

WIOA Policy No. 5-16
WorkForce West Virginia

TO: One-Stop Centers
Workforce Development Boards

FROM: WorkForce West Virginia
EO Office

DATE: April 13, 2016

SUBJECT: Accessibility and Reasonable Accommodation

EFFECTIVE DATE: July 1, 2015

I. REFERENCE(S):

Workforce Innovation and Opportunity Act (WIOA), Section 188 (Part 29 CFR 38); WIOA Notice of Proposed Rulemaking; Americans with Disabilities Act of 1990; Americans with Disabilities Amendments Act of 2008 (ADAA); Rehabilitation Act of 1973, as amended, Section 504; Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide.

II. PURPOSE:

Entities within the American Job Center (AJC) system are required to have a policy on accessibility that addresses the provisions identified herein. As set forth in the regulations (29 CFR Part 38) implementing Section 188 of WIOA, AJC system entities have an obligation to make reasonable modifications to its policies, practices, and procedures to ensure equal opportunity for individuals with disabilities, unless it can be demonstrated that making modifications would fundamentally alter the nature of the service, program or activity. Further, any entity that receives financial assistance under Title I of WIOA is a recipient obligated to ensure nondiscrimination and equal opportunity. This includes State and local Workforce Development Boards, AJC operators, service providers, vendors, and subrecipients. This policy is directed toward ensuring that the programs, services (including services using technology and the Internet), and facilities of the AJC delivery system are accessible to all.

III. BACKGROUND:

The Workforce Innovation and Opportunity Act (WIOA) stresses physical and programmatic accessibility, including the use of accessible technology to increase access to high quality workforce services to individuals with disabilities. Title I of WIOA assigns responsibilities at the local, State and Federal levels to ensure the creation and maintenance of an American Job Center (AJC) system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance. WIOA Title I prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, and participant status. Although gender identity is not an explicitly protected basis under the applicable federal laws, discrimination based on gender identify, gender expression, and sex stereotyping has been interpreted to be a

form of prohibited sex discrimination, including under laws that apply to federal financially assisted training, education programs, and employment activities.

IV. POLICY:

No individual is to be excluded from participation in, denied benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any program or activity, funded in whole or in part under WIOA, because of race, color, religion, sex, national origin, age, disability, political affiliation or belief. This policy reflects all aspects of the AJC's program, including: Registration and orientation; initial screening, assessment, and testing; and service delivery.

Prohibition on the Basis of Disability

A recipient is obligated to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 188 of WIOA.

AJCs are required to provide reasonable accommodation for individuals with disabilities to ensure equal access and opportunity. The term “**reasonable accommodation**” is defined in the current Section 188 regulations as “[m]odifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training or employment that the qualified applicant/registrant desires;” or “[m]odifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities;” or “[m]odifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated qualified individuals without disabilities.”

The ADA defines a “disability” with respect to an individual to mean a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment.

WIOA Program Accessibility

When providing aid, benefits, or services under a WIOA Title I financially assisted program or activity, a recipient **must not** directly or through contractual, licensing, or other arrangements, on the ground of disability:

- (1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
- (2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

Separate or different programs or services for individuals with disabilities are not prohibited under the ADA; however individuals with disabilities cannot be forced to participate in these programs instead of WIOA Title I financially assisted programs or activities.

Reasonable Accommodations

With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. Definitions of the terms “reasonable accommodation” and “undue hardship” are specified in 29 CFR § 38.4.

Auxiliary Aids, Services and Assistive Technology

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I program or activity, a recipient must furnish appropriate auxiliary aids or services where necessary. In determining what type of auxiliary aid or service is appropriate and necessary, recipients must give primary consideration to the requests of the individual with a disability. Primary consideration means honoring the choice unless the agency can demonstrate that another equally effective means of communication is available, or that using the means chosen would result in a fundamental alteration in the service, program, activity, or undue financial and administrative burdens.

A list of auxiliary aids and services can be found in 29 CFR § 38.4, and includes:

- Qualified interpreters, note-takers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;

- Acquisition or modification of equipment or devices; and
- Other similar services and actions.

A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures associated with providing auxiliary aids, services, or assistive technology, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I. This obligation does not require a recipient to provide personal devices, such as wheelchairs; prescribed devices, such as prescription eyeglasses or hearing aids; or readers for personal use or study.

