

General Institution

**AP 3447 REASONABLE ACCOMMODATION PROCESS FOR
EMPLOYMENT**

References[†]:

Education Code Sections 87789; 88190 – 88195
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)
Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.; 20
U.S.C § 1681 et seq.)
California Fair Employment and Housing Act (GC § 12940 et seq.)
California Constitution, Art. 1, § 1
California Family Rights Act (12495)
CalPERS Disability Retirement (GC 21153)
Family Medical Leave Act (29 U.S.C § 2601 et seq.)
BP 3410 and BP 3430

Introduction and Scope

I. Purpose

The purpose of this Administrative Procedure is to set forth procedures by which the Riverside Community College District will provide Reasonable Accommodation to all disabled applicants and employees within the meaning of the Fair Employment and Housing Act (Government Code § 12940) and Title I of the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.). To ensure that Reasonable Accommodation is made, the District will engage in good-faith interactive processes with applicants and employees requesting accommodation.

II. Scope

This Administrative Procedure applies to all applicants/candidates for District employment, employees (probationary, permanent status, at will or

[†] If the federal statutes cited would result in broader protection of the civil rights of individuals than that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of Title 5, section 59300.

by employment contract) as well as individuals who work under the control of the employer (temporary agency help and contractors).

III. Definitions

- A. Accommodations Process Coordinator: The person designated to manage the Interactive Process and support the efficient operation of the Accommodations Process shall be a member of the Diversity and Human Resources Department and work under the direction of the Director of Diversity, Equity and Compliance.
- B. Alternative Work Assignment: Performance of work in an assignment other than in the employee's regular position. Temporary assignments to alternative work may encompass tasks not organized in an approved classification, but assigned to allow an injured employee to remain working for a short duration of time. Long-term or permanent alternative assignments require that there is a vacancy in the District approved to be filled and that the injured employee is minimally qualified to perform the work, as well as physically able to perform the work with or without reasonable accommodation. Further, the salary for the alternative work assignment must be the same or less than the injured employee's original position's salary.
- C. Applicant: Person applying for an available position at the District who has not yet completed the initial application process and/or has not been interviewed for such position.
- D. Candidate: Person who has successfully completed the initial application process for a position at the District and is invited to interview for such vacant position.
- E. Disability: The Fair Employment and Housing Act (FEHA) define physical disability, mental disability and medical condition as follows:
 - 1. Physical Disability: Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of several body systems and limits a major life activity. The body systems listed include the neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine systems. A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity, such as working, if it makes the achievement

of the major life activity difficult.

When determining whether a person has a physical disability, the District cannot take into consideration any medication or assistive device, such as wheelchairs, eyeglasses or hearing aids, that an employee may use to accommodate the disability. However, if these devices or mitigating measures “limit a major life activity” they should be taken into consideration.

Physical disability also includes any other health impairment that requires special education or related services; having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment which is known to the employer; or being perceived or treated by the employer as having any of the aforementioned conditions.

2. **Mental Disability:** Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity, or having any other mental or psychological disorder or condition that requires special education or related services. An employee who has a record or history of a mental or psychological disorder or condition which is known to the employer, or who is regarded or treated by the employer as having a mental disorder or condition, is also protected.
3. **Medical Condition:** Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer, or a genetic characteristic. A “genetic characteristic” can be a scientifically or medically identifiable gene or chromosome or an inherited characteristic that could statistically lead to increased development of a disease or disorder. For example, women who carry a gene established to statistically lead to breast cancer are protected under state law.

Sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs are specifically excluded and are not protected under the FEHA.

Further, it is the intent of the legislature that physical and mental limitations are not required to be “substantial,” and that “working” is a major life activity regardless of whether the actual or perceived working limitation implicates a particular employment or a broad class of jobs.

- F. **Eligible Persons:** Persons eligible for reasonable accommodation

and therefore covered by this Administrative Procedure are applicants/candidates for District employment, employees (probationary, regular, at will or by employment contract) as well as individuals who work under the control of the employer (temporary agency help or contractors).

