

**Superintendent Policy 4032: Reasonable Accommodation**

**Status:** ADOPTED

**Original Adopted Date:** 04/16/2016 | **Last Reviewed Date:** 04/16/2016

Except when undue hardship would result to the County Office of Education (COE), the County Superintendent of Schools or designee shall provide reasonable accommodation:

1. In the job application process, to any qualified job applicant with a disability
2. To enable any qualified employee with a disability to perform the essential functions of the position he/she holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities

No employee or job applicant who requests an accommodation for his/her physical or mental disability shall be subjected to discrimination or to any punishment or sanction, regardless of whether the request for accommodation was granted. (Government Code 12940)

The COE designates the position specified in AR 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

### **Definitions**

Disability, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such an impairment
3. Being regarded as having such an impairment

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

Essential functions are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (Government Code 12926; 29 CFR 1630.2)

Reasonable accommodation means: (Government Code 12926; 29 CFR 1630.2)

1. For a qualified job applicant with a disability, modifications or adjustments to the job application process that enable him/her to be considered for the position he/she desires
2. For a qualified employee with a disability, modifications or adjustments to the work environment, or to the manner or circumstances under which the position the employee holds or desires is customarily performed, that enable him/her to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the COE's other similarly situated employees without disabilities

Qualified individual with a disability means a job applicant or employee with a disability who: (29 CFR 1630.15, 1630.2)

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he/she holds or desires
2. Can perform the essential functions of the position with or without reasonable accommodation
3. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to himself/herself or others in the job he/she holds or desires

Undue hardship is a determination based on an individualized assessment of current circumstances that shows that the provision of a specific accommodation would cause significant difficulty or expense to the COE. (29 CFR 1630.2)

### **Request for Reasonable Accommodation**

When requesting reasonable accommodation, an employee or his/her representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition. The supervisor shall inform the coordinator of the employee's request as soon as practicable.

When requesting reasonable accommodation for the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation during the process.

When the disability or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations, and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the coordinator to submit a list of specific questions to his/her health care or vocational professional.

If the documentation submitted by the employee does not indicate the existence of a qualifying disability or explain the need for reasonable accommodation, the coordinator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the coordinator may require him/her to submit to an examination by a health care professional selected and paid for by the COE.

The COE may make a medical or psychological inquiry of a job applicant or require him/her to submit to a medical or psychological examination after he/she has been given a conditional offer of employment but before the commencement of his/her job duties, provided the inquiry or examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification. (Government Code 12940)

The coordinator shall not request any job applicant's or employee's genetic information except as authorized by law. (42 USC 2000ff-1, 42 USC 2000ff-5)

In accordance with law, the coordinator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, he/she shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment. (42 USC 12112)

### **Granting Reasonable Accommodation**

Upon receiving a request for reasonable accommodation from a qualified individual with a disability, the coordinator shall:

1. Determine the essential functions of the job involved
2. Engage in an informal, interactive process with the individual to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential accommodations, and assess their effectiveness
3. Develop a plan for reasonable accommodation which will enable the individual to perform the essential functions of the job or gain equal access to a benefit or privilege of employment without imposing undue hardship on the COE

A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

- a. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding
- b. The overall financial resources of the facility making the accommodation, the number of persons employed at this facility, and the effect on expenses and resources of the facility
- c. The overall financial resources, number of employees, and the number, type, and location of facilities of the COE
- d. The type of operation of the COE, including the composition, structure, and functions of the workforce and the geographic separateness and administrative or fiscal relationship of the facility making the accommodation to other COE facilities
- e. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business

The coordinator may confer with the site administrator, any medical advisor chosen by the COE, and/or other COE staff before making a final decision as to the accommodation.

### **Appeal Process**

Any qualified individual with a disability who is not satisfied with the decision of the coordinator may appeal in writing to the County Superintendent of Schools or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The County Superintendent of Schools or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The County Superintendent of Schools or designee shall give the individual his/her decision within 15 working days of receiving the appeal. The decision of the County Superintendent of Schools is final.

28 CFR 35.101-35.190	Americans with Disabilities Act
28 CFR 35.107	Designation of responsible employee and adoption of grievance procedures
28 CFR 36.101-36.608	Nondiscrimination on the basis of disability by public facilities
29 CFR 1630.2	Definitions
29 USC 701-794e	Vocational Rehabilitation Act
42 USC 12101-12213	Equal opportunity for individuals with disabilities
42 USC 2000ff-2000ff-11	Genetic Information Nondiscrimination Act of 2008

### Management Resources

Court Decision	<b>Description</b> US Airways, Inc. v. Barnett, (2002) 535 U.S. 391, 122 S.Ct. 1516
Court Decision	Colmenares v. Braemar Country Club, Inc., (2003) 29 Cal.4th 1019
Court Decision	Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045
Court Decision	A.M. v. Albertsons, LLC, (2009) Cal.App.4th 455
EEO Commission Publication	Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002
Website	<a href="#">U.S. Equal Employment Opportunity Commission</a>
Website	<a href="#">U.S. Department of Education, Office for Civil Rights</a>
Website	<a href="#">California Department of Fair Employment and Housing</a>
<b>State</b>	<b>Description</b>
Civ. Code 51	<a href="#">Unruh Civil Rights Act</a>
Gov. Code 12900-12996	Fair Employment and Housing Act

### Cross References

Code	Description
0430	<a href="#">Comprehensive Local Plan For Special Education</a>
0430	<a href="#">Comprehensive Local Plan For Special Education</a>