

## **ND-5 Procedures for Requesting Reasonable Accommodation**

### **Regulation Statement**

The Maricopa County Community College District (MCCCD) is committed to providing reasonable accommodations to its employees and applicants for employment to ensure that individuals with disabilities enjoy equal access to all employment opportunities. Section 501 of the Rehabilitation Act of 1973 requires federal agencies to provide reasonable accommodation for qualified employees or applicants with disabilities, unless to do so would cause undue hardship.

### **Reason for Regulation**

These Procedures fully comply with the Rehabilitation Act of 1973, Executive Order 13164 (requiring federal agencies to establish procedures to facilitate the provision of reasonable accommodation), MCCCD regulations, and 29 C.F.R. § 1614.203(d)(3) (clarifying the written procedure requirement).

### **Regulation**

#### **Procedures for Requesting Reasonable Accommodation**

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#### **I. DEFINITIONS OF KEY TERMS**

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## I. DEFINITIONS OF KEY TERMS

**Disability:** To be eligible for a reasonable accommodation, an individual must either have a physical or mental impairment that substantially limits a major life activity, or must have a record (a history) of a physical or mental impairment that substantially limited a major life activity. An individual who is only regarded as having a disability is not entitled to reasonable accommodation. Determination of disability will comply with the requirements of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) which requires a broad interpretation of the term and generally does not require an extensive analysis.

**Essential Functions:** Essential functions are those job duties that are fundamental to the position that the individual holds or desires. The term "essential functions" does not include marginal functions of the position. "Marginal functions" are those job duties that are less important or critical to the success or failure of the specific position. A function can be "essential" if, among other things: the position exists to perform the function; a limited number of other employees are available to perform the function; or the function is highly specialized and the individual is hired based on having those specialized skills. Evidence of whether a particular function is essential includes:

- MCCCD's judgment (generally a supervisor's, manager's and/or office director's judgment)
- a written position description developed before a job is advertised
- the amount of time spent performing the function
- the consequences of not requiring the person in the position to perform the function
- the terms of a policy and/or agreement
- the work experience of past incumbents in the job or current incumbents in similar jobs.

Determination of whether a particular function is essential must be done on a case-by-case basis because the duties of a specific job may deviate from what is indicated in a position description or from the duties of employees holding a similar job.

**Extenuating Circumstances:** Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation or limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. (e.g., identified software such as a Screen Reader is not compatible with existing equipment).

**Health Care or Rehabilitation Professional:** A person who has completed a course of study and is licensed to practice in a field of health care, which includes the diagnosis and assessment of the particular disability or disabilities in question.

**Interactive Process:** The interactive process refers to an information-gathering approach used by an employer with the employee to evaluate a request for accommodation. It is intended to be a flexible approach that centers on the communication between an employer and the individual requesting reasonable accommodation, but may (and often does) involve obtaining relevant information from a supervisor and an individual's

health care provider. This process begins upon receipt of an oral or written request for reasonable accommodation. Any request will be transmitted to the Disability Coordinator (“DC”) at the college or site. The DC is the person who will decide whether to grant or deny a reasonable accommodation. The DC will engage in the interactive process with the requestor and other relevant individuals (e.g., a supervisor, a requestor's health care provider) to collect whatever information is necessary to make an informed decision about whether the requestor is covered as an individual with a disability; and, if so, whether the requestor qualifies for an accommodation(s). If the employee is qualified to receive a reasonable accommodation, the DC will determine what reasonable accommodation(s) will effectively eliminate the barrier identified by the requestor and permit an equal opportunity to apply for a job, to perform a job, or to gain access to the workplace, or to enjoy access to the benefits and privileges of employment. Reasonable accommodations are intended to support an eligible employee in performing the essential functions of their position and not supplant such essential functions.

**Interim Accommodation:** Any temporary or short-term measure put in place until a granted accommodation is available.

**Invisible/Hidden Impairments:** Disabilities or conditions that are not obviously apparent or visible, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, HIV infection, chronic depression, learning disabilities, autism spectrum disorder, and mild intellectual disability.

**Major Life Activities:** Major life activities include activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

**Mental Impairment:** Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness (major depression, bipolar disorder, anxiety disorders), schizophrenia, and specific learning disabilities.

**Physical Impairment:** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, immune systems, respiratory, genitourinary, hemic, circulatory and lymphatic, skin, normal cell growth, and endocrine system.

