

SUBJECT: THE ADA AND REASONABLE ACCOMMODATION PROCEDURE	REFERENCE #
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	EFFECTIVE: 07/29/21
APPROVED BY: Robin Phillips, VP, Human Resources	REVISED:

Purpose

The purpose is to help supervisors and administrators respond to requests for accommodations, to help employees and applicants understand the reasonable accommodation process and to provide notice regarding the University ADA Coordinator as required by the ADA.

Introduction to the ADA

California State University, San Bernardino (CSUSB) is committed to providing a diverse and supportive academic environment for all students, employees and campus visitors. Pursuant California Fair Employment and Housing Act (FEHA), Title VI and VII, Civil Rights Acts of 1964, the U.S. Equal Employment Opportunity Commission (EEOC), Government Code Section 12920 et seq., the Americans with Disabilities Act of 1990 (ADA); the Americans with Disabilities Amendments Act (ADAAA) of 2008, 42 U.S.C. 12101 et seq., and Sections 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. Section 701 et seq. and CSU Executive Order 1111, it is CSUSB's policy to ensure that individuals with disabilities have equal access and the opportunity to participate in CSUSB activities and programs as it relates to the areas of employment, educational services and campus physical access. Qualified individuals with disabilities must have equal access to all aspects of employment that are available to employees without disabilities. Those Acts also require employers to afford such individuals reasonable accommodations that will allow them to perform the essential functions of their jobs. CSUSB is fully committed to ensuring equal employment opportunity for qualified applicants and/or employees with disabilities and engages in a timely, good faith, interactive process to determine effective reasonable accommodations.

The ADA thus establishes a process in which CSU, San Bernardino must assess a qualified individual with a disability's ability to perform the essential functions of the specific job held or desired. While the ADA focuses on eradicating barriers, the ADA does not relieve an employee or applicant with a disability from the obligation to perform the essential functions of the job. To the contrary, the ADA is intended to enable persons with disabilities to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.

However, where an individual's functional limitation impedes such job performance, we must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose an undue hardship. Such accommodations may be adjustments to the way a job customarily is performed or to the work environment itself.

Visitors

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Members of the general public with disabilities who need accommodations to access University sponsored events shall request an accommodation through the campus organization sponsoring the event at least seven days prior to the event, if at all possible. All event announcements must include a contact for requesting accommodations.

Employees and Applicants

In order to comply with the reasonable accommodation requirements of the laws and regulations cited in this policy and California's Fair Employment and Housing Act (California Government Code § 12926-12928, 12940, 19230) CSU, San Bernardino is committed to providing reasonable accommodations to its employees and applicants for employment in order to ensure that individuals with disabilities have full access to equal employment opportunities.

As an employer, CSUSB provides reasonable accommodations:

- when an applicant with a disability needs an accommodation in order to be considered for a job;
- when an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to participate in equal benefits and privileges of employment (see Definition of Key Terms).

Definition of Key Terms

ADA Coordinator: The ADA Coordinator has been designated as the campus authority to verify employee disabilities and to prescribe specific accommodations for employees with documented disabilities.

Individual with a Disability is any person who has a physical or mental impairment, has a record of such an impairment, or is regarded as having an impairment that limits (by making difficult) one or more major life activities such as caring for oneself, performing manual tasks, seeing, hearing, speaking, breathing, and working.

Qualified Individual with a Disability is an individual with a disability who (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.

Essential Functions are those job duties that are so fundamental to the position that the individual holds or desires that she or he cannot do the job without performing them. A function can be "essential" if, among other things:

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- the position exists specifically to perform that function;
- there are a limited number of other employees who could perform the function;
- the function is specialized and the individual is hired based on his or her ability to perform it.
- Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

Major Life Activities: Activities such as caring for oneself, performing activities of daily living, performing manual tasks, walking, seeing, hearing, breathing, learning, concentrating, and working. Also included are the operations of major bodily functions, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Mitigating Measures: Mitigating measures are medications and assistive devices that an individual uses to eliminate or reduce the effects of impairment. The only mitigating measures that may be considered in determining disability are ordinary eyeglasses or contacts intended to fully correct the vision of an employee or applicant for employment. Other mitigating measures may not be considered in the determination of an individual's disability status.

Reasonable Accommodations: are modifications or an adjustment to the work environment or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the *essential functions* of that position. CSUSB need not provide an employee's preferred accommodation as long as CSUSB provides an effective accommodation.

Reasonable accommodations must be provided to qualified part-time, full-time, permanent, temporary, or probationary employees. A reasonable accommodation need not be the best or most expensive accommodation available, as long as it is effective for the purpose. Reasonable accommodations do not include adjustments to a job and/or work environment that alter essential job functions, create positions that would otherwise not exist, lower performance standards, create an undue hardship, or provide transportation or personal care needs.

