



WINDHAM SCHOOL
DISTRICT
BOARD OF TRUSTEES

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PAGE: 1 of 10
SUPERSEDES: None

WINDHAM BOARD POLICY

SUBJECT: AMERICANS WITH DISABILITIES ACT AND EMPLOYMENT OF PERSONS WITH A DISABILITY

AUTHORITY: *Rehabilitation Act of 1973, 29 U.S.C. §§ 720–728a, 791(c), 794; Civil Rights Act of 1964 and 1991, 42 U.S.C. §§ 1981, 1983; Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101–12117; 29 C.F.R. §§ 825.125, 1604.10, 1630.2; Tex. Health & Safety Code §§ 81.001–.353; Tex. Lab. Code §§ 21.001–.556; Tex. Transp. Code §§ 681.001–.013; General Appropriations Act, 86th Leg., R.S., art. V;*

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

This policy **does not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of this policy at any time.

Nothing in this policy limits the superintendent’s authority to establish or revise human resources policy. This policy guides the operations of the WSD and **does not** create a legally enforceable interest for employees or limit the superintendent’s authority to terminate a noncontract employee at will.

POLICY:

The WSD complies with the provisions of the *Americans with Disabilities Act (ADA)*. The employment status of such employees shall be determined in a consistent and fair manner without regard to race, color, religion, sex (gender), national origin, age, disability, or genetic information.

DEFINITIONS:

The following terms are defined for the purpose of this policy and are not intended to be applicable to other policies or procedures.

“Contact Person” is: for a posted position, the employee responsible for providing employment application forms, study material, and information regarding worksite visits and to whom employment applications should be submitted.

“Disability” means: (a) a physical or mental impairment that substantially limits at least one major life activity; (b) a record of such an impairment; or (c) being regarded as having such an impairment. Pregnancy is not a disability; however, impairments related to pregnancy may qualify as a disability.

“Essential Functions” means a position’s fundamental job duties that an applicant or employee is required to be able to perform, with or without a reasonable accommodation.

“Health Care Provider” is: (a) a person authorized in the state in which services are provided to diagnose and treat physical or mental health conditions, and who is performing within the scope of the provider’s practice under state law, including: a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, licensed acupuncturist, nurse practitioner, nurse-midwife, clinical social worker, or physician assistant; (b) any health care provider recognized under the Texas Employees Group Benefits Program; or (c) a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts. 29 C.F.R. § 825.125

“Major Life Activity” includes: (a) caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating, working, and speaking; and (b) the operation of a major bodily function, including functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

“Minimum Qualifications” refers to the minimum level of education, experience, training, knowledge, and skills required or preferred for a position. Minimum qualifications are included in each job description.

“Reasonable Accommodation” means a modification or adjustment (a) to the job application process that enables a qualified applicant with a disability to be considered for the desired position; (b) to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position; or (c) that enables an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities. The WSD is not required to provide an accommodation that causes the WSD undue hardship.

“Selection Reviewer” is the employee responsible for reviewing the selections packet to verify that each step of the selection process was conducted in compliance with WSD policies and procedures, as well as, conducting certain selection process actions, such as document screening or interviewing.

“Trainee” is an employee attending the WSD Pre-Service Training Course which includes Non-Correctional Officer Security Training.

“Undue Hardship” is a significant difficulty or expense incurred by the WSD as a result of providing an accommodation, taking into account the nature and cost of the accommodation, the size and resources of the WSD, and the impact of the accommodation on the WSD’s operations.

PROCEDURES:

I. General Provisions

A. The WSD shall not:

1. Discriminate against a qualified individual due to the individual’s disability in regard to recruitment or recruitment advertising, selection, placement, layoff or termination, promotion, demotion, transfer, training, participation in programs, compensation, use of facilities, or other terms and conditions of employment; or
2. Subject an individual with a disability to retaliation for:
 - a. Opposing employment discrimination due to a disability; or
 - b. Testifying or assisting in an investigation of such a claim.
3. Discriminate against any person due to the person’s association with an individual who is protected by the ADA.

B. An individualized assessment will be used to determine whether a reasonable workplace accommodation may be extended to an applicant or employee.

II. Applicants for Employment

The WSD hiring process is open to individuals with a disability who can perform the essential functions of a job with or without a reasonable accommodation.

A. Interview Process

An applicant shall request an accommodation prior to the interview process. The employee to whom an applicant makes the need for an interview process accommodation known shall ensure Human Resources is notified of the request.

B. Final Applicants for Posted WSD Positions

1. Applicant Responsibilities

Upon being read a conditional offer of employment, it is the final applicant's responsibility to notify the contact person, or other WSD representative reading the conditional offer of employment, of any workplace accommodation that may be required to perform the essential functions of the job because of a medical condition.

2. Contact Person or Other WSD Representative Responsibilities

If the final applicant makes the need for an accommodation known when the contact person or WSD representative reads the conditional offer of employment, the contact person or representative shall:

- a. Proceed with advising the final applicant of the requirement to take a pre-employment drug test; and
- b. Notify the Human Resources Administrator of the final applicant's request for a workplace accommodation.