**Qualified:** An individual with a disability is qualified for the position that such individual holds or desires if the individual:

- (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and

(2) can perform the essential functions of the position, with or without reasonable accommodation.

**Reasonable Accommodation:** A reasonable accommodation is any change in the workplace or in the way things are customarily done that provides an equal employment opportunity to an individual with a disability. The MCCCCD provides reasonable accommodation:

- when an individual with a disability needs an accommodation to have an equal employment opportunity in the application process;
- when an employee with a disability needs an accommodation to perform the essential functions of the job held or desired, or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office-sponsored events).

If there are several effective and reasonable accommodations that would provide an equal employment opportunity, or if the employee or applicant with a disability prefers to provide their own accommodation, the employee's or applicant's preference will be given first consideration. However, the ADA permits the MCCCCD to choose among effective and reasonable accommodations, and it may choose one that is less expensive or easier to provide, even though it might not be the employee's or applicant's preferred accommodation.

**Reassignment:** Reassignment is a form of reasonable accommodation. It may be provided to an employee (not an applicant) who, because of a disability, can no longer perform the essential functions of her current job, with or without reasonable accommodation. A reassignment is made only to a vacant position that the MCCCCD has authorized to be filled at the time of the accommodation request and intends to fill. Where possible, reassignment is to an equivalent position, but if no equivalent position is available, may be to a lower level position that is as close as possible to the employee's current position. If the employee is qualified for such a position and the District chooses to offer it as an accommodation, the employee will be reassigned to the new job and will not have to compete for it.

**Undue Hardship:** Undue hardship means that an employer would incur significant difficulty or expense in providing a certain reasonable accommodation. The Rehabilitation Act does not require the MCCCCD to provide a reasonable accommodation that causes an undue hardship. Determination of undue hardship is *a/ways* made on a case-by-case basis, considering such factors as the nature and net costs of the accommodation, the overall financial resources of the MCCCCD, and the impact of the accommodation on the operation of the District, including the impact on the MCCCCD's ability to conduct business. Most undue hardship assessments involve non-financial considerations, such as the timely performance of job duties and the ability to effectively serve the public. The MCCCCD must consider the resources of the District as a whole, not simply the budget of a specific office, when determining whether an accommodation imposes significant cost; however, the MCCCCD does not have to

include any funding that is designated for a specific purpose that does not include provision of reasonable accommodation.

## II. ROLES AND RESPONSIBILITIES

### Chief Human Resources Officer (CHRO)

- Reviews requests for reconsideration;
- Issues final decisions within 15 business days from the date the request for reconsideration is received; and,
- Designates another MCCCDC staff member as a substitute for the DC when the DC is unavailable for any extended length of time.

### Disability Program Manager (DPM)

- Ensures District compliance as to employees with the Americans with Disabilities Act and other applicable laws.
- Coordinates and manages the reasonable accommodation program between colleges
- Serves as a resource for the Disability Coordinators
- Tracks district accommodations
- Administers the District-wide budget to cover all costs associated with providing reasonable accommodations, including sign language interpreters, furniture, technology, and other significant purchases.

### Disability Coordinator (DC)

- Coordinates and manages the reasonable accommodation program at each college;
- Administers the reasonable accommodation program by reviewing requests for employees and applicants for completeness; assessing requests to determine whether the individual meets the definition of an individual with a disability and needs the accommodation requested; initiating the interactive process with the requesting employee and appropriate officials; issuing timely decisions granting or denying accommodation requests; and, implementing granted accommodations.
- Obtains and evaluates documentation supporting an accommodation request (such as medical information) when the disability and/or need for accommodation is not obvious;
- Works with the employee's supervisor to ensure that any accommodation, if appropriate, meets the individual's disability-related needs, does not entail eliminating essential functions of the position, is feasible, and does not pose an undue hardship;
- Works with applicants with disabilities who need accommodation to apply for or be interviewed for a job;
- Makes the final decision on each request at the college or site with input from the DPM as needed; and,

### **Employee and Applicant with a Disability:**

- Notifies the MCCCCD of a need for accommodation;
- Cooperates in the interactive process throughout the reasonable accommodation process (failure on the part of the employee or applicant to cooperate in the interactive process may result in a denial of the reasonable accommodation request);
- Promptly provides any requested medical information about the disability, limitations, and need for accommodation to the DPM; and,
- Submits any requests for reconsideration on reasonable accommodation decisions within ten (10) business days to the CHRO.

