

(School District or ISD)  
**NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**  
(Policies/Guidelines – SAMPLE)

The Board of Education does not discriminate on the basis of race, color, religion, national origin, sex, disability, age, height, weight, marital status, or any other legally protected characteristic, in its programs and activities, including employment opportunities.

The Superintendent shall appoint a compliance officer whose responsibility it will be to ensure that Federal and State regulations are complied with and that any inquiries or complaints are dealt with promptly in accordance with law. She/He shall also ensure that proper notice of nondiscrimination for Title II, Title VI, and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, and Section 504 of the Rehabilitation Act of 1973 is provided to students, their parents, staff members, and the general public. Any sections of the District's collectively-bargained, negotiated agreements dealing with hiring, promotion, and tenure need to contain a statement of nondiscrimination similar to that in the Board's statement above. In addition, any gender-specific terms should be eliminated from such contracts.

These guidelines shall be used to ensure that the Board of Education's policy on nondiscrimination is implemented properly and in compliance with Federal and State laws and regulations, particularly Part 104 of Section 504 of the Rehabilitation Act of 1973 (34 C.F.R.) and the Americans with Disabilities Act (ADA).

That policy states:

The Board of Education does not discriminate on the basis of religion, race, color, national origin, sex, disability, or age in its programs, activities, or employment.

The following person(s) have been designated to handle inquiries regarding the non-discrimination policies of the District or to address any complaint of discrimination:

Name and/or Title: (Designated Person)  
Address: (School District or ISD)  
(Street Address)  
(City, State, Zip Code)  
Telephone No.: (Area Code) (Phone Number)

Notice of the Board's policy on nondiscrimination in employment practices shall be posted throughout the District, published in any District statement regarding the availability of employment, and in any staff handbooks.

When referred to in policy and in these and other guidelines, "person with a disability" shall mean any staff member or candidate for employment who meets any of the following criteria established by Federal law:

- A. has a physical or mental characteristic which substantially limits one (1) or more major life activities
- B. has a record of such impairment
- C. is regarded as having such an impairment

Significant exclusions are employees or an applicant currently engaged in illegal drug use or whose use of alcohol prevents the person from performing job responsibilities or poses a direct threat to the safety and property of others.

In order to be a qualified individual with a disability, an individual must be able to perform the essential functions of the position. The following are a nonexclusive list of reasons that a job function may be considered essential:

- A. the reason the position exists is to perform that function
- B. a limited number of employees are available among whom the performance of the job function can be distributed
- C. the function is highly specialized so that an individual is hired for his/her expertise in performing that function

The following may be considered as evidence in determining whether a particular function is essential:

- A. the employer's judgment as to which functions are essential
- B. written job descriptions prepared before advertising or interviewing applicants for the job
- C. the amount of time spent on the job performing the function
- D. the consequences of not requiring the incumbent to perform the function
- E. the work experience of past incumbents in the job
- F. the current work experience of incumbents in similar jobs

### **Recruiting and Hiring**

No candidate for employment shall be required to answer a question regarding a disabling condition and no such candidate will be discriminated against on the basis of a disabling condition unless it is directly related to the essential function of the position for which she/he has applied and cannot be reasonably accommodated. However, this stipulation does not constrain the need to ensure that an applicant is not afflicted with a currently-communicable disease or infection which would constitute a direct threat to staff and students nor to determining if an applicant is an abuser of substances.

All employee medical records are to be filed separately from personnel records and be treated as confidential records.

### **Reasonable Accommodation**

It is essential that no discrimination occur in employment, promotion, assignment, or transfer because of a disabling condition. If the person has all of the qualifications required to properly fulfill the job responsibilities, then reasonable efforts must be made to modify existing facilities, the work environment, or working conditions to accommodate a particular disabling condition, providing such accommodation does not seriously diminish the quality of programs or services provided by the District.

With both ADA and Section 504, the District must show that the accommodation would impose undue hardship on its operation. The factors to be considered in determining whether an accommodation imposes undue hardship include the type of operation and the nature and cost of the accommodation needed.

Undue hardship is not limited to financial difficulty. It refers to any accommodation that would be unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature of the District.

The EEOC provided a nonexclusive list of defenses to allegations of discrimination pursuant to the ADA in the proposed regulations thereto. This list includes the following:

- A. Charges of disparate treatment: The challenged treatment is justified by a legitimate, nondiscriminatory reason.
- B. Charges of discriminatory application of selection criteria: The selection criteria have been shown to be job-related and consistent with business necessity and performance of the job cannot be accomplished with reasonable accommodation.
- C. Charges of not making reasonable accommodations: The requested or needed accommodation would impose undue hardship on the operation of the business.
- D. Conflict with other Federal law: The challenged action is required by another Federal law.
- E. Specific activities permitted: The alleged discriminatory activity may be specifically permitted. Examples of this defense include:

- 1. religious entities - may require that all applicants and employees conform to its religious tenets;
- 2. regulation of alcohol and drugs;
- 3. drug testing;
- 4. regulation of smoking;
- 5. infectious and communicable diseases: food handling jobs.

