



# WORKFORCE SOLUTIONS of the Coastal Bend

## POLICY

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TITLE:	Reasonable Accommodations	
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### I. PURPOSE:

This policy outlines Workforce Solutions of the Coastal Bend's (WFSCB) commitment and process for providing universal access to programs and services for customers with disabilities.

### II. DEFINITIONS:

**Basic Services** — Basic services are those that are available to everyone seeking services from Workforce Solutions of the Coastal Bend.

**Customer** — For the purposes of this document, a customer is defined as a job seeker, someone from the business community, a program participant, and/or staff of partner agencies.

**Customer who has a disability** — A customer who has a disability is defined as a person with a physical or mental impairment that substantially limits one or more major life activities.

**Reasonable Accommodation/Modification** — A reasonable accommodation and/or modification is any change in the application or registration process, and/or the delivery of programs, policies, practices, procedures, and/or the environment that allows customers with a disability to have an equal opportunity to utilize the workforce center services. The goal is to enable an otherwise qualified person who has a disability to have an equal opportunity to perform satisfactorily to his/her fullest potential. WFSCB Career Centers provide any reasonable accommodations or modifications at no cost to the customer. Requested accommodations must be provided unless they would cause an undue hardship, and requested modifications must be provided unless they would fundamentally alter the nature of the service, program or activity.

Examples of Reasonable Accommodation/Modifications include, but are not limited to:

- Provision of readers, interpreters, and other auxiliary aids or services necessary to ensure that communications with customers with disabilities are as effective as communications with other customers;
- Modifications or adjustments to the environment in which, or the rules under which, the aid, benefit, service or training is provided;
- Modifications or adjustments to the manner in which a training program or other activity is conducted.

To determine reasonableness of a requested accommodation or modification, Board professionals and/or WFSCB Career Center professionals must determine whether the accommodation would impose an undue hardship, or the modification would create a fundamental alteration.

**Undue hardship/burden** — A significant difficulty or expense. In general, the factors to be considered in determining whether a particular accommodation would impose an undue hardship include:

- the *type* of accommodation that has been asked for;
- the *net cost* of the accommodation (taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation);
- the *overall size* of the recipient (including number of employees, number of participants, number and type of facilities, and size of budget);
- the *overall financial resources* of the recipient as a whole and the individual facility or facilities that would be involved with the accommodation; and
- the *effect* that providing the accommodation would have on the recipient's or facility's ability to serve other customers (or, for a work-related accommodation, its employees' ability to perform their duties), and the recipient's or facility's ability to carry out its mission.

Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger entity would be expected to make accommodations requiring greater effort or expense than would be required of a smaller organization.

**Fundamental alteration** – The term “fundamental alteration” is defined in two ways:

- a change in the *essential nature* of a program or activity, or
- a cost that a recipient can demonstrate would result in an *undue burden*.

To determine whether a particular modification would result in an undue burden, The Board must consider the factors listed in the definition of *fundamental alteration* in 29 CFR §37.4. These factors are similar to those listed for *undue hardship*, as discussed above.

### III. POLICY STATEMENT:

Workforce Solutions of the Coastal Bend upholds the highest standards of non-discrimination and the provisions of equal opportunity to all customers of its basic services, expanded services and financial aid. The Board administers the WIA financially assisted programs and activities and other programs in the most integrated setting appropriate to the needs of qualified individuals with or without disabilities. Workforce Solutions of the Coastal Bend 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.

Workforce Solutions of the Coastal Bend 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. The Board has taken appropriate steps to ensure that communications with beneficiaries, applicants, registrants, eligible applicants/registrants, participants, employees or applicants of employment and members of the public who are individuals with or without disabilities are as effective as communications with others. 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.

