

Northwest Workforce Council

POLICY AND PROCEDURE DIRECTIVE

EFFECTIVE DATE: August 25, 2004

SUBJECT: WorkSource Policy Relating to the Provision of Reasonable Accommodation, Reasonable Modification, and Auxiliary Aids and Services to Persons With Disabilities

REFERENCE #: WIA 01-28

PURPOSE AND SCOPE

The purpose of this policy is:

- To ensure customers with disabilities are afforded the same opportunities as envisioned by the key guiding principles of WIA: streamlined services, empowered individuals, universally accessible services, and increased accountability of the workforce system.
- To implement the requirements of Section 188 of the Workforce Investment Act
- To meet the legal requirements of Washington State Law Against Discrimination (RCW 49.60)
- To implement the full requirements of the Americans with Disabilities Act.

Scope of the Policy: this policy, pertaining to reasonable accommodation, reasonable modification, and effective communication, applies to qualified individuals with disabilities in regard to all aids, benefits, services and training offered by WorkSource sites. This policy encompasses:

- All WIA required core services
- All mandated, federally funded WIA partner programs operating in the WorkSource Center
- Continuous Quality Improvement that ensures WorkSource and its programs remain legally compliant and universally accessible
- WorkSource's oversight responsibilities with non-mandated partners providing services out of a WorkSource Center
- WorkSource's oversight responsibilities with private business using a WorkSource Center for recruiting

OVERVIEW OF THE REASONABLE ACCOMMODATION/MODIFICATION

With regard to aid, benefits, services, and training, the WorkSource Center will provide reasonable accommodations to qualified individuals with disabilities who utilize WIA core and Title IB program services unless providing the accommodation would cause undue hardship.

The WorkSource Center will also make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless making the modifications would fundamentally alter the nature of the service, program, or activity.

The need for an accommodation/modification shall not adversely affect the consideration of a qualified individual with a disability for aid, benefits, services, and training.

In those situations where the WorkSource Center believes that the proposed accommodation/modification would cause undue hardship/fundamental alteration in the nature of the program, the One Stop Operator has the burden of proving that the accommodation/modification would result in such undue hardship/fundamental alteration.

If an accommodation/modification would result in undue hardship/fundamental alteration, the One Stop Operator will take any other action but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, and training provided by the WorkSource Center. If an accommodation would result in undue hardship, the WorkSource Center will give the individual with a disability the option of providing the accommodation.

1.0 REASONABLE ACCOMMODATION, REASONABLE MODIFICATION, AND AUXILIARY AIDS AND SERVICES

Accommodations, modification, providing effective communication, and auxiliary aids and services will hereinafter be referred to as “accommodations”.

1.1 NOTICE OF THE AVAILABILITY and RIGHT TO RECEIVE REASONABLE ACCOMMODATIONS

The WorkSource Center must post notice of the availability of reasonable accommodations. This notice should be directed to registrants, applicants, participants, and applicants for employment/employees, unions, professional organizations, sub-providers, and the public. The notice shall include that it is a qualified individual’s right to receive reasonable accommodations.

1.2 AUXILIARY AIDS AND SERVICES

Taking steps to ensure effective communication: WorkSource personnel will take steps to ensure that communications with individuals with disabilities are as effective as communications with others.

Furnishing Auxiliary aids and services: WorkSource personnel will furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to

participate in, and enjoy the benefits of: core services offered to the general public and the WIA Title I financially assisted programs or activities.

Providing appropriate signage: WorkSource personnel will ensure that interested individuals can obtain information as to the existence or location of accessible services, activities, and facilities, including the provision of appropriate signage at the primary entrances to its inaccessible facilities.

1.3 RECEIVING REQUESTS FOR ACCOMMODATIONS

When a person with a disability makes a request for a reasonable accommodation to any WorkSource representative, the WorkSource Center is required to respond to that request. WorkSource personnel will be able to recognize such a request and initiate a response to that request through the proper decision making procedures.

Request for accommodations, modifications, and/or effective communication are requests that include the following two elements:

1. A request for an adjustment or assistance;
- AND
2. An indication that the request might be related to a medical condition or disability.