### **Supervisor/Manager:**

- Immediately forwards requests for reasonable accommodation to the DC(as soon as practicable, preferably within 2 business days);
- Clarify with the individual whether reasonable accommodation is requested if the nature of the initial communication is unclear;
- Participates in the interactive process to ensure that any accommodation meets the individuals accommodation needs and enables the individual to perform the essential functions of the position; and,
- Is familiar with these Procedures as well as other MCCCCD programs and resources available to employees.

### III. REASONABLE ACCOMMODATION PROCEDURES

#### A. Requesting Reasonable Accommodation

Generally, an applicant or employee must inform the MCCCCD of a need for an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An individual need not have a particular accommodation in mind before making a request. An applicant or employee may request a reasonable accommodation at any time, orally or in writing.

A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication in which an individual asks or states a need for the MCCCCD to provide or to change something because of a medical condition. A person does not have to specify a particular accommodation although it is helpful if they can suggest one. It is sufficient for the individual requesting accommodation to state that some sort of change or assistance is required. A supervisor, manager, or the DC should ask an individual whether they are requesting a reasonable accommodation if the nature of the initial communication is unclear.

If a manager or supervisor directly receives a reasonable accommodation request, that individual should forward the request immediately to the DC, within two (2) business days, if practicable. While the DC will handle all requests for reasonable accommodations, supervisors, managers, and office directors often will need to be consulted about specific requests to ensure that any accommodation meets the individual's disability-related needs and enables the individual to perform the essential functions of the position.

A family member, health professional, or other representative may request an accommodation on behalf of an MCCCCD employee or applicant. For example, a doctor's note outlining medical restrictions for an employee may constitute a request for reasonable accommodation.

For applicants, information about contacting the DC will be in the vacancy announcement and the letter of appointment. Applicants may also request accommodations from any MCCCCD employee connected with the application process.

An employee should request a reasonable accommodation directly from the DC since this is the staff person who will handle the request. An employee who prefers to submit the request to someone other than the DC may submit it to a supervisor or manager in the employee's chain of command.

If an applicant or employee makes a reasonable accommodation request to someone other than the DC, these individuals must forward the request to the DC immediately, but no later than two (2) business days, if practicable, after

the request is made. The reasonable accommodation process begins as soon as the oral or written request for accommodation is made.

When an individual (or third party) makes an oral request, the DC must confirm the request in writing. An individual does not have to place the request in writing in order for the interactive process to begin.

An individual may request reasonable accommodation regardless of whether the individual has previously received or been denied an accommodation. In some situations, a new request may indicate that circumstances have changed (e.g., the disability has worsened or an employee has been assigned new duties that require an additional or different reasonable accommodation). The DC may not refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier.

An employee needing a reasonable accommodation on a regularly recurring basis, such as receiving the monthly staff meeting agenda ahead of time, must submit the "Confirmation" form only for the first request. If the accommodation is needed on a known scheduled basis (e.g., a weekly staff meeting), the DC should ensure that an employee's supervisor makes the appropriate arrangements without requiring a request in advance of each occasion. However, if the need for accommodation will happen on an unscheduled or infrequent basis (e.g., the need for help sending materials to conferences 3 or 4 times a year), the employee requesting accommodation must give appropriate advance notice each time the accommodation is needed.

While there are some things that are not considered reasonable accommodations (e.g. removal of an essential job function or provision of personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits including office common areas, parking lots, and office events.

Common types of accommodations include:

- modifying work schedules or supervisory methods
- altering how or when job duties are performed
- removing and/or substituting a marginal function
- moving to different office space
- providing telework beyond that provided by the applicable policy or agreement
- making changes in workplace policies (e.g., concerning granting breaks or providing leave)
- providing assistive technology, including information technology and communications equipment or specially designed furniture

- providing a reader or other staff assistant to enable employees to perform their job functions, where accommodation cannot be provided by current staff (See Appendix E for information on hiring staff assistants)
- removing an architectural barrier, including reconfiguring work spaces
- providing accessible parking if the District provides on-site parking to all employees
- providing materials in alternative formats (e.g., Braille, large print)
- providing a reassignment to another job

The MCCCCD will process requests for reasonable accommodation and will provide reasonable accommodations where appropriate, in a prompt and efficient manner in accordance with the time frames set forth in the Procedures.