The interactive process is an informal practice in which the employee and the employer work together to determine the precise limitations created by the disability and how best to respond to the need for accommodation. Participants in the process include the employee, the supervisor, the ADA Coordinator, and other appropriate CSUSB representatives (e.g., directors or deans).

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During the interactive process, participants consider information such as the essential functions of the job; the employee's functional limitations and medical information; possible accommodations; and the reasonableness and implementation of possible accommodations. This information is used by the ADA Coordinator to determine what, if any, accommodation will be made.

Undue Hardship means an action requiring *significant difficulty or expense*. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive or that would fundamentally alter the nature or the operation of the business. Determination of undue hardship is always made on a case-by-case basis, considering several factors including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the University making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility or program;
- the overall financial resources, size, number of employees, type and location of facilities of CSUSB (if the facility involved in the reasonable accommodation is part of a larger entity, i.e., the State of California);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employee;
- the impact of the accommodation on the operation of the facility or program.

Note: CSUSB cannot claim undue hardship based on co-workers' fears or prejudices toward the individual's disability. Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of co-workers.

Direct Threat is a significant risk of substantial harm to the health and safety of others that cannot be eliminated by reasonable accommodation. The threat cannot be speculative or remote and must be based on objective medical or other factual data.

Benefits and privileges of employment include, but are not limited to, employer- sponsored: (1) training, (2) services (e.g., employee assistance programs (FSAP), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings). If an employee with a disability needs a reasonable accommodation in order to gain access to, and have an equal opportunity to participate in, these benefits and privileges, then CSUSB must provide the accommodation unless it can show undue hardship.

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Making a Request for Accommodation

Employees

An employee may request an accommodation orally or in writing from his or her supervisor; another supervisor or manager in his/her immediate chain of command; an appropriate administrator; or the campus ADA coordinator.

A request for accommodation does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." The statements "I can't move those boxes because of my back" and "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing" both constitute requests that need to be considered for reasonable accommodation. Managers and Administrators must be attuned to recognizing these kinds of statements as possible requests for reasonable accommodation.

Applicants

An applicant may request an accommodation orally or in writing from any CSUSB employee with whom the applicant has contact in connection with the application process.

Third Party Requests

A family member, health professional, or other representative may request an accommodation on behalf of a CSUSB employee or applicant.

Responding to Requests for Accommodation

ADA Coordinator:

All requests for accommodations made by current CSUSB employees will be managed by the ADA Coordinator. Requests received by supervisors or other CSUSB employees shall be forwarded to the ADA Coordinator as soon as possible, but in no more than five business days. The ADA Coordinator will notify the employee's appropriate administrator promptly that an accommodation request has been made.

Human Resources:

Requests for accommodation from applicants will be referred to and handled by the Talent Acquisition Director responsible for the recruitment or selection process. The campus ADA Coordinator will be available, as needed, to provide assistance to employees and decision-makers in processing all requests for accommodation from applicants.

Gathering Information

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Once an accommodation request has been received, the ADA Coordinator will gather necessary information 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, an individual may know that he or 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 ADA Coordinator does not have enough information to provide effective accommodations. The ADA Coordinator needs to know what limitations are interfering with job performance and what specific work tasks are at issue. Therefore, unless a disability is obvious and apparent or otherwise known to the ADA Coordinator, employees requesting accommodation must provide verification of a disability and limitations as they relate to the essential functions of their job. It is important to understand that medical providers describe conditions and functional limitations, which may create workplace barriers. Medical providers do not make decisions regarding the implementation of reasonable accommodations.

The failure to provide appropriate documentation or to cooperate in CSUSB efforts to obtain such documentation or failure to follow through with requests for other information or meetings, can result in a delay in deliberating and implementing the request for accommodation.

A current job description is also necessary to process the request so that the ADA Coordinator can understand the essential functions of the employee's job.

Exploring and Choosing Accommodations

Once the ADA Coordinator has identified the employee's limitation that is causing a problem and has identified what that problem is, then we are ready to explore accommodation options. The employee, supervisor, ADA Coordinator and others may be involved in discussing effective accommodation solutions.

Reasonable accommodations must be provided to qualified part-time, full-time, permanent, temporary, or probationary employees.

A reasonable accommodation must be an effective accommodation. It must provide an opportunity for a person with a disability to achieve the same level of performance or to enjoy benefits or privileges equal to those of an average similarly-situated non-disabled person. However, the accommodation does not have to ensure equal results or provide exactly the same benefits or privileges.

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The reasonable accommodation obligation applies only to accommodations that reduce barriers to employment related to a person's disability; it does not apply to accommodations that a disabled person may request for some other reason.

A reasonable accommodation need not be the best accommodation available, as long as it is effective for the purpose; that is, it gives the person with a disability an equal opportunity to be considered for a job, to perform the essential functions of the job, or to enjoy equal benefits and privileges of the job.