III. Trainees

Human Resources shall be contacted if:

- A. A trainee reports any medical condition preventing the trainee from performing all of the essential functions of the trainee's position while attending training.
- B. It is determined by a member of the training staff that the trainee is unable to perform the essential functions of the trainee's position.

IV. Current Employees Seeking an Accommodation

- A. In order for a current employee with a disability to be considered for an accommodation, the employee shall complete and submit a written request for a Workplace Accommodation Packet. The employee may:
 1. Complete the online form through the Employee Self-Service Portal; or
 2. Obtain the Workplace Accommodation Packet from the employee's human resource representative.
- B. An employee may submit the completed Workplace Accommodation Packet to the human resources representative through the Employee Self-Service Portal. To be considered complete, the Workplace Accommodation Packet shall include all of the following original forms:

1. Request for an accommodation submitted through the Employee Self-Service Portal.
2. A health care provider's statement assessing the essential job functions and what workplace accommodation(s) may be needed. The healthcare provider's statement is required to have been completed by the employee's health care provider within 30 calendar days of the date the employee submits the completed Accommodation Request to the human resources representative. The health care provider's statement is required to include:
 - a. The diagnosis and medical facts associated with the medical condition;
 - b. Whether the medical condition is permanent, long-term, or temporary;
 - c. Limitations and restrictions;
 - d. Whether the limitations or restrictions are permanent, long-term, intermittent, or temporary; and
 - e. The extent, duration, or long-term effects of the impairment(s).

The human resources representative may request additional information as needed from the employee. If sufficient medical information is not provided by the employee, the human resources representative may ask the employee to sign a limited release permitting the human resources representative to contact the employee's health care provider. It is the employee's responsibility to ensure that all forms and additional requested information or documents are furnished.

- C. When an employee sustains a work-related injury or illness for which compensation is payable under the *Texas Workers' Compensation Act*, the employee shall not be eligible for a workplace accommodation until the employee's attending health care provider:
 1. Provides the employee with a maximum medical improvement evaluation (MMI) via: (1) a DWC FORM-73, "Texas Workers' Compensation Work Status Report," or (2) a health care provider's statement;
 2. Issues an MMI rating; and
 3. Releases the employee to return to work, with or without restrictions.

Upon submitting a request or an accommodation, the employee shall provide not only the Workplace Accommodation Packet, but also a copy of the MMI evaluation, the impairment rating, and the release to return to work. No determination shall be made regarding the employee's eligibility for

accommodation until these documents have been received and reviewed.

The fact that an employee is awarded workers' compensation benefits by the State Office of Risk Management, has a permanent or long-term medical condition as defined by the *Texas Workers' Compensation Act*, or is assigned an impairment rating by a physician under the workers' compensation system does not automatically establish that the employee is protected by the ADA.

V. Initial Review of the Accommodation Packet

Upon receipt of a Workplace Accommodation Packet, the human resources representative shall review the packet for completion.

- A. If the Workplace Accommodation Packet is complete, the human resources representative shall determine:
 - 1. If the accommodation request was submitted by an applicant for employment, whether the applicant is an eligible individual with a medical condition;
 - 2. If the Workplace Accommodation Packet was submitted by a current employee, whether there is a medical condition impairing a major life activity based on the health care provider's report and statements from the employee;
 - 3. Whether an appropriate accommodation would be for equipment, a modification in the workplace, or a position reassignment for a current employee; and
 - 4. Whether the requested accommodation constitutes an undue or unnecessary hardship to the WSD.
- B. If the Workplace Accommodation Packet is not complete, the human resources representative shall contact the applicant or employee.

VI. Maximum Search Period for a Reasonable Accommodation

From the date it is determined an applicant or employee has a disability and is eligible for an accommodation, the human resources representative shall search for a reasonable accommodation for a period not to exceed 90 calendar days.

- A. If an employee is separated from employment within the 90 calendar days, the search for a reasonable accommodation shall cease on the day of separation. The request for an accommodation shall be closed.
- B. Additionally, if all applicable reasonable accommodations have been offered and refused, the request shall be closed at that time. A refusal by a current employee includes:

1. Declining the opportunity to visit the worksite of a potential job reassignment; or
2. Declining to be reassigned to a position, for which the employee meets the minimum qualifications, at the pay rate indicated by the employee as acceptable.

VII. Equipment, Structural Changes, or Modifications

If the human resources representative determines that the appropriate accommodation is equipment, structural changes, or modifications, the human resources representative shall prepare a decision memorandum (DM) and forward the DM to the superintendent requesting approval for the proposed accommodation. The DM shall include instructions concerning the ordering of equipment, making arrangements for structural changes, or any other needed modifications.

VIII. Position Reassignments – Current Employees

In order to be reassigned to another position, an employee shall meet the minimum qualifications of a vacant posted position and be able to perform the essential functions of the position with or without reasonable accommodation. If the human resources representative determines that a job reassignment is a reasonable workplace accommodation, the search for a job reassignment shall be conducted in accordance with the procedures in this section.