## Examples of General Types of Discriminatory Actions

Actions that are considered discriminatory may include, but are not limited to:

- Denying a qualified person with a disability the opportunity to participate in, or benefit from, the same program or activity afforded to other persons;
- Failing to give a qualified person with a disability an equal opportunity to get the same results or benefits from a program or activity that people without disabilities receive;
- Charging a particular person with a disability any extra fees to cover costs of accommodating the disability;
- Accepting any job orders from an employer that will not accept applications from qualified persons with disabilities;
- Stereotyping people with disabilities when evaluating their skills, needs, abilities, and interests;
- Referring qualified persons with disabilities to different programs, activities, employers or types of jobs than other qualified people;
- Using tests or other assessment processes that measure the impairments of persons with disabilities, not their skills and abilities;
- Failing to provide a reasonable accommodation or modification, or failing to take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with others;
- Perpetuating discrimination by providing significant assistance to, or contracting with, an agency, organization or business that discriminates on the basis of a person's disability status.
- Administering certification and licensing programs in a manner that discriminates on the basis of disability.
- Having/imposing eligibility criteria that screens out or tends to screen out an individual with a disability or class of individuals with disabilities unless such criteria can be shown to be necessary for the provision of aid, benefit, service, training, program or activity being offered.
- Providing different, segregated, or different services or training to individuals with disabilities.
- Denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards.

All Board Service Providers and their sub-contractors are responsible for adherence to this policy expressed in both verbal and written communication.

### Description of Requirements

1. Workforce Solutions of the Coastal Bend 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. WFSCB Career Centers and satellite offices shall remain architecturally barrier-free. When determining a site or location of a facility, the Board's selection process will be made in a manner that does not have a discriminatory effect.
3. All services offered by WFSCB shall be available and welcoming to all qualified customers, regardless of disability.

4. Customers should be presumed 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. WFSCB 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. Board professionals must review certain required factors when determining whether there would be a fundamental alteration or undue hardship. These factors are delineated in the following "Definitions" section of this document. If it is determined that the requested accommodation would cause undue hardship, or the requested modification would result in a fundamental alteration, Board professionals must provide a written statement of reasons for denying the requested accommodation or modification, give a copy of the statement to the customer requesting the accommodation or modification, and offer another action to avoid discrimination, provide equal opportunity, and allow the person with the disability to participate to the fullest extent possible.
7. 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.
8. Board professionals are allowed to ask for reasonable documentation of the disability or medical condition under the circumstances, and following the procedures, described in part 2 of the "Procedures" section of this document.
9. WFSCB professionals may discipline, including denial of service to, any individual who violates Career Center policy related to conduct, even if the conduct resulted from a disability, if all of the following criteria are met:
  - a. the conduct policy is **both**:
    - i. related to provision of the specific services at issue, **and**
    - ii. consistent with business necessity; **and**
  - b. the discipline being imposed is consistent with program policy – in other words, the same discipline is imposed on a customer with a disability as on other customers without disabilities.

If a customer with a disability who has violated Career Center policy related to conduct asks for reasonable accommodation to be able to comply with the policy in the future, that accommodation must be provided unless it imposes an undue hardship, as with other accommodation requests. However, the Board is not required to excuse misconduct that took place before the accommodation request.

10. All customers are welcome to bring a professional or personal support person and/or attendant to help them access the program and services with the exception of assistance with testing. The Board workforce center 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. WFSCB Career Center professionals 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.

## IV. PROCEDURES:

### 1. Communication Aids

WFSCB 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*

1. Large print

### 2. Reasonable Accommodations and Modifications – Interactive Process (This is your procedure/steps if a person requests accommodation-consolidate with existing steps)

#### **Customer Request**

Customers with accommodation or modification needs seeking workforce center services may direct their request to any staff person they come in contact with, including workforce center personnel. 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.

An individual with a disability is not required to accept an accommodation, aid, benefit, service, training, or opportunity that the individual chooses not to accept. Also, it is prohibited to place a surcharge on an individual or group of individuals with disabilities to cover the cost of measures such as accommodation request, auxiliary aids, or program accessibility.

#### *Interactive Process*

The Equal Employment Opportunity Commission (EEOC) recommends that employers use an "interactive process" when customers or employees make an accommodation request. This simply means that both parties, the workforce center management/employer and the person with disabilities who requests the accommodation, work together.

#### **Step 1: Recognizing an Accommodation Request**

The interactive process starts with an accommodation request from an employee with a disability so it is important for employers to be able to recognize a request. So what constitutes an accommodation request? According to the EEOC, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation" when requesting an accommodation. Therefore, any time an employee indicates that he/she is having a problem and the problem is related to a medical condition, the employer should consider whether the employee is making a request for accommodation under the ADA.