### **Job Descriptions**

Each job description should be carefully analyzed to:

- A. identify any environmental factors that could create a barrier for a disabled person;
- B. ensure that all essential physical, mental, and intellectual qualifications have been defined and justified.

## **FEDERAL REGULATIONS FOR SECTION 504 34 CFR Ch. 1 (7-1-88 Edition); SUBPART B**

### **EMPLOYMENT PRACTICES**

#### **104.11 Discrimination Prohibited**

##### **(a) General**

- (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.
- (2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.
- (3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.
- (4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

- (b) **Specific activities:** The provisions of this subpart apply to:
- (1) Recruitment, advertising, and the processing of applications for employment;
  - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (3) Rates of pay or any other form of compensation and changes in compensation;
  - (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (5) Leaves of absence, sick leave, or any other leave;
  - (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
  - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (8) Employer sponsored activities, including social or recreational programs; and
  - (9) Any other term, condition, or privilege of employment.
- (c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collectively-bargained agreement to which it is a party.

#### 104.12 **Reasonable Accommodation**

- (a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
- (b) Reasonable accommodation may include:
- (1) making facilities used by employees readily accessible to and usable by handicapped persons, and
  - (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.
- (c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:
- (1) the overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;
  - (2) the type of the recipient's operation, including the composition and structure of the recipient's workforce; and
  - (3) the nature and cost of the accommodation needed.
- (d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

#### 104.13 **Employment Criteria**

- (a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:
- (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and
  - (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.
- (b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or

whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

#### 104.14 **Pre-Employment Inquiries**

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a Pre-employment medical examination or may not make Pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make Pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6 (a). when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6 (b). or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) the recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) the recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided, that:

(1) all entering employees are subjected to such an examination regardless of handicap, and

(2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) first aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) government officials investigating compliance with the Act shall be provided relevant information upon request.

### **GRIEVANCE PROCEDURES FOR NONDISCRIMINATION AND EQUAL OPPORTUNITY/ACCESS**

#### **Section I**

Any person that believes that she/he has been discriminated against or denied equal opportunity or access to programs or services may file a complaint, which shall be referred to as a grievance, with the District's Civil Rights Coordinator.

(Designated Person)

(School District or ISD)

(Street Address)

(City, State, Zip Code)

(Area Code) (Phone Number)

The individual may also, at any time, contact the U.S. Department of Education, Office of Civil Rights, 600 Superior Avenue, Room 750, Cleveland, Ohio 44114-2611.

## **Section II**

The person who believes she/he has a valid basis for grievance shall discuss the grievance informally and on a verbal basis with the District Civil Rights Coordinator, who shall in turn investigate the complaint and reply with an answer to the complainant. She/He may initiate formal procedures according to the following steps:

**Step 1:** A written statement of the grievance signed by the complainant shall be submitted to the District Civil Rights Coordinator within five (5) business days of receipt of answers to the informal complaint. The Coordinator shall further investigate the matters of grievance and reply in writing to the complainant within five (5) business days.

**Step 2:** If the complainant wishes to appeal the decision of the District Civil Rights Coordinator, she/he may submit a signed statement of appeal to the Superintendent within five (5) business days after receipt of the Coordinator's response. The Superintendent shall meet with all parties involved, formulate a conclusion, and respond in writing to the complainant within ten (10) business days.

**Step 3:** If the complainant remains unsatisfied, she/he may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's response in step two. In an attempt to resolve the grievance, the Board of Education shall meet with the concerned parties and their representative within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting.

**Step 4:** If at this point the grievance has not been satisfactorily settled, further appeal may be made to the U.S. Department of Education, Office of Civil Rights, 600 Superior Avenue, Room 750, Cleveland, Ohio 44114-2611.

Inquiries concerning the nondiscriminatory policy may be directed to: Director, Office for Civil Rights, Department of Education, Washington, D.C. 20201.

The District Coordinator will provide a copy of the District's grievance procedure to any person who files a complaint and will investigate all complaints in accordance with this procedure.

A copy of each of the Acts and regulations on which this notice is based, may be found in the Civil Rights Coordinator's office.

