



CENTRAL REGION

Central Virginia Workforce Development Board

Workforce Innovation and Opportunity Act (WIOA) Administrative Policy #209

Subject: Accessibility & Reasonable Accommodations

Date of Issuance: March 19, 2019

Purpose:

This policy is intended to ensure that every Workforce Innovation and Opportunity Act (WIOA) Title 1 participant receives quality services. The Central Virginia Workforce Development Board (CVWDB) has 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. The policy outlines steps to ensure nondiscrimination and equal opportunity and the reasonable accommodations required to effectively serve individuals with disabilities.

References:

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
Virginia Community College System Workforce Investment Act (WIA) Policy 00-10 Equal Opportunity Requirements for Local Workforce Investment Boards in Relation to the Workforce Investment Act of 1998

Policy:

CVWDB considers individuals with disabilities an important element of diversity and ability within Virginia Career Works Centers. Individuals with disabilities must be treated with respect and given customer-centric services.

No individual is to be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in any program or activity, funded in whole or in part under WIOA, due to race, color, religion, sex, gender identity, national origin, age, disability, or political affiliation or belief.

Program operators must use the same processes for all customers, including individuals with disabilities. The program operator must also make reasonable modifications in practices and procedures when the modifications are necessary to avoid discrimination based on 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.

Procedure:

The following actions should be taken to ensure nondiscrimination of individuals with disabilities:

- Ensure the Virginia Career Works Centers in the Central Region are compliant with the American with Disabilities Act (ADA) and equipped with auxiliary aids and accommodations.
- Ensure individuals are aware of compliance through use of signs or other means of visibility. "Equal Opportunity is the Law" must be prominently displayed within the Centers and made available in other formats as requested.
- Ensure individuals are aware of the ability to receive reasonable accommodations. Notice of the availability and right to receive reasonable accommodations must be posted.
- Maintain confidentiality and not disclose disability-related or other medical information about an individual to an employer or partnering organization unless the job seeker has requested the disclosure on their behalf.
- Incorporate information on accommodations and rights of all individuals, including individuals with disabilities, in orientations.
- Refrain from stereotyping individuals with disabilities when evaluating their skills, abilities, interests and needs.
- Periodically review eligibility criteria for services or training to eliminate elements that may screen out individuals with disabilities (unless criteria are directly related to specific training or services and is essential), such as literacy/numeracy level requirements to access services that may unnecessarily prevent individuals with intellectual, cognitive or development disabilities from accessing services.

Program operators are subject to the following provisions of law:

- Section 188 of the Workforce Innovation and Opportunity Act, which prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief and requires that reasonable accommodations be provided to qualified individuals with disabilities in certain circumstances.

- Section 504 of the Rehabilitation Act, which prohibits discrimination against individuals with disabilities by recipients of Federal financial assistance.
- Title I of the Americans with Disabilities Act, which prohibits discrimination in employment based on disability.
- Title II of the Americans with Disabilities Act, which prohibits State and local governments from discriminating based on disability.
- Section 427 of the General Education Provisions Act, which requires recipients to ensure equitable access to, and participation in, certain programs run by the U.S. Department of Education.

Individuals may or may not choose to disclose that they have a disability. The individual does not have to document a disability to apply for or receive WIOA Title I Services

Staff should only ask individuals if they have a disability if this question is asked of all customers using the program and for data collection purposes, or for customer service and satisfaction improvements. Staff may ask individuals whether they are able to perform the essential functions of a job, training, or activity, but should not directly ask if an individual has a disability.

If it appears that an 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. If the individual indicates that an accommodation is not needed, no further inquiries about the disability may be made. The individual's response must determine the program or services actions.

If the individual discloses a disability, staff must inform the individual that:

- Providing information about one's disability is voluntary;
- The information will be kept confidential as provided by law;
- Refusal to provide the information will not subject the individual to adverse treatment; and
- The information will only be used in accordance with the law.

For WIOA Title I services, individuals with disabilities do not need to verify a disability to be served, unless required for their specific individual eligibility; however, it would benefit the individual to provide documentation of the disability to receive priority of service and to receive connections to additional resources. If individuals with disabilities request accommodations on any testing for service delivery purposes, documentation of the disability will be required. Additionally, some discretionary grants may require individuals with disabilities to show documentation of their disability for eligibility purposes.

Specific information on disabilities gathered for program eligibility purposes, including medical information gathered, must be kept confidential and maintained in a separate, secure file that is only available to authorized individuals. Medical information given to staff verbally by a person with a disability is also regarded as confidential and should not be released without written consent of the person with a disability.

Reasonable accommodations, modifications, providing effective communication, and auxiliary aids and services will hereinafter be referred to as "reasonable accommodations." 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.

Program operators providing services will provide reasonable accommodations to qualified individuals with disabilities who utilize WIOA Title I services to ensure equal access and opportunity.

The policies pertaining to reasonable accommodations apply to qualified individuals with disabilities regarding:

- Registration and orientation,
- Initial screening, assessments, and testing,
- Service delivery, including career services, training services, and support services, and
- Continuous improvement.

Program operators must not place a surcharge on an 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.

There are many forms of reasonable accommodations. Staff and the individual with a disability should work together to identify the most effective reasonable accommodation for that individual. Determining the most reasonable accommodation should be done as quickly as possible to avoid delaying access to services.

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I or Title III program or activity, the program operator must furnish appropriate auxiliary aids or services, including effective means of communication, where necessary. In determining what type of auxiliary aid or service is appropriate and necessary, program operators 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 accommodation 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 non-exhaustive list of auxiliary aids and services can be found in 29 CFR S 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/1TYs, video telephones, or video remote interpreting devices), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;
- Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;
- Acquisition or modification of equipment or devices; and
- Other similar services and actions.

