

## NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

These guidelines shall be used to ensure that the Board of Education's policies on nondiscrimination (Policy 3122) & (Policy 4122) are implemented properly and in compliance with Federal and State laws and regulations, particularly Part 104 of Section 504 of the Rehabilitation Act of 1973 (34 C.F.R.) and the Americans with Disabilities Act (ADA). See AG 3122C for a comparative analysis of ADA and 504.

That policy states:

The Board does not discriminate on the basis of race, color, religion, national origin, gender, disability, military status, ancestry, or age in its programs and activities, including employment opportunities.

The following person has been designated to handle inquiries regarding the nondiscrimination policies of the District or to address any complaint of discrimination:

Director of Personnel  
1101 SOM Center  
Mayfield Heights, OH  
44124 440-995-7225

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

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

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

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

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

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

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

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

### **Recruiting and Hiring**

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

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

### **Reasonable Accommodation**

It is essential that no discrimination occur in employment, promotion, assignment, or transfer because of a disabling condition. If the person has all of the qualifications required to properly fulfill the job responsibilities, then reasonable efforts must be made to modify existing facilities, the work environment, or working conditions to accommodate a particular disabling condition, providing such accommodation does not seriously diminish the quality of programs or services provided by the District (see Form 3122 F2).

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

accommodation imposes undue hardship include the type of operation and the nature and cost of the accommodation needed.

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

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

- A. Charges of disparate treatment: The challenged treatment is justified by a legitimate, nondiscriminatory reason.
- B. Charges of discriminatory application of selection criteria: The selection criteria have been shown to be job-related and consistent with business necessity and performance of the job cannot be accomplished with reasonable accommodation.
- C. Charges of not making reasonable accommodations: The requested or needed accommodation would impose undue hardship on the operation of the business.
- D. Conflict with other Federal law: The challenged action is required by another Federal law.
- E. Specific activities permitted: The alleged discriminatory activity may be specifically permitted. Examples of this defense include:
  - 1. religious entities - may require that all applicants and employees conform to its religious tenets;
  - 2. regulation of alcohol and drugs;
  - 3. drug testing;
  - 4. regulation of smoking;
  - 5. infectious and communicable diseases: food handling jobs.

### **Military Status**

For purposes of this policy/administrative guideline, "military status" refers to a person's status in the uniformed services which includes the performance of duty, on a voluntary or involuntary basis, in a uniformed service including active duty, active duty for training, initial active duty for training, inactive duty for training, full-time National Guard duty, and performance of duty or training by a member of the Ohio organized militia. It also includes the period of time for which a person is absent from employment for the purpose of an examination to determine the fitness of the person to perform any such duty as listed above.