## **COMPARATIVE ANALYSIS OF EMPLOYMENT RELATED PROVISIONS OF ADA AND SECTION 504**

<b>Issue</b>	<b>Section 504</b>	<b>ADA</b>
Coverage	Covers only recipients of Federal funds	Covers all employers with 15 or more employees; adds 2-year exemption for employers with less than 25 employees
Definition of	A disabled person who,	An individual with a

"Qualified Individual with Disability"	with "reasonable" accommodation, can perform the essential functions of the job	disability who, with or without reasonable accommodation, can perform the essential functions of the employment position
Reasonable Accommodation	Reasonable Accommodation may include:  making facilities used by employees readily accessible and usable by disabled persons  job restructuring, part-time or modified work schedules  No comparable provision  acquisition or modification of equipment or devices  No comparable provision  provision of readers or interpreters	Reasonable Accommodation may include:  making facilities readily accessible  job restructuring, part-time or modified work schedules  reassignment to a vacant position  acquisition or modification of equipment or devices  appropriate adjustment or modifications of examinations, training materials or policies  provision of readers or interpreters
Undue Hardship	Factors considered:  1) size of the organization and its budget	Factors considered:  1) size of the organization and its budget

	2) type of operation 3) nature and cost of accommodation	2) type of operation 3) nature and cost of accommodation
Drug and Alcohol Use	Current drug use is not considered a disability  Current alcohol abuse that prevents individual from performing duties of the job or that constitutes direct threat to property or safety of others is not considered a disability	Current drug use is not considered a disability  Current alcohol abuse that prevents individual from performing duties of the job or that constitutes direct threat to property or safety of others is not considered a disability
Communicable Diseases	Term "individual with disabilities" excludes any individual with a communicable disease which would constitute a direct threat to the health or safety of others or which renders the individual unable to perform the job	Permits qualification standard requiring that an individual with a currently-communicable disease or infection not pose a direct threat to the health or safety of others
Relationships or Associations	No comparable provision	Prohibits discrimination based on relationship to or association with another disability

**STAFF REQUEST FOR REASONABLE ACCOMMODATION**

DATE \_\_\_\_\_

NAME \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ ZIP \_\_\_\_\_

POSITION \_\_\_\_\_ SUPERVISOR \_\_\_\_\_

DESCRIPTION OF DISABILITY \_\_\_\_\_

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**ACCOMMODATION REQUESTED**

ACCESS TO FACILITY OR PROGRAM:

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JOB RESTRUCTURING/MODIFICATION:

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EQUIPMENT:

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OTHER:

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\_\_\_\_\_  
SIGNATURE of STAFF MEMBER

\_\_\_\_\_  
SIGNATURE of ATTENDING PHYSICIAN

**NOTICE OF NONDISCRIMINATION AND GRIEVANCE PROCEDURES  
(INCLUDING TITLE II, TITLE VI, TITLE VII, AND TITLE IX, SECTION 504, AND ADA)**

**Nondiscrimination**

The Board of Education does not discriminate on the basis of race, color, religion, national origin, sex, disability, age, height, weight, marital status, or any other legally protected characteristic in its programs and activities, including employment opportunities.

**Complaint Procedure**

**Section I**

Any person who believes that she/he has been discriminated against or denied equal opportunity or access to programs or services may file a complaint, which shall be referred to as a grievance, with the District's Civil Rights Coordinator. (LIST NAME, DISTRICT, ADDRESS, CITY, STATE, ZIP, PHONE)

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The individual may also, at any time, contact the U.S. Department of Education, Office of Civil Rights, 600 Superior Avenue, Room 750, Cleveland, Ohio 44114-2611.

**Section II**

The person who believes she/he has a valid basis for grievance shall discuss the grievance informally and on a verbal basis with the District's Civil Rights Coordinator, who shall in turn investigate the complaint and reply with an answer to the complainant. She/He may initiate formal procedures according to the following steps:

**Step 1**

A written statement of the grievance signed by the complainant shall be submitted to the District's Civil Rights Coordinator within five (5) business days of receipt of answers to the informal complaint. The Coordinator shall further investigate the matters of grievance and reply in writing to the complainant within five (5) business days.

**Step 2**

If the complainant wishes to appeal the decision of the District's Civil Rights Coordinator, she/he may submit a signed statement of appeal to the Superintendent of Schools within five (5) business days after receipt of the Coordinator's response. The Superintendent shall meet with all parties involved, formulate a conclusion, and respond in writing to the complainant within ten (10) business days.

Step 3

If the complainant remains unsatisfied, she/he may appeal through a signed written statement to the Board of Education within five (5) business days of his/her receipt of the Superintendent's response in step two. In an attempt to resolve the grievance, the Board of Education shall meet with the concerned parties and their representative within twenty (20) days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting.

Step 4

If at this point the grievance has not been satisfactorily settled, further appeal may be made to the U.S. Department of Education, Office of Civil Rights, 600 Superior Avenue, Room 750, Cleveland, Ohio 44114-2611.

Inquiries concerning the nondiscriminatory policy may be directed to Director, Office for Civil Rights, Department of Education, Washington, D.C. 20201.

The District's Coordinator will investigate all complaints in accordance with this procedure.

A copy of each of the Acts and the regulations on which this notice is based may be found in the District Coordinator's office.