Sometimes the MCCCCD may be able to address an employee's disability-related needs outside the reasonable accommodation process. It also may take steps, solely at its discretion, beyond those required by either the non-discrimination or model employer provisions of section 501 of the Rehabilitation Act of 1973.

#### B. Processing the Request

The DC is responsible for processing requests for reasonable accommodation. While the DC has responsibility for processing requests for reasonable accommodation, the DC should work closely with an employee's supervisor or office director, particularly for requests involving job performance. The DC will need to consult with an employee's supervisor and the DPM and legal as applicable to gather relevant information necessary to respond to a request and to assess whether a particular accommodation will be effective. No reasonable accommodation involving performance of the job will be provided without first informing an employee's supervisor.

#### C. The Interactive Process

Generally, after a request for accommodation has been made, the DC will begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the DC must communicate with each other about the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.

Upon notification of the request, the DC will contact the applicant or employee as soon as practicable, preferably within seven (7) business days after the request is made, to begin discussing the accommodation request. When the disability and/or the need for accommodation is not obvious, the DC may ask the individual for reasonable documentation about their disability and functional limitations. The DC is entitled to know that the individual has a

covered disability for which the individual needs a reasonable accommodation. Such information may not be necessary if the disability is obvious (e.g., the requestor is blind or has paralysis), if the disability is already known to the MCCCDC (e.g., a prior request revealed that a disability existed and there has been no change in the individual's medical condition), or if the need for the requested accommodation is clear.

Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different forms of reasonable accommodation. Both the individual making the request and the DC should work together to identify effective accommodations. The DC should update the requestor throughout this process. In addition, the requestor may periodically check with the DC, by phone or email (Whichever method is preferred by the DC), for information on the DC's progress in processing the request.

When a third party (e.g., an individual's doctor) requests accommodation on behalf of an applicant or employee, the DC should, if possible, confirm with the applicant or employee that they want a reasonable accommodation before proceeding. Where this is not possible, for example, because the employee has been hospitalized in an acute condition, the DC will process the third party's request if it seems appropriate (e.g., by granting immediate leave) and will consult directly with the individual needing the accommodation as soon as practicable.

The DC may need to consult with other MCCCDC personnel (e.g., an employee's supervisor, Information Technology staff, the DPM) or outside sources to obtain information necessary for making a determination about the request. The MCCCDC expects that all District personnel will give a high priority to responding quickly to a DC's request for information or assistance.

A supervisor or office director who believes that an employee may no longer need a reasonable accommodation should contact the DC. The DC will decide if there is a reason to contact the employee to discuss whether the employee has a continuing need for reasonable accommodation.

#### Reassignment as a Reasonable Accommodation

There are specific considerations in the interactive process when an employee needs, or may need, a reassignment.

- The DC must explain to the requester that reassignment will be considered if no accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship. The DC must also explain that reassignment means that an employee may

be placed in a vacant position that is authorized to be filled and for which the individual is qualified, without having to compete for that job.

- If the DC determines that there is no reasonable accommodation to permit an employee to perform the essential functions of the employee's current position, the DC must ask if the employee would like the DC to search for a possible reassignment. If the employee wants the DC to check for any vacancies, the DC will work with the DPM to do so.
- In considering whether there are positions available for reassignment for which the employee is qualified with or without reasonable accommodation, the DC will work with both the DPM and the employee requesting reassignment to identify: (1) vacant positions within the District (not just the employee's current office) that are currently advertised, (2) currently authorized vacant positions that are no longer being advertised but for which no hiring decision has yet been made, and (3) vacant positions that the College/District has authorized to fill but that District has not yet advertised. Upon completion of searching for vacancies that fall within these three situations, the search is over. If the DPM determines after consultation with the relevant manager that the employee is qualified for a particular vacancy, it may be offered to the employee as an accommodation. If the DPM does not find an appropriate vacancy, the results will be conveyed to the employee.
- Reassignment is to an equivalent position where possible, but if no equivalent position is available, may be to a lower level position that is as close as possible to the employee's current position.