This obligation does not require the program operator to provide personal devices, such as wheelchairs; prescribed devices, such as prescription eyeglasses or hearing aids; or readers for personal use or study.

Virginia Career Works Centers must be ready and welcoming for when persons with disabilities seek services, and as such, advance preparatory actions must be taken.

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. CVWDB requires that all service providers ensure that requests for accommodations are taken seriously and that receipt of accommodations is easy, user-friendly, and treated in a respectful and timely manner. Requests for accommodations should be shared with the CVWDB Staff as soon as possible following a request, to ensure services were made available and are available for any future request.

The individual does not need to use the term "reasonable accommodation" when seeking assistance. A request can be made before services are received or after a customer has already begun to receive the services for which the accommodation is requested. The request for accommodations may be made by a family member, friend, or other representative on their behalf. However, staff should directly verify with the customer the specific need and request.

When a person with a disability makes a request for a reasonable accommodation to any of the program operators' representatives, the program operator is required to respond to that request. Request for accommodations, modifications, and/or effective communication are requests that include the following two elements:

- A request for an adjustment or assistance; and
- An indication that the request might be related to a medical condition or 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:

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

Assessment and testing accommodations will be based upon the nature of the disability or special need and can include, but are not limited to:

- Braille Test Edition
- Large Print Edition
- Repeated Directions
- Assistive Technology
- Answers Recorded
- Extended Time/Adjusted Time
- Communication Assistance

For testing accommodations, documentation of disability must provide a comprehensive evaluation, a specific diagnosis, and objective evidence of a substantial functional limitation. The diagnostic report must include specific recommendations for accommodation(s), as well as a detailed explanation of why each accommodation is recommended. The evaluator(s) must describe the impact the diagnosed disability has on a specific major life activity as well as the degree of recommendations with specific test results or clinical observations. This evaluation must be made by a qualified professional whose credentials are appropriate to the disability. The name, title, and professional credentials (e.g., degrees, areas of specification, license or certification, employment) should be clearly stated in the documentation.

A written record must be made of any requests for reasonable accommodations that would require significant resources or preparation. Records must include the name of the individual, the nature of the reasonable accommodation, and the reason for the accommodation.

In keeping records pertaining to requests for reasonable accommodations in Virginia Career Works Centers, all staff should ensure that the documentation process does not delay or impede the provision of accommodations. Any documentation collected for reasonable accommodation considerations should be kept with the One-Stop Operator or Center Manager. Any documentation collected for reasonable accommodation considerations through WIOA Title I services should be kept with the appropriate Program Director or in the individual's participant file.

All staff members should be able to provide or arrange basic accommodations on their own initiative in the most expedient and customer friendly way possible. Virginia Career Works Center Managers should be knowledgeable and able to assist in arranging accommodations as needed.

The program operator may deny a request for a reasonable accommodation based on the following criteria:

- The program operator has determined the customer does not have a disability. The program operator 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 program aid, benefit, service and training, OR
- The program operator 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.

The denial of an accommodation requires review and decision-making at the administrative level. If 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 Equal Opportunity (EO) Officer or administrative level designee. The EO Officer will consider the recommendation, and if appropriate, conduct the inquiry.

Requests that cannot be provided or which are believed to pose an undue burden must be reviewed by the EO Officer. In situations where the program operator believes that the proposed accommodation would cause undue hardship, the program operator has the burden of proving that the accommodation would result in such undue hardship. The EO officer is the only person with authority to determine undue hardship on behalf of the program operators.

The EO Officer for the CVWDB is the Director, as identified in the Equal Opportunity (EO) policy.

A written statement of the reasons for reaching these conclusions will accompany the decision of an accommodation denial. The program operator will provide a copy of the statement of reasons to the individual who requested the accommodation, modification, auxiliary aid or service, and in alternate format or with other auxiliary aids for effective communication, as appropriate.

The written notice of denial must:

- Explain the reasons for the denial;
- Inform the customer of his or her rights to file a complaint with the Department of Labor Civil Rights Center and Department of Justice, Office of Civil Rights;
- 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, the written notice of denial must also document that all the required factors that must be considered in determining undue burden were considered and be reviewed by an attorney versed in ADA.

After a determination of undue hardship, the program operator 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 program aids, benefits, services, and training. If an accommodation would result in undue hardship, the program operator will give the individual with a disability the option of providing the accommodation. The program operator must also offer to cover the costs of the reasonable accommodation up to the limit of undue burden and to allow the customer to cover any costs above that threshold.

Individuals who believe that they have been discriminated against in failure to provide accommodations, may file a complaint with the EO Officer. Information on how to file a complaint will be publicly posted and available in alternative formats. The Equal Opportunity (EO) Policy explains this process in detail.

Monitoring

The CVWDB acknowledges that the grant recipient, the state and the federal organizations that pass-through funding to the CVWDB has the authority to monitor and assess compliance with accessibility and reasonable accommodation procedures for WIOA Title I programs. To ensure that policies are being followed and expectations are being met, CVWDB staff or a designee will review accessibility of facilities

and services periodically to ensure compliance. It will be the responsibility of the program operator to make any corrections and to conduct an internal review if areas of concern are found.

Disclaimer

This policy is based on CVWDB interpretation of the statute, along with the Workforce Investment and Opportunity Act; Final Rule released by the U.S. Department of Labor and federal and