Facility Accessibility

In order to be ready and welcoming when persons with disabilities seek services, advance preparatory actions must be taken. Specific information on ADA accessibility guidelines for buildings and facilities is provided on the Internet at <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>. Some areas to particularly note include:

- Signage
- Accessible Counters
- Automatic and Power-Assisted Doors
- Accessible Restrooms
- Accessible Workstations
- Obstacle Free Entrance
- Space in Waiting Room for People Using Wheelchairs
- 32-inch Clear Opening on Door
- 36-inch Clear Path of Travel

The above is only a sampling of considerations. Accessibility is an on-going process. However, all of the ADA technical requirements must be applied during the design, construction, and alteration of buildings and facilities.

Completion of Section 504 Self-Evaluation Form

Under WIOA, recipients that receive Federal financial assistance must meet accessibility obligations under Section 504 of the Rehabilitation Act of 1973, and the implementing regulations at 29 CFR 38. This includes physical accessibility and programmatic accessibility. All State and local Workforce Development Boards, AJC operators, service providers, and subrecipients must complete the "Section 504 Self-Evaluation" form. The completed evaluation must be submitted to the State level EO Officer as follows:

Vickie Elkins, EO Officer
WorkForce West Virginia
112 California Avenue
Charleston WV, 25305.
Phone: 304-558-1600
TDD: 304-558-1549 or WV Relay 7-1-1

Confidentiality

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that is obtained in connection with the request for a reasonable accommodation must be kept in a separate file from the individual's case file or personnel file. This includes the fact that a reasonable accommodation has been requested or approved and information about functional limitations. These confidentiality guidelines must be followed by all staff involved in the process.

V. PROCEDURE:

Reasonable Accommodations

One key aspect of ensuring equal opportunity for individuals with disabilities who are applicants, registrants, participants and applicants for employment with regard to aid, benefits, and training is the provision of reasonable accommodations. AJC system entities are required to provide reasonable accommodations for individuals with disabilities to ensure equal access and opportunity. A reasonable accommodation is a change in the way the program is administered that enables an individual with a disability to receive benefits, services and training equal to those provided to individuals without disabilities. There are many forms of reasonable accommodations and the individual with a disability and the AJC should work together to identify the most effective reasonable accommodation for each individual through informal discussions known as the "interactive process" whereby the individual is provided the opportunity to articulate their needs and the AJC is able to determine how best to meet those needs.

Instructions to AJC Staff for Processing Requests for Accommodation by Customers (Applicants, Registrants, Eligible Applicants/Registrants, Participants)

AJC staff *shall not* automatically refer job seekers with disabilities to State vocational rehabilitation programs. Referrals must be based on whether the individual would benefit from such services, in addition to the other programs and services available in the AJC. An individual with a disability is not required to use the term "reasonable accommodation" when seeking assistance. The process of identifying and providing a reasonable accommodation should be done as quickly as possible to avoid delaying access to services.

- Each AJC is required to prominently display the poster, "Notice of Reasonable Accommodations and Modifications Available at WorkForce West Virginia One-Stop Centers". This poster advises customers to request and complete the "Customer Reasonable Accommodation Request Form".

The proper steps to follow in processing requests for reasonable accommodation are:

1. The “Customer Reasonable Accommodation Request Form” shall be available at the front counters of each AJC, and WIOA Case Managers. **Should the customer need assistance in completing the form, the local office manager or his/her designee will provide the necessary assistance in completing the form.**
2. After completion, of the “Customer Reasonable Accommodation Request Form”, **it must immediately be sent to the State level EO Officer and appropriate field supervisor via scan-to-email, or fax.** The local office manager or his/her designee will immediately review and assess the type of accommodation being requested, on a case-by-case basis.
3. Should the local office manager or his/her designee need assistance in assessing the appropriate accommodation, he/she are directed to contact the State level EO Officer.

Requests for accommodation do not have to be submitted in writing as the request for accommodation may be made by a family member, friend, or other representative on the individual’s behalf. If a person requesting reasonable accommodation/modification does not wish to complete the “Customer Accommodation Request Form”, AJC staff are required to complete the form so that the State level EO officer and the proper administrative authority are notified of the request and can conduct follow-up as necessary.

Questions concerning this policy should be submitted to Vickie Elkins, EO Officer at 304-558-1600, or Vickie.H.Elkins@wv.gov.

This is a living document and subject to change as needed to accommodate public comments, Federal and State requirements and expectations, etc.