The EEOC (Reasonable Accommodation and Undue Hardship (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>) provides the following examples:

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

#### Tips:

- **Err on the side of caution:** If an employer is not sure whether an employee has requested an accommodation, the employer should ask the employee to clarify what is being requested and why.
- **Act quickly:** Once an accommodation request is identified, the employer should respond immediately – unnecessary delays in processing an accommodation request can violate the ADA.
- **Assign responsibility:** Employers should assign at least one person who is responsible for making sure an accommodation request is processed so the request is not lost on someone's desk.
- **Conduct training:** Employers should train all managers and supervisors to recognize accommodation requests and what to do with a request once it is received.

#### Step 2: Gathering Information

Once an accommodation request has been received, the employer should gather whatever information is necessary to process the request. Necessary information may include documentation of the disability and need for accommodation. In some cases, the employee's disability and need for accommodation are obvious and no additional information is needed. For example, if an employee who recently started using a wheelchair indicates that he needs a ramp to get into the workplace, the disability and need for accommodation are obvious.

However, in other cases the individual may know that he/she is having difficulty, but may be uncertain about the exact cause or possible solution. For example, if an employee with a non-visible disability indicates she is having trouble completing her work tasks because of her disability, the employer does not have enough information to provide effective accommodations. The employer needs to know what limitations are interfering with job performance and what specific work tasks are at issue.

So how should an employer get the information that is needed? The employee who requested the accommodation is often the best source of information about the disability and possible accommodations. If the employee cannot provide the necessary information, then medical documentation can be useful. The important thing for employers to remember is not to ask for too much information. Under the ADA, when an employee requests an accommodation and the disability and need for accommodation are not obvious, then the employer can request medical documentation to help determine whether the employee has a disability and needs the requested accommodation and information to help process the accommodation request.

#### Tips:

- **Find out the limitation and problem.** In most cases, to find effective accommodations employers need to know what limitation is causing what problem so this is usually a good place to start.
- **Get information from the employee when possible.** Employees with disabilities are familiar with their limitations and often know what accommodations will work best for them.
- **Remember ADA rules for medical inquiries.** A good policy for employers is to only ask for what is absolutely necessary. Asking for all medical records will rarely, if ever, meet this test.

### Step 3: Exploring Accommodation Options

Once the employer has identified the employee's limitation that is causing a problem and has identified what that problem is, then the employer is ready to explore accommodation options. At this step, employers should be open to new ideas and new ways of doing things. This is the time to brainstorm and consider what might work.

Again, the employee who requested the accommodation is a good place to start so employers should always invite the employee to suggest accommodations. If more accommodation ideas are needed, the employer can ask the employee's medical provider for ideas – in some cases medical professionals are able to suggest effective accommodations. In other cases, they may not be able to suggest ideas, but may be able to say whether ideas under consideration will help overcome the employee's limitations.

And if still more ideas are needed, then the employer should consult with outside resources such as JAN, vocational rehabilitation, rehabilitation engineers, and disability-related organizations. Remember when consulting with outside resources, employers must comply with the confidentiality rules of the ADA. One good approach is to withhold the employee's name and identifying information from outside resources.

#### Tips:

- **Keep an open mind.** Accommodations are about doing things differently to help overcome disability-related limitations, so keep an open mind when exploring accommodation options.
- **Invite the employee to suggest accommodations.** The employee who requested the accommodation may have some good accommodation ideas, but may be hesitant to bring them up without being asked to do so.
- **Ask the employee's medical provider for ideas.** Some medical professionals will brainstorm accommodation ideas with employers.
- **Use JAN when needed.** JAN is a free, national resource for employers who are seeking help coming up with accommodation ideas.

### Step 4: Choosing an Accommodation

Once accommodation options have been explored, the employer must choose what accommodation to implement. If there is more than one option, the employer should consider the preference of the employee. However, the employer gets to choose among effective options and can choose, for example, the lowest cost accommodation.

Sometimes employers are not sure whether an accommodation will work and are afraid if they try it out they will be locked in forever. This is not the case – employers are free to try accommodations and stop them if they do not work. One thing employers might want to do when testing accommodations is to make a written agreement with the employee that the accommodation is being tested, how long the test will be, and what

will happen if the accommodation does not work. That way, no one is surprised when the accommodation is revisited down the road.