A request can be made after a customer has already begun to receive the services for which the accommodation is requested. Requests may also be made by a third party such as a relative, friend, counselor or job coach. This is particularly likely when a customer's disability might make it difficult for the individual to make the request independently. However, staff must directly verify with the customer an agreement with the request.

1.4 INQUIRIES ABOUT DISABILITY

If it appears that a qualified individual with a disability may need an accommodation, staff may ask the individual if he or she can participate in a specific aid, benefit, service, or training with or without an accommodation. The individual's response must determine the Center's actions. If the individual indicates that an accommodation is not needed, no further inquiries about the disability may be made.

For data collection purposes necessary for customer service and satisfaction improvements, WorkSource staff may ask job seekers if they have a disability when this question is asked of all customers using the center. Job seeking customers are informed that disclosure is voluntary.

1.5 REASONABLE ACCOMMODATION / MODIFICATION TO SERVICE DELIVERY

WorkSource staff will provide appropriate assistance to individuals with disabilities so that they can effectively benefit from core and WIA mandated program services. In order to ensure that individuals with disabilities have the same opportunity to benefit from services that are as effective as those provided to non-disabled customers, modifications may be made to the following:

- Eligibility criteria for registration in core, intensive and training services.
- WIA Title 1-B policies for registration in core, intensive and training services.

- Procedures in both accessing core services at the Center and procedures in accessing WIA mandated partner programs.

2.0 RESPONSIBILITIES OF INDIVIDUALS WITH DISABILITIES AND WORKSOURCE PERSONNEL TO PROVIDE REASONABLE ACCOMMODATIONS, MODIFICATIONS AND AUXILIARY AIDS AND SERVICES

The WorkSource Center personnel will be able to communicate the responsibilities of both the staff and the qualified individual with disability and act accordingly in collecting information in order to provide accommodations.

2.1 NOTICE OF NEED FOR ACCOMMODATIONS

A qualified individual with a disability seeking reasonable accommodations, modifications, auxiliary aids and services must inform WorkSource personnel on a timely basis of a need for such accommodation and must submit, upon request, to the WorkSource Center any reasonable and necessary medical documentation.

2.2 NOTICE OF RIGHT TO FILE A GRIEVANCE/COMPLAINT

Individuals who believe that they have been discriminated against because the WorkSource Center failed to provide accommodations/modifications may file a complaint with the Equal Employment Officer. Information on how to file a complaint will be publicly posted and available in alternative formats.

2.3 WORKSOURCE PREPAREDNESS TO RESPOND

WorkSource personnel must be informed on how to proceed if an accommodation is requested.

2.4 UNDUE HARDSHIP

Requests that cannot be provided or which are believed to pose an undue burden or fundamental alteration must be reviewed by the EEO Officer. The EEO officer or administrative level designee is the only persons with authority to determine undue hardship/fundamental alteration on behalf of the WorkSource Center. The EEO Officer or administrative level designee can make the decision that the accommodation would result in undue hardship/fundamental alteration only after considering all factors listed in the federal regulations (29 CFR 37.4).

2.5 WRITTEN STATEMENT OF DENIAL

A written statement of the reasons for reaching these conclusions will accompany the decision that an accommodation would result in undue hardship/fundamental alteration. The WorkSource Center will provide a copy of the statement of reasons to the individual who requested the accommodation, modification, auxiliary aid or service.

3.0 DOCUMENTATION OF REQUESTS FOR REASONABLE ACCOMODATIONS/ VERIFYING A DISABILITY

Requesting documentation for a disability can be an impediment to expedient and customer friendly service and therefore should usually be avoided.

Documentation of a disability underlying a request for an accommodation should not be requested when:

1. The request for accommodation falls within the range of adjustments that staff would normally make in providing good customer service for any WorkSource customer.
2. The disability is apparent.

However, there are some instances when such documentation may be necessary.

Documentation of the disability underlying a request for an accommodation may be appropriate when:

1. The disability is not apparent AND the accommodation requested could be of benefit to an individual who does not have a disability.
2. There is reason to suspect an individual may be attempting to abuse the reasonable accommodation/modification/effective communication process to disrupt or harass the program.
3. The connection between the disability and the accommodation requested is unclear.

A written record must be made of any requests for reasonable accommodations that would require significant resources or preparation.

