” (29 CFR §37.34).

Recipients ensure that all brochures, publications, and broadcasts include a TDD/TTY number or provide an equally effective means of communication with individuals who are hearing impaired. Under Title IV of the ADA, a message relay telephone system is mandated in each state. The system in Texas is Relay Texas. Relay Texas provides statewide telephone accessibility to speech and hearing impaired individuals. In Texas, the Relay Texas system telephone number must be indicated wherever telephone numbers are included in all brochures, publications, and broadcasts.

4. Disability-Related Inquiries

Intake and Registration

Whether it is lawful to ask questions that may lead to the disclosure of a disability, or of medical-related information, depends upon the context. Some practices that are *legal* in the context of providing services are *illegal* in the context of *employment-related* activities. Both types of activities take place in Board offices, so it is essential to make sure that the type of questions you plan to ask are lawful in the context of the type of activity you or your staff members will be performing while asking the questions.

Before asking any questions that may lead to the disclosure of medical- or disability-related information, staff must clearly inform the person that: (1) providing the information is voluntary; (2) the information will be kept confidential; (3) refusal to provide information will not subject the applicant, employee or participant to any adverse treatment; and (4) the information will be used only in accordance with law. Staff may also wish to inform the customer why they are asking the medical or disability-related questions so that the customer has the information that s/he needs in order to decide whether to disclose his/her medical or disability-related information.

“Services” context vs. “employment” context

Services-related legal standards apply to activities such as assessment of a customer's skills, prior work experience and employability; creation of a service strategy for an individual customer; or supportive programs such as child care, transportation, housing assistance, or benefits counseling. By contrast, employment-related legal standards apply to activities that meet the definition of "employment-related training" in the WIA nondiscrimination regulations, as well as to job placement, job referral, and related activities of Board/workforce center offices, or agencies, programs, or activities within those Offices, that are acting as "employment agencies" within the legal definition of that term.

"Employment-related training"

The WIA nondiscrimination regulations define the term "employment-related training" broadly: the definition states that the term means "training that allows or enables an individual to obtain employment." Examples of such training include:

- Occupational skills training
- On-the-job training
- Job readiness training

Whether other types of training, such as basic educational skills training or English as a Second Language training, fall within the definition of "employment-related training" will depend on the way in which a particular Board/workforce offices provide each type of training. When in doubt, the safest course is to assume that a specific type of training does fall within the definition, and to ask only those questions related to the training that would be permissible in the employment context.

"Employment agency"

The Board/workforce center offices, or an agency, program, or portion of a program within a Center, is acting as an "employment agency" – and therefore is covered by the legal requirements that apply in the "employment" context -- when it regularly has as a "principal function":

- procuring employees for at least one employer, or
- procuring work opportunities for customers.

Therefore, any staff member who is engaged in these or related activities must comply with the employment-related requirements regarding disability-related inquiries.

Questions That May Be Asked In The "Services" Context

In the "services" context, disability-related inquiries are not only legal, but recommended. Examples of circumstances in which a Center would be permitted, and may wish, to ask questions that may disclose disability-related information include screening customers who have particular types of employment problems for signs of hidden disabilities, determining eligibility for targeted programs, or determining whether,

and which, reasonable accommodations would help a customer succeed in employment.

Questions That May Be Asked In The "Employment" Context

In employment-related contexts, disability-related questions are illegal except under certain limited circumstances. These exceptions include:

Demographic data. The WIA nondiscrimination regulations require that every individual in a specific list of categories (applicant, registrant, eligible applicant/registrant, participant, terminatee, applicant for employment, and employee) must be asked to provide four pieces of demographic data: (1) race/ethnicity; (2) gender; (3) age; and (4) disability status. See 29 CFR 37.37(b)(2). This requirement applies in the employment context as well as the services context. Although the Board/workforce center offices or service provider must ask the individual for the data, the individual is not required to provide it. All demographic data gathered pursuant to this requirement must be stored separately from other information about the individual, as described in more detail later in this document.