- G. Essential Functions: Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. Factors to consider in determining if a function is essential include: whether the reason the position exists is to perform that function, the number of other employees available to perform the function or among whom the performance of the function can be distributed, and the degree of expertise or skill required to perform the function.

The employer's judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered as evidence of essential functions. Other kinds of evidence that will be considered include: the actual work experience of present or past employees in the job, the time spent performing a function, the consequences of not requiring that an employee perform a function, and the terms of a collective bargaining agreement.

- H. Health Care Provider:
1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
 2. ***Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, which directly treats or supervises treatment of a serious health condition;***
 3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California state law;
 4. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California state law;
 5. Christian Science practitioners listed with the First Church of

Christ, Scientist; and

6. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

I. Interactive Process: State law incorporates guidelines developed by the Equal Employment Opportunity Commission in defining an "interactive process" between the District and the applicant or employee with a known disability. The guidelines include: consulting with the individual to ascertain the precise job-related limitations and how they could be overcome with reasonable accommodation; and identifying potential accommodations and assessing their effectiveness.

Although the preferences of the individual in the selection of the accommodation should be considered, the accommodation implemented should be one that is most appropriate for both the employee and the employer.

J. Modified Work Assignment: Performance of current job classification where employee is able to perform all of the essential functions of the position with the support of reasonable accommodations.

K. Not a Reasonable Accommodation: An employer is not required to lower quality or production standards, provide personal use items (such as glasses), 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 him/herself, co-workers or the public, or if the accommodation would create an undue hardship for the District.

L. Permanent / Long-Term Disability: Having a disability/medical condition that is expected to continue for an indeterminate amount of time or has been stated by a medical provider to be expected for the life of the individual.

M. Reasonable Accommodation: Reasonable accommodation is any appropriate measure that would allow the applicant or employee with a disability to perform the essential functions of the job. It can include making facilities accessible to individuals with disabilities, restructuring jobs, modifying work schedules, buying or modifying equipment, modifying examinations and policies, or other accommodations. For example, providing a keyboard rest for a person with carpal tunnel syndrome may qualify as a reasonable

accommodation.

- N. Temporary/Short-Term Disability: A disability/medical condition that is expected to last for a specific amount of time, typically for not longer than 6 months.

- O. Undue Hardship: Undue hardship is a significant difficulty or expense caused by accommodation, such as the:
 - 1. Nature and cost of the accommodation needed
 - 2. Overall financial resources of the facility making the Reasonable Accommodation
 - 3. Effect on expenses and resources of the facility
 - 4. Impact of the accommodation on the operation of the facility
 - 5. Impact of the accommodation on other employees

IV. Procedures

The following procedures identify the process the District will use for handling: 1) requests for reasonable accommodation by job applicants and candidates, 2) requests for reasonable accommodation by employees, and 3) the perception by the employer of employee need for reasonable accommodation. All forms referenced in this procedure are available online on the DHR intranet site or from the DHR Accommodations Process Coordinator or the Risk Management department.

- A. Job Applicant Requests for Reasonable Accommodation for the Application or Interview Process.
 - 1. The District employment application and all job announcement-related material will include the following statement: "Riverside Community College District provides equal opportunity to qualified persons with disabilities in all terms and conditions of employment. The District will provide reasonable accommodation upon request. If you require accommodation for the application or interview process, please contact [DHR Manager and contact info] or the office of Diversity, Equity and Compliance at (951) 222-8039."
 - 2. The District employment application and job announcement-related material will include the name and contact information for filing a formal complaint of discrimination or failure of the equal employment opportunity process.

Disabled job candidates who successfully complete the application and selection process to qualify for employment with the District will be provided with the same Reasonable Accommodation process described below for employees.