A. The human resources representative shall contact the employee and request the employee submit an Employment History or a current completed State of Texas Application for Employment that includes the employee's most recent work history. It is the employee's responsibility to ensure the Summary of Experience is detailed sufficiently to show previous experience, education, and skills. Any supporting documents to be considered for qualification purposes shall be attached, such as a transcript, typing test, certifications, licenses, training, or seminar certificates. These shall be the only documents used to verify the employee's qualifications, job experience, skills, and education.

1. The additional requirements of the position listed on the job description shall be compared to the employee's limitations and restrictions as stated on the health care providers report.
2. A copy of the Employment History or the State of Texas Application for Employment may be faxed to the human resources representative for verification of the employee's qualifications.

B. The human resources representative shall review all existing vacancies for which a

request to fill has been approved that:

1. Are within the employee's preferred geographic location(s);
 2. Have a salary plan within the range of the employee's current pay group or the lowest salary rate the employee would accept;
 3. Have the minimum qualifications the employee meets based on a review of the employee's documented education, work experience skills, abilities, and knowledge. The minimum qualifications are described in the position description.
- C. If applicable, the human resources representative shall schedule a worksite visit for the employee and notify the employee of the date, time, and place for the visit.
- D. The human resources representative shall notify and request concurrence from the human resources administrator, general counsel, and superintendent prior to offering a position to the employee. After receiving concurrence, if the employee verbally accepts the position, the human resources representative shall:
1. Have the employee sign and date a Letter of Acceptance;
 2. Advise the employee when, where, and to whom to report;
 3. Notify the gaining and losing supervisors;
 4. If the position was posted prior to the employee accepting the position, submit an HR Action e-form to cancel the posting. Use the Justification Section of the HR Action e-form to explain the request is being submitted as the result of an ADA accommodation placement; and
 5. Prepare a Payroll Transaction Report indicating "ADA Accommodation" with an effective date being the date the letter of acceptance was signed by the employee.
- E. If the human resources administrator, general counsel, or superintendent indicates non-concurrence with the placement for reasons that are job related and applicable to the qualifications and physical or mental health requirements of the position, the human resources representative shall resume the search for a reasonable workplace accommodation.
- F. If the employee does not sign the "Letter of Acceptance" indicating acceptance of the position, the employee shall not be placed in the position, and the request for an accommodation shall be administratively closed.
- G. Once the employee has been accommodated with a job reassignment, the employee shall submit a new request if additional workplace accommodations are needed, such

as modifications, adjustments, or equipment. However, the employee shall not be provided another job reassignment unless a new or altered medical condition prevents the employee from being able to perform the essential functions of the current position without another accommodation.

IX. Relief from Duty and Compliance with Leave Policies

An employee may be relieved of duty after informing appropriate staff, that the employee is unable to perform the essential functions of the employee's position due to a medical condition. The employee shall be required to provide a health care provider's statement and a Leave Request through Employee Self-Service, in accordance with the WSD applicable leave policy. If the employee or the health care provider's statement indicates the medical condition may be a disability, the employee's supervisor and human resources representative shall enter into interactive dialogue with the employee to develop an individualized assessment to be considered for a workplace accommodation.

- A. If the employee requests a workplace accommodation and the human resources representative determines the employee is eligible for work accommodation consideration, the initial Leave Request, and health care provider's statement shall be considered valid during the maximum accommodation search period of 90 calendar days.
- B. If the human resources representative is unable to assist the employee or if the maximum accommodation search period of 90 calendar days expires, the human resources representative shall notify the human resources administrator that the employee's request for an accommodation is being closed. The human resources representative shall advise the employee that the employee is required to comply with the WSD appropriate leave policy.

X. Confidentiality

Information regarding an individual's permanent, long-term, or temporary medical condition is provided voluntarily by the applicant or employee; however, any request for a reasonable workplace accommodation is subject to verification. Such information is confidential and shall be maintained accordingly.

XI. Fraudulent Information

Intentional submission of fraudulent information may be grounds to discontinue the accommodation process.

- A. An outside applicant who submits fraudulent information shall be disqualified from employment consideration.
- B. A current employee who submits fraudulent information may be subject to disciplinary action.

XII. Use of Parking Spaces Designated for a Person with a Disability

An employee is not required to request an accommodation in order to use a parking space designated for a person with a disability. However, the employee's vehicle shall display a license plate indicating the employee has a disability or is a disabled veteran, or state-issued disabled parking placard.

- A. An employee who requires the use of a disabled parking space shall provide verification of this requirement to a human resources representative. The verification shall include a copy of the employee's driver license and one of the following:
1. The state-issued disabled parking placard and verification that the placard is issued to the employee; or
 2. Documentation issued by the county tax office identifying the disabled license plate number and the person to whom the plate is issued.

The human resources representative shall ensure the employee is the person identified on the documentation issued by the county tax office.

- B. It is a violation of law for a person without a disability to use a parking space designated for persons with disabilities or to park in such space without displaying an appropriate license plate or placard. If an employee parks in a space designated for persons with disabilities without verification of the employee's authorization to use such a parking space, the human resources representative shall require the employee to provide the documentations or move the vehicle. If the violation recurs, the employee shall be subject to disciplinary action.

Signature on File
Patrick O'Daniel
Chairman, Board of Criminal Justice