**Tips:**

- **Consider the employee's preference.** Although not required by the ADA, when possible employers should choose the accommodation the employee prefers.
- **Consider a trial period.** When it is not clear whether an accommodation will work, it might be possible to try out the accommodation.

**Step 5: Implementing the Accommodation**

Once an accommodation has been chosen, it is time to implement the accommodation. This step is very important to the success of an accommodation. If equipment is involved, then it needs to be properly installed and the employee needs to be trained in its proper use. If the accommodation involves a schedule change or policy modification, then certain managers or supervisors may need to know of the change to effectively implement it. If the accommodation involves an outside service, someone needs to make sure the service is provided promptly and effectively. If the accommodation is a reassignment, then the employee may need time to acclimate to the new job.

**Tips:**

- **Make sure all necessary steps are taken to implement the accommodation.** A good way to do this is to check to see if the accommodation is actually working.
- **Communicate with essential personnel about the accommodation.** Remember ADA confidentiality rules and only let managers and supervisors know about the accommodation if necessary.

**Step 6: Monitoring the Accommodation**

An important but often forgotten part of the interactive process is monitoring accommodations after they are in place. In some cases, an accommodation stops being effective for various reasons such as: the employee's limitations change, workplace equipment changes, the job changes, the workplace itself changes, or the accommodation becomes an undue hardship for the employer.

Because changes occur, employers may need to periodically check on the ongoing effectiveness of accommodations. If equipment is involved in the accommodation, someone may need to be assigned to perform maintenance or upgrades as needed. The most important way to monitor accommodations is to encourage ongoing communication. Employees who are receiving accommodations need to understand that they should let their employers know if there are changes or problems with the accommodation and who specifically to contact.

**Tips:**

- **Check on effectiveness.** As things change in the workplace, accommodations may need to also change so employers should periodically check the effectiveness of accommodations.
- **Maintain the accommodation.** Equipment will not function forever without maintenance so when equipment is part of an accommodation, employers need to make sure the equipment is properly maintained.
- **Encourage ongoing communication.** For any workplace issue, ongoing communication is the key to success. The same is true for accommodations – employers should encourage employees to communicate any issues they have with their accommodations.



A flowchart is provided below so you can easily visualize how the accommodation process works:

**Figure 1:  
THE INTERACTIVE PROCESS**



Among available methods for meeting the requirements listed under “Examples of Reasonable Accommodations”, Workforce Solutions of the Coastal Bend shall give priority methods that offer programs and activities to individuals with disabilities in the most integrated setting appropriate by providing an alternate location which has accessible parking, routes, auxiliary aids, etc., such as all Workforce Solutions of the Coastal Bend One-Stop offices located in Alice, Beeville, Corpus Christi (2 locations), Kingsville, and Sinton, TX.

**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 workforce Career Center professional 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, staff, 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.

Workforce Career Center professionals 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, staff 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 staff to submit a list of specific questions to the health care or vocational professional. WFSCB Career Center professionals 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 staff's initial request, the customer may be required to go to a health care professional of workforce center's choice. However, Career Center professionals 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, WFSCB Career Center professionals may simply discuss with the customer the nature of the person's disability and functional limitations. WFSCB Career Center professionals need to clarify why it is requesting information - to verify the existence of a disability and the need for a reasonable accommodation.

Under Federal disability nondiscrimination law, WFSCB Career Center professionals cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the person has already provided 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 he/she refuses to provide the reasonable documentation requested by WFSCB Career Center professional, then he/she is not entitled to reasonable accommodation. On the other hand, failure by the WFSCB Career Center professional 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**

WFSCB Career Center professionals 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:

- WFSCB Career Center professionals 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 WFSCB Career Center professional 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 workforce center, 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. Workforce Career Center management in conjunction with Board professionals 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 to directly to the customer.

### **Wait Period for Decision on Reasonable Accommodation or Modification**

Decisions requiring additional review or planning by 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 is not obvious, staff 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. *This information is located at issuance 04-06 change 2.*

- 3. Notice and Communication** (This section covers the "EO is the Law" WIA notice w/your contact information; the required tag line w/RELAY TX, TDD/TTY telephone numbers required to be listed on all publication, brochures, TV, Newspaper, Radio Ads, etc.,.