#### D. Requests for Medical Information

If a requestor's disability and/or need for accommodation are not obvious or already known, the MCCCCD (specifically the DC) may require medical information showing that the requestor has a covered disability that requires accommodation. Specifically, the MCCCCD may seek only medical information that is sufficient to explain the nature of the disability, the individual's need for reasonable accommodation, and how the requested accommodation will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace. A disability is obvious or already known when it is clearly visible or where the MCCCCD already has information from the individual showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by the DC where the disability and/or need for accommodation are not obvious or already known.

Only the DC may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate

health professional (for example, a doctor, psychologist, clinical social worker, physical therapist, or rehabilitation counselor). Even if medical information is necessary to process a request, the DC does not necessarily have to request medical documentation from a health care provider; in many instances, the requestor may be able to provide sufficient information to substantiate the existence of a "disability" and/or need for a reasonable accommodation. If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform the DC of this fact. The DC will then determine whether additional medical information is needed to process the current request.

If the initial information provided by the health professional or volunteered by the requestor is insufficient for the DC to determine whether the individual has a "disability" and/or that an accommodation is needed, the DC will explain what additional information is needed and why. If necessary, the individual should then ask their health care provider or other appropriate professional to provide the missing information. The DC also may give the individual a list of questions for the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual, the DC may ask the requester to sign a limited release permitting the DC to contact the provider for additional information. If an individual refuses to provide information requested by the DC, that may result in a decision not to provide reasonable accommodation.

The DC may have medical information provided by an individual or their health care professional reviewed by a doctor of the MCCCCD's choosing, at the District's expense.

#### E. Confidentiality Requirements

Under the Rehabilitation Act, information obtained in connection with the reasonable accommodation process must be kept confidential. This means that the existence of an accommodation request, details of the request, whether it has been approved, and information about functional limitations, all must remain confidential. This includes all medical information that the MCCCCD obtains in connection with a request for reasonable accommodation, which must be kept in files separate from the individual's personnel file. Whether this information is kept in a file drawer or in a computer file, it must be stored so that only the DC or a designated substitute, has access to it. Any MCCCCD employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The DC may share certain information with an employee's supervisor or other District staff as necessary to make appropriate determinations on a reasonable accommodation request. When the DC must reveal the name of the individual requesting reasonable accommodation, the DC will inform the recipient about these confidentiality requirements. But, the information disclosed by the DC will be no more than is necessary to obtain

assistance/advice from other MCCCCD staff. In many situations, the DC will not need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability. As long as the name of the requestor or any other identifying information is not revealed, even if sharing information about functional limitations, confidentiality is maintained.

In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

- supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
- first aid and safety personnel may be told if the disability might require emergency treatment or assistance in evacuation;
- worker's compensation officials may receive medical information in order to process or evaluate claims for this benefit; and
- government officials may be given information necessary to investigate the District's compliance with applicable law.

Any medical documentation that someone other than the DC receives as part of the reasonable accommodation process (for example, a letter from a health care provider to a supervisor), must be sent to the DC to become part of the file on this request. Only the DC should retain copies of this documentation, and it shall be placed in the confidential medical files, not in the employee's personnel file.

#### F. Time Frames for Processing Requests and Providing Reasonable Accommodations

Generally, the time frame for processing a request, notifying the requestor of the outcome, and providing accommodation, if the request is granted is as soon as possible but no later than thirty (30) business days from the date the request is made, absent extenuating circumstances (e.g., lack of awareness by DC, delayed receipt of documents). This thirty (30)-business day period includes the seven (7)-business day time frame in which the DC must contact the requestor after a request for reasonable accommodation is made.

The thirty (30)-business day period for processing of the request begins when an oral or written request for reasonable accommodation is made, and not necessarily when it is received by the DC. Therefore, everyone involved in processing a request should respond as quickly as possible.

If the DC must request medical information or documentation from a requestor's health care provider, the time frame will stop on the day that the DC makes a request to the individual to obtain medical information or sends out a request for information/documentation, and will resume on the day that the information/documentation is received by the DC.

If the disability is obvious or already known to the DC, if it is clear why reasonable accommodation is needed, and if an accommodation can be provided quickly, then the DC should not require the full thirty (30) business days to process the request. For example, the following requests ordinarily can be provided in less than thirty (30) business days:

- An employee with insulin-dependent diabetes who sits in an open area asks for three breaks a day to test blood sugar levels in private.
- An employee with clinical depression who takes medication which makes it hard to get up in time to get to the office at 9:00 a.m. requests to be allowed to start work at 10:00 a.m. and still work an eight-and-a-half-hour day.
- A supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the employee's disability makes it difficult to read quickly and more time is needed to prepare.