Invitation to self-identify. Staff operating in the employment context may invite customers to disclose their disability status if all of the following criteria are met:

- The Center, or the employer for which the Center staff is seeking applicants, is taking remedial action to correct the effects of past discrimination; *or*
- The Center, or the employer for which the Center staff is seeking applicants, is taking voluntary action to overcome the effects of conditions that resulted in limited participation by people with disabilities in the recipient's program or activity;
- The Center, or the employer for which the Center staff is seeking applicants, is a Federal contractor or subcontractor that is taking affirmative action under Section 503 of the Rehabilitation Act of 1973, as amended.

When inviting self-identification under these circumstances, staff must inform the customer about how the information will be used -- for remedial actions or voluntary or affirmative action efforts -- as well as making the other required disclosures discussed above.

Staff may always ask questions that are not considered "disability-related." Examples of questions staff may ask include whether a customer can perform specific job functions, if the customer has the needed experience education or license, non-disability-related impairments the customer may have, whether the customer will need accommodations for the application process if the customer has disclosed the disability or the disability is obvious, and if the customer currently uses illegal drugs.

Following is a list of sample questions that staff may ask of all customers.

SAMPLE QUESTIONS FOR THE GREETER AT TIME OF FIRST INTERACTION WITH CUSTOMER

- ✓ *What is your overall goal in using the Center?*
- ✓ *What specific things are you trying to accomplish today?*
- ✓ *In what other ways can we assist you today?*

SAMPLE QUESTIONS FOR THE RESOURCE ROOM STAFF AT INITIAL CONTACT WITH ALL CUSTOMERS

- ✓ *Will you need any support or assistance to use the equipment or participate in the services you are seeking today?*

SAMPLE QUESTIONS FOR PERSONAL SERVICES REPRESENTATIVE STAFF UPON INITIAL INTERVIEW FOR EXPANDED SERVICES

- ✓ *What do you think might help you to be successful?*
- ✓ *What are things you have tried before that work for you?*
- ✓ *Are there other organizations or resources with whom you interact that you would find helpful to have us contact?*

Again, for any disability-related inquiry, staff must clearly inform the person that: (1) providing the information is voluntary; (2) the information will be kept confidential as provided by law; (3) refusal to provide information will not subject the applicant, employee or participant to any adverse treatment; and (4) the information will be used only in accordance with law. If a customer discloses a disability and requests an accommodation or modification, staff may enter into a conversation related to how the Board can assist the person with accommodations or modifications.

5. Confidentiality

Any information that is disclosed is confidential. All staff will safeguard the confidentiality of the public served.

The Board must keep any medical or disability-related information on its customers confidential, with the following limited exceptions: (1) supervisors, managers and trainers at the Board may be informed about a customer's disability, but only to explain limitations or reasonable accommodations; (2) first aid and safety personnel may be informed about a customer's disability or medical condition, but only if the disability or condition may require emergency treatment, including evacuation; and (3) other staff may be informed about a customer's disability or medical condition, but only on a need-to-know basis, interpreted narrowly.

All customer information related to a disability or medical condition must be: (1) kept in separate files, apart from all other information about a customer, applicant or employee; (2) stored securely with limited access (i.e., electronic files must be password protected, hard files must be locked); and (3) available only to authorized persons. Access to files containing medical or disability-related information is limited to staff members who work with the particular customer and require the confidential file information. This group is more limited than the group of staff members or others who may be informed about a customer's medical or disability status. For example, access to medical documentation that a participant is an individual with a disability should be limited to those staff that need to ensure that there is documentation supporting that disability status – for example, for purposes of documenting eligibility for a program or activity that includes disability status as an eligibility criterion. In addition, first aid personnel may need access to underlying documentation related to a participant's medical condition in an emergency.

Confidentiality is paramount.

6. Customer Information Disclosure to Employers

As a general rule, the board must not disclose medical or disability-related information about a customer to an employer to whom the Board is referring a customer or an employer who is considering hiring the customer. The Board may disclose information related to a customer's disability to an employer **only if**: (1) the job-seeker customer has made an independent decision to disclose to the employer; (2) the job-seeker has specifically asked the Board or its center staff to make the disclosure on his or her behalf; and (3) the disclosure request has been initiated by the job-seeker customer, not by center staff.