CSU, San Bernardino is not required to provide an accommodation that is primarily for personal use. Reasonable accommodation applies to modifications that specifically assist an individual in performing the duties of a particular job. Equipment or devices that assist a person in daily activities on and off the job are considered personal items that CSU, San Bernardino is not required to provide. However, in some cases, equipment that otherwise would be considered "personal" may be required as an accommodation if it is specifically designed or required to meet job-related rather than personal needs.

The analysis of reasonable accommodations is within the purview of the ADA coordinator; Work assignments, schedules, and the way that work is conducted (such as course assignments, and teaching schedules) is within the purview of the employee's department.

Reasonable accommodations will be periodically reviewed and considered for reevaluation either based on additional information regarding an employee's disability or if the accommodations no longer meet the needs of the department.

While reasonable accommodations may require consideration of whether a policy exception is appropriate, reasonable accommodations cannot violate State or Federal law.

Not all accommodations produce the desired outcome. If the accommodation is not working, the process should start again. Sometimes, it takes "trying" an accommodation to see if it is effective for the employee and the employer.

Time Frames for Processing Requests for Accommodations

CSU, San Bernardino will process requests for accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. CSU, San Bernardino recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested, whether it is necessary to obtain supporting information, and the availability of persons to participate in the interactive process.

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Notice of Receipt of Initial Request

Within five days of receiving the request for accommodation, the ADA Coordinator will contact the employee to provide notification that the request has been received, to provide the following documents, and begin the interactive process:

1. Employee Request for a Disability-Related Accommodation Application (if not already submitted)
2. Medical Provider Inquiry Form in Response to an Accommodation Verification form

Final decisions regarding accommodations, as well as notice in writing to the employee will generally be made within 30 business days of receiving all the necessary documentation and information necessary to make a determination, including working through the interactive process.

Expedited processing: In certain circumstances, a request for accommodation requires an expedited review and decision in a short time frame, including:

- To enable an applicant to apply for a job.
- To enable an employee to attend a meeting scheduled to occur shortly.

Extenuating Circumstances: All CSU, San Bernardino faculty and staff are expected to act as quickly as reasonably possible in processing requests and providing accommodations. It is CSU, San Bernardino's position that extenuating circumstances be narrowly defined as circumstances that could not reasonably have been anticipated or avoided, preventing an expeditious process. When extenuating circumstances are present, the time for processing a request for accommodation and providing the accommodation will be extended as reasonably necessary. Extenuating circumstances include:

- an outstanding initial or follow-up request for medical information, or when the campus ADA Coordinator is evaluating medical information which has been provided;
- the purchase of equipment because of requirements under campus procurement procedures;
- when equipment must be back-ordered, the vendor typically used by CSU, San Bernardino for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available;
- when the employee with a disability needs to try equipment on a trial basis to ensure that it is effective before CSU, San Bernardino buys it; or
- an accommodation involves the removal of architectural barriers.

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Where extenuating circumstances are present, the ADA Coordinator will notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes will be communicated promptly to the individual.

Other Delays:

Delays in providing documentation, responding to requests for information and meetings, employee absence due to time base (10/12, summer's off, etc.) may result in a delay to the ADA Coordinator's ability to respond to requests timely.

The complexity of requests made, including the need to consult multiple administrative units, and the analysis of the impact on a specific department may also delay implementation of requests.

Confidentiality and Disclosure

Medical information obtained in connection with this process must be kept confidential and maintained in a file separate from the employee's personnel file. The campus ADA Coordinator will maintain custody of all records obtained or created during the processing of a request for accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611.

This information may be disclosed only as follows:

- supervisors and managers who need to know may be told about necessary restrictions regarding the work or duties of the employee and about the necessary accommodation(s), but medical information shall only be disclosed if absolutely necessary.
- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- the information may, in certain circumstances, be disclosed to workers' compensation offices, benefits office or insurance carriers.

Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

The implementation of some accommodations require a level of disclosure, much like someone using a service animal, requiring an interpreter or other amplification device. There is not a need to disclose specific disability related information, but the nature of the accommodation itself results in disclosure.

Inquiries and Distribution

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Any person wanting further information concerning these procedures may contact the campus ADA Coordinator at (909) 537-3720.

These procedures shall be posted on CSU, San Bernardino's ADA/Accommodations website. These procedures will be provided in alternative formats, when requested by, or on behalf of, any CSU, San Bernardino employee or applicant.

Selected Reasonable Accommodation Resources

U.S. Equal Employment Opportunity Commission 1-800-669-3362 (Voice) 1-800-800-3302 (TT)
<http://www.eeoc.gov>

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

Job Accommodation Network (JAN)
1-800-232-9675 (Voice/TT)
<http://janweb.icdi.wvu.edu>

ADA Home Page
<http://www.ada.gov>