Information regarding the complaint process is made available in multiple formats to WFSCB Career Center professionals as well as customers. The notice must be provided in appropriate formats to individuals with hearing and/or visual impairments. Where the notice has been given in an alternate format to a participant with hearing and/or visual impairment, a record that such notice has been given must be made a part of the participant's file (29 CFR 37.31(b)). Posters, with both print and pictures, informing and instructing applicants on complaint procedures are posted throughout the workforce centers to recipients, sub recipients, affiliate and co-location sites. In addition, information about how to file a complaint is available upon customer request. Board and Career Center professionals are provided access complaint procedures in WD Letter 18-07, Discrimination Complaint Procedures and its attachment, Texas Workforce Solutions Discrimination Complaint Procedures.

The Board's website provides a link to a copy of "EO is the Law" posters in English and Spanish. The site includes the local EO Officers, the WIA discrimination complaint procedures, and the complaint form. See <http://www.theworksource.org/other/eeo.html>.

During orientations that inform new participants, new employees, and/or the general public of WIA Title I-financially assisted programs and/or activities, WFSCB Career Center professionals 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 funded publications must include the Equal Opportunity 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 the workforce center 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 the 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 Second Language training, fall within the definition of "employment-related training" will depend on the way in which a particular the workforce center office provides 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 workforce center office, 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 Center personnel 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/registant, participant, termini, 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 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 confidential and 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 WFSCB Career Center, or the employer for which the Career Center professional is seeking applicants, is taking remedial action to correct the effects of past discrimination; *or*
- The WFSCB Career Center, or the employer for which the Career Center professional 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 WFSCB Career Center, or the employer for which the Career Center professional 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.

The WFSCB Career Center professional 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.**

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 they can assist the person with accommodations or modifications.

**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 Workforce Center 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?*

**5. Confidentiality (Storage of medical and/or disability-related information)**

**Any information that is disclosed is confidential.** All staff will safeguard the confidentiality of the public served. WFSCB Career Center professionals must keep any medical or disability-related information on its customers confidential, with the following limited exceptions: (1) supervisors, managers and trainers 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 the staff that needs 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 required.**

## 6. Customer Information Disclosure to Employers

As a general rule, WFSCB Career Center professionals must not disclose medical or disability-related information about a customer to an employer to whom the workforce center is referring a customer or an employer who is considering hiring the customer. WFSCB Career Center professionals 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 s 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

WFSCB Career Center professionals that provide direct services will receive training on serving customers with disabilities. The Equal Opportunity Officer will ensure staff receives training 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 1-9 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.

**Training provided by the Equal Opportunity Officer:** Staff is 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:** A log of workforce career center professionals training will be maintain and submitted to the Equal Opportunity Officer.

## 8. Complaint Procedures and Timelines

The Board and Career Center professionals 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: An individual whose identity it is necessary to disclose must be protected from retaliation (29 CFR 37.41).

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.

## V. RELATED POLICY INFORMATION:

### **Workforce Investment Act, §188;**

**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;**

**United States Department of Labor**, Implementation of the Nondiscrimination and Equal Opportunity; Provisions of The Workforce Investment Act of 1998 [29 C.F.R. §32.15(d) and §37.37(b)];

### **State of Texas Methods of Administration.**

## VI. RESPONSIBILITIES:

President/CEO – Responsible for the Board's adherence to all applicable laws and rules with respect to this policy.

Equal Opportunity Officer – Responsible for ensuring Board and service provider professionals are trained to comply with this policy; coordinating the recipient’s obligations and compliance activities under the nondiscrimination and equal opportunity provisions of WIA; and providing oversight and monitoring of adherence and compliance with this policy.

WFSCB Career Center professionals– Responsible for the delivery of workforce services in accordance with applicable laws, rules, Board policy and the terms of the contract.

Workforce Center Managers– Must ensure staff is apprised of and complies with the requirements of this policy.

**VII. FORMS AND INSTRUCTIONS:**

**VIII. DISTRIBUTION:**

Board of Directors       Board Professionals       Service Provider Professionals

**IX. SIGNATURES:**

\_\_\_\_\_  
Reviewed by EO Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
President/CEO

\_\_\_\_\_  
Date