B. Employee Requests for Reasonable Accommodation.

1. Temporary/Short-Term Requests for Reasonable Accommodations.

- a. Any employee who believes he/she is in need of temporary/short-term reasonable accommodation(s) for a period not to exceed six (6) months is to inform his/her direct supervisor of the need in writing and provide medical verification. If the employee needs assistance completing the form, they may contact their supervisor or DHR. Requests in writing are to be completed on the District "Reasonable Accommodation Application". The form is available via the Diversity and Human Resources intranet or from the Risk Management department.
- b. The Accommodations Process Coordinator will review the reasonable accommodation request with the employee and employee's department management. If the department is able to offer the employee temporary/short-term reasonable accommodation in the form of modified or alternative work, the Accommodations Coordinator will complete and provide to the employee and department a "Temporary Modified/Alternative Duty Agreement" to sign.
- c. If temporary modified or temporary alternate work is not available the employee will remain off work, utilizing all available paid/non-paid leaves. If the employee is unable to return to work before all paid leaves are expired, the employee will be contacted to discuss extended unpaid leave options and the need for long term reasonable accommodation.
- d. An employee who remains off work due to functional limitations / work restrictions that cannot be reasonably accommodated is required to continue providing medical certification for all days missed from work to their site supervisor and Diversity and Human Resources.
- e. Should an employee's condition change such that the temporary work restrictions become permanent, Diversity and Human Resources will engage with the employee in a more formal interactive Reasonable Accommodation Process to determine what reasonable accommodations may be available to support the employee's condition.
- f. If the employee disagrees with the decision made, he/she

may appeal by contacting the Director of Diversity, Equity and Compliance in writing.

2. Permanent/Long-Term Request for Reasonable Accommodation:

- a. Any employee who believes that he/she is in need of permanent/long-term Reasonable Accommodation(s) and has medical verification is to notify his/her direct supervisor. Initial requests for permanent/long-term reasonable accommodation can be made in writing using the District's "Reasonable Accommodation Application". Medical verification must be submitted with the request. If the employee needs assistance completing the form, they may contact their supervisor or DHR.
- b. Upon notice, the employee's supervisor will notify the Accommodations Process Coordinator in Diversity and Human Resources. The Accommodations Process Coordinator will then contact the employee, provide him/her with a copy of this Administrative Procedure and the necessary forms, and assist the employee through the process as necessary.
- c. Upon receipt of all necessary documentation, the Accommodations Process Coordinator will schedule a good-faith interactive reasonable accommodations meeting between the employee, Diversity and Human Resources, representatives from the employees department and any other participants that are deemed necessary to properly explore reasonable accommodation options.
- d. At the accommodations meeting, all parties present will review the employee's work restriction(s) and jointly discuss options for providing reasonable accommodation. It may take one or more meetings to fully explore all possible reasonable accommodations options.
- e. If the employee disagrees with the decision made by District after the accommodations meeting, he/she may appeal by contacting the Director of Diversity, Equity and Compliance and may file a formal complaint of discrimination based on Disability using the District's complaint procedure, Administrative Procedure 3435: Handling Complaints of Discrimination, Harassment and Retaliation.

C. Perception of an Employee as Disabled

If an employee is perceived to have a medical condition or disability that may require reasonable accommodation by a supervisor in the District, the employer must take steps to determine if engaging in the interactive process with the employee is necessary. If the employee's supervisor, manager or other appropriate employer representative believes that the employee may be a safety risk or unable to perform one or more essential functions of the position due to a disability, then the supervisor may send the employee home and contact the Accommodations Process Coordinator, who will work with the supervisor and the employee to determine if the employee is in need of Reasonable Accommodation. It may be necessary to either request medical clarification from the employee's medical provider or schedule a Fitness-For-Duty examination to obtain necessary certification from a health care provider to determine if the employee has any work restrictions and if so the duration of those work restrictions.

Accommodations Process Coordinator Contact Information:

Ms. Martha Arellano, HR Analyst
Diversity and Human Resources
450 E. Alessandro Blvd.
Riverside, CA 92508
951/222-8591

See also AP 3445 - Accommodations for Persons with Disabilities for Non-Classroom Related Activities

Office of Primary Responsibility: Office of Diversity, Equity and Compliance

Administrative Approval: June 17, 2013