Written records are made in order to respond effectively to requests, provide justification for decisions about whether or not to make accommodations and/or expenditures pertaining to requests and for the continuous improvement of services to customers with disabilities.

In keeping records pertaining to requests for reasonable accommodations, WorkSource personnel should insure that the documentation process does not delay or impede the provision of accommodations.

Records must be kept confidential and maintained in a separate, secure file.

4.0 DECISION MAKING AUTHORITY IN RESPONDING TO REQUESTS FOR REASONABLE ACCOMMODATIONS

WorkSource personnel will be able to provide or arrange accommodations on their own authority and initiative in the most expedient and customer friendly way possible. Providing an accommodation should take place at the lowest administrative level that has access to the necessary resources.

The denial of an accommodation should require review and decision-making at the administrative level. In the event that a staff person believes that it may be appropriate to seek

documentation of a disability underlying a request for accommodation, that staff person should present the recommendation to the designated **EEO Officer or administrative level designee**. The **EEO Officer** will consider the recommendation, and if appropriate, conduct the inquiry.

In providing auxiliary aids for effective communication, primary consideration must be given to the customer's preferred mode of communication, and that a decision to use some other mode must be justified by very strong programmatic consideration.

5.0 DENYING A REQUEST FOR A REASONABLE ACCOMMODATION

Factors for Determining that there is No Obligation to Provide a Reasonable Accommodation:

The Center may deny a request for a reasonable accommodation that goes beyond the scope of good customer service only on the basis of the following criteria:

A. The Center has determined the customer does not have a disability,
B. The Center has determined that the absence of the requested reasonable accommodation would not limit the customer's ability to have genuine, meaningful participation in and derive an equal benefit from the Center's aids, benefits, services and training,

OR

C. The Center has determined that there is no accommodation that would be effective in improving the customer's ability to have genuine, meaningful participation in and derive an equal benefit from our aids, benefits, services and training.

Undue Burden: The Center may limit its obligation to provide any reasonable accommodation if the provision of that accommodation would result in an undue burden or fundamental alteration. A determination of undue burden/fundamental alteration can only be made after taking into consideration the following factors:

(a) The nature and net cost of the accommodation or modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification

(b) The overall financial resources of the facility or facilities involved in the provision of the modification, including: (i) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and (ii) The effect the accommodation or modification would have on the expenses and resources of the facility or facilities

(c) The overall financial resources of the provider, including: (i) The overall size of the provider; (ii) The number of persons aided, benefited, served, trained, or employed by the provider; and (iii) The number, type and location of the provider's facilities;

(d) The impact of the modification upon the operation of the facility or facilities, including: (i) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and (ii) The impact on the facility's ability to carry out its mission. The denial of a request for a reasonable accommodation on the basis of undue burden/fundamental alteration will require agreement by the NWC Director and the One Stop Administrator, and the Director(s) of pertinent program service providers when involved. After a determination of undue burden/fundamental alteration, the Center must still take any other action which would not result in such burden but which would improve, to the maximum extent possible, the customer's ability to participate in and benefit from the Center's aids, benefits services and training. The Center must also offer to cover the costs of the reasonable

accommodation up to the limit of undue burdens and to allow the customer to cover any costs above that threshold.

Written Notice of Denial: Any denial of a request for reasonable accommodation must be communicated to the customer in writing, and in alternate format or with other auxiliary aids for effective communication as appropriate. The written notice of denial must:

- 1) explain the reasons for the denial;
- 2) inform the customer of his or her rights to file a complaint with the Department of Labor Civil Rights Center;
- 3) provide instructions for initiating such complaints. A copy of this notice of denial must be provided to the State Equal Opportunity Officer. Additionally, if the denial is based on a determination of undue burden/ fundamental alteration, the written notice of denial must also document that all of the required factors that must be considered in determining undue burden were considered.

6.0 CONFIDENTIALITY AND DISCLOSURE

WorkSource personnel inform individuals that if they have a disability they can choose to disclose and seek reasonable accommodation, reasonable modification, and auxiliary aids and services. Disclosure is voluntary and information regarding disability will be kept confidential.