#### 1. Expedited Processing of a Request

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in less than thirty (30) business days. This includes where a reasonable accommodation is needed:

- to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, the need to expedite a request for reasonable accommodation may arise to ensure that an applicant with a disability has an equal opportunity to apply for a job.
- to enable an employee to attend a meeting or training scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five (5) days.

#### 2. Extenuating Circumstances

These are circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond MCCCCD's ability to control. When extenuating circumstances are present, the thirty (30)-business day time frame for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary to deal with the extenuating circumstance. The DC must notify the individual of the reason for the delay, including explaining the extenuating circumstance that justifies the delay, and when the DC expects to

conclude processing the request. As discussed below, the DC will also determine if an interim accommodation is possible.

#### G. Interim Accommodation

There are two situations in which the DC must provide an interim accommodation. First, the DC must provide an interim accommodation if the DC has received sufficient information in the interactive process to believe it is reasonably likely that an employee will be entitled to a reasonable accommodation, even while awaiting additional information needed to make a final decision. For example, the DC may be waiting to receive medical documentation - meaning the interactive process is not completed -- but given the weight of the other information already provided, the DC concludes it is reasonably likely reasonable accommodation will be provided and therefore the DC must provide an interim accommodation. The requirement to provide an interim accommodation in this situation, however, depends on finding that there is an available interim accommodation (either what the individual has requested or something else) that allows the individual to perform some or all of the essential functions of the position without imposing an undue hardship on the District. The DC must make clear to the requestor and the supervisor that this is only an interim accommodation until the DC can complete the review and make a final decision.

Second, if the DC has completed review and determined that the employee is entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the DC must provide, if feasible, an interim accommodation that allows the employee to perform some or all of the essential functions of the position without imposing an undue hardship on the Commission. The DC must explain to the requestor why there is a delay in providing the accommodation chosen by the DPM, when the employee can expect to receive that accommodation, and why the DC chose an interim accommodation.

Finally, a DC may provide an interim accommodation if a supervisor/manager, in forwarding a request for reasonable accommodation to the DPM, tells the DC that an interim accommodation is warranted (either what the employee has requested or something else). Usually this will involve a situation in which a disability is obvious or likely, the reason given for needing an accommodation seems plausible, and the requested accommodation is easy to provide. If the DC agrees with this recommendation, the DC will inform the employee of an interim accommodation option during the period of the interactive process while the DC evaluates the request and makes a formal decision.

Consideration of an interim accommodation is not meant to slow down the interactive process and the 30-business day time frame will not be lengthened because an interim accommodation is considered.

#### H. Resolution of the Reasonable Accommodation Request

All decisions regarding a request for reasonable accommodation will be communicated to an applicant or employee in writing, as well as orally, when practicable.

1. If the MCCCCD grants a request for accommodation, the DC notify the requestor in writing, and discuss implementation of the accommodation, even if the MCCCCD is granting the request without determining whether the requestor has a "disability" and regardless of what type of change or modification is granted.
  - A decision to provide an accommodation other than the one specifically requested is considered a decision to grant an accommodation. The notification will explain both the reasons for the denial of the individual's specific requested accommodation, if applicable, and why the DC believes that the chosen accommodation will be effective.
  - If the request is approved but the accommodation cannot be provided immediately, the DC will specify why there is a delay, including any extenuating circumstances that justify the delay, and when MCCCCD expects to provide the accommodation(s) granted. If an accommodation cannot be provided immediately, the DC also will discuss with the employee whether an interim accommodation can be provided.
2. If the DC denies a request for accommodation, the DC must communicate the denial and clearly explain the specific reasons for the denial. The DC cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective."
  - If there is a reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the DC will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the DC will explore whether there is a reasonable accommodation that will meet the employee's needs.
  - If the DC offers an accommodation other than the one requested, but the alternative accommodation is not accepted, the DC will record the individual's rejection of the alternative accommodation.

#### I. Reconsideration Request

An individual dissatisfied with the resolution of a reasonable accommodation request can ask the DPM to reconsider that decision. An individual must request reconsideration within 10 business days of receiving written notification of resolution.