Again, the disclosure must be voluntary on behalf of the customer. Staff cannot request, persuade, coerce or otherwise pressure the customer to get him or her to disclose medical or disability-related information.

Staff working on behalf of employers should not have access to any customer's file containing medical or disability-related information, except where necessary to document a customer's disability status for eligibility for an employer's remedial, voluntary, or affirmative action program, as discussed in section 5 above.

7. Staff Training

Staff who provide direct services will receive training on serving customers with disabilities. The H-GAC EO Officer ensures that personnel training is provided at an acceptable level. When available, the Disability Program Navigator can provide information, support and training to assist in meeting this standard.

Type of Training and Timeline for Training in Disability Related Topics:

- ***Initial Training*** - Should be completed by the end of ninety (90) days of the hire date of new employees.
 - Disability, Accommodations, WIA Section 188 Policy;
 - Complaint Process;
 - Confidentiality & Privacy (inter/intra agency/business);
 - Sensitivity including communication etiquette;
 - Customer orientation services for people with disabilities.

- ***On-going Training*** - Training sessions for relevant staff should encompass all or part of the topics listed.
 - Elements of the Methods of Administration;
 - Basic knowledge and understanding of disabilities, including non-apparent or “hidden” disabilities;
 - Accommodations and adaptive equipment usage, including TTY skills for all staff who routinely are required to interact with customers via telephone
 - Self advocacy for individuals with disabilities;
 - Marketing customers with disabilities to employers;
 - Disability related business assistance;
 - Methods of communications/outreach to people with disabilities and organizations that serve them.

NOTE: The Board may design training to meet the unique needs of its local area. Therefore, the specific ways such training topics are incorporated into the human resource development activities of each of contractor is left to local discretion, as long as each of the topics is addressed directly and within the timeline noted.

Training Provided by the Equal Opportunity Officer: Staff are required to attend any training that is deemed necessary by the Equal Opportunity Officer, which includes but is not limited to specific elements of the Methods of Administration.

Documentation of Training: The Board shall maintain a log of staff training and make it available to the Equal Opportunity Officer upon request.

9. Complaint Procedures and Timelines

The Board will advise customers, verbally and in written format, of their right to file a complaint. Any person who believes that s/he, or any class of persons, has been discriminated against on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief, or, for beneficiaries only, basis of citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or participation in any WIA Title I financially assisted program or activity, has the right to file a complaint.

Complaints must be filed within 180 days of the alleged discrimination, unless the Director of the U.S. Department of Labor Civil Rights Center (CRC) has extended the filing time for good cause shown. Complainants may file with the local Equal Opportunity Officer, or directly with the State Equal Opportunity Officer and/or the Director of the Civil Rights Center.

The complaint process provides for prompt and equitable resolution of complaints and includes the following elements in the initial written notice to the complainant:

1. Acknowledgement of receipt;
2. Notice of right to representation;
3. Written statement of issues raised in the complaint;
4. A period of fact-finding;
5. A period for resolution of the complaint. Methods of resolution must include alternative dispute resolution (ADR). The choice whether to use ADR or the customary process rests with the complainant; and
6. Written notice of final action that contains required information and that is issued within 90 days of the date on which the complaint is filed.

Upon receipt of a written complaint, the EO Officer is required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint:

1. The fact that the complaint has been filed;
2. The identity of the complainant(s);
3. The identity of individual respondents to the allegations; and
4. The identity of any person(s) who furnished information relative to, or assisted in, a complaint investigation or compliance review.

If the local EO Officer determines that another entity has jurisdiction and it is appropriate to refer a complaint, the EO Officer promptly refers the complaint to that entity, properly informs those with a need to know of this decision, and explains why.

A separate system is maintained both locally and at the state level for logging, tracking and reporting discrimination complaints. This log should contain the following:

1. Date complaint was filed;
2. Name and address of complainant;
3. Basis of the complaint;
4. Description of complaint; and
5. Disposition of complaint.

The log must be stored in a way that ensures that the information on it remains confidential as required by law. The Board will be monitored to ensure it is complying with the complaint process.