Specific information, including medical information gathered for the purpose of determining the need and arranging for an accommodation for a qualified individual with a disability must be kept confidential and maintained in a separate, secure file that is only available to authorized individuals. Authorized individuals include managers/supervisors, EO personnel, and enforcement agencies.

Medical information given to WorkSource staff verbally by a person with a disability is also regarded as confidential and should not be released to without written consent of the person with a disability.

7.0 CONTINUOUS QUALITY IMPROVEMENT

The WorkSource Center has a process for continuously collecting and reviewing data that informs both success and areas for improvement in providing services to individuals with disabilities in core, intensive and training services.

The WorkSource Center responds in a timely manner to improve services to individuals with disabilities based on data. The WorkSource Center considers and is responsive to disaggregate data to determine the satisfaction of customers with disabilities who voluntarily disclose their disability.

The WorkSource Center uses data and information submitted to the State to prepare annual performance reports of persons served and outcomes as well as demographic data necessary to continuously improve the effectiveness of its program of services and supports for persons with disabilities.

The WorkSource Center has in place a process for continuously reviewing the progress of particular customers with disabilities to ascertain whether the individual's disability or the provision of accommodations and auxiliary aids and services is affecting the person(s) progress.

The WorkSource Center completes a review on a regularly scheduled basis to ensure that the facility, the core, intensive and training services, and the information provided to the general public remain accessible to persons with disabilities.

8.0 WORKSOURCE RESPONSIBILITIES WORKING WITH BUSINESS.

WorkSource personnel providing services to business will inform business customers of the Equal Employment Opportunity Law as necessary, and will represent qualified job seekers with disabilities in a positive manner.

WorkSource will provide upon request information regarding tax credits and other relevant incentives to businesses hiring qualified job seekers with disabilities.

Referral of qualified job seekers with disabilities to job openings is a standard operating procedure of the WorkSource Center.

9.0 DEFINITIONS

Auxiliary Aid for Effective Communication: The term "auxiliary aid for effective communication" means a technology, individual, skill, formats, strategy, other means, or combination of means employed to provide effective communication.

Fundamental Alteration: The term "fundamental alteration" means (1) A change in the essential nature of a program or activity, including aid, benefits, services, or training; or (2) A cost that a provider can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in undue burden are set out in the federal regulations implementing Section 188 of WIA (29 CFR 37.4).

Undue Hardship: The term "undue hardship" means, with regard to individuals with disabilities, significant difficulty or expense incurred by a provider, when considered in light of the factors set out in the regulations implementing Section 188 of WIA (29 CFR 37.4).

Individual with a Disability: The term "individual with a disability" means a person who has a disability. The term "disability" means with respect to an individual, a physical or mental impairment which substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Providing Effective Communication: The term "providing effective communication" means taking affirmative steps to insure that individuals who have hearing, speech, vision, or cognitive disabilities experience the same access to information and opportunity to express themselves

that would be available to a similarly situated individual without a disability, through methods or means that are as effective in conveying the information to and/or from the individual with a disability as those employed with individuals who do not have a disability.

Qualified Individual With a Disability: The term "qualified individual with a disability" means with respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Reasonable Accommodation: The term "reasonable accommodation" means:

1. Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, or training that the qualified applicant/registrant desires;

OR

2. Modifications or adjustments that enable a qualified individual with a disability to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to the environment where aid, benefits, services, or training are given or the customary manner in which, or circumstances under which aid, benefit, service, or training are given;

OR

3. Modifications or adjustments that enable a qualified individual with a disability to enjoy the same aid, benefits, services, or training as are enjoyed by other similarly situated individuals without disabilities.

WorkSource Staff: The term WorkSource staff means any staff located, co-located, or providing itinerant services at a WorkSource Center. This includes both mandated and non-mandated WIA partners.

REFERENCES:

Regulations implementing Section 188 of WIA (29 CFR 37.8)

Regulations implementing Section 504 of the Rehabilitation Act (29 CFR 32.13)

Washington State Law against Discrimination (RCW 49.60)

WIA Policy, WIA 01-05, Maintenance of medical information filing system.

<http://www.usdoj.gov/crt/508/508law.html> Sec. 508 Electronic and Information Technology WIA Law.

<http://www.usdoj.gov/crt/ada/pubs/ada.txt> ADA Public Law.