The DPM has fifteen (15) business days to reconsider the requested accommodation and issue a final decision.

#### J. Information Tracking and Reporting

In order for the MCCCCD to ensure compliance with these Procedures and the Rehabilitation Act, the DC will track all accommodations in the manner determined by the DPM.

#### IV. DISTRIBUTION OF THESE PROCEDURES

Any *employee or applicant* wanting further information concerning these Procedures or otherwise seeking to request an accommodation may email the DC or the DPM. These Procedures will be posted on the MCCCDC's Intranet and Internet sites, and will be available in the District EEO Office, and the Office of the MCCCDC CHRO. These Procedures will be provided in alternative formats when requested from the DC or DPM by, or on behalf of, any MCCCDC employee.

## V. REASONABLE ACCOMMODATION RESOURCES

### **A. Internal Reasonable Accommodation Resources**

**B.** The MCCCDC has many documents that address the reasonable accommodation obligation required under the Rehabilitation Act, including the Commission's "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act," available at <http://www.eeoc.gov/policy/docs/accommodation.html>. In addition, the following documents may also be helpful:

- EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act, [www.eeoc.gov/policy/docs/guidance-inquiries.html](http://www.eeoc.gov/policy/docs/guidance-inquiries.html)
- Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, [www.eeoc.gov/policy/docs/accommodation\\_procedures.html](http://www.eeoc.gov/policy/docs/accommodation_procedures.html)
- EEOC Efforts For Veterans with Disabilities, <https://www1.eeoc.gov/laws/types/veterans.cfm?redirected=https://www.MCCCDC.gov/laws/types/disability.cfm>

The EEOC has issued a number of documents that discuss how the ADA addresses various leave issues, including:

- Employer-Provided Leave and the Americans with Disabilities Act, <https://www.EEOC.gov/MCCCDC/publications/ada-leave.cfm>
- Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, [www.EEOC.gov/policy/docs/accommodation.html](http://www.EEOC.gov/policy/docs/accommodation.html) (see "Leave" under "Types of Reasonable Accommodations")
- Enforcement Guidance on Pregnancy Discrimination and Related Issues, [www.EEOC.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.EEOC.gov/laws/guidance/pregnancy_guidance.cfm) (see section II.B., ADA and Reasonable Accommodation)
- The Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964, [www.EEOC.gov/policy/docs/fmlaada.html](http://www.EEOC.gov/policy/docs/fmlaada.html) (see "Comparison of ADA and FMLA Leave" and "ADA Compliance When the FMLA Also Applies")
- Enforcement Guidance: Workers' Compensation and the ADA, [www.EEOC.gov/policy/docs/workcomp.html](http://www.EEOC.gov/policy/docs/workcomp.html) (see "Return to Work Decisions" and "Reasonable Accommodation")
- The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities, [www.EEOC.gov/facts/performance-conduct.html](http://www.EEOC.gov/facts/performance-conduct.html) (see "Attendance issues")
- EEOC documents discussing specific types of disabilities and the most common reasonable accommodations for them; reasonable accommodations for particular types of workplaces (e.g., health care facilities); and leave and telework. These documents may

be found on EEOC'S website  
at <https://www.EEOC.gov/laws/types/disability.cfm>.

- **Job Accommodation Network (JAN)** - 1-800-526-7234 (Voice), 1-877-781-9403 (TTY); <http://askjan.org> is funded by the U.S. Department of Labor's Office of Disability Employment (ODEP) Policy and provides information on the Americans with Disabilities Act (ADA) and a wide range of reasonable accommodations options for many different types of disabilities.

### **Responsible Parties/Contacts**

#### **-Senior Leader**

Chief Human Resource Officer

#### **-Regulation Owner**

Associate General Counsel, Sr., Employment

#### **-Regulation Contact**

District EEO/AA Director

### **Legal References (for OPS reference, not for posting)**

TITLE I OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

SECTIONS 102 AND 103 OF THE CIVIL RIGHTS ACT OF 1991

SECTIONS 501 AND 505 OF THE REHABILITATION ACT OF 1973.

Executive Order 13164 (requiring federal agencies to establish procedures to facilitate the provision of reasonable accommodation)

29 C.F.R. § 1614.203(d)(3) (clarifying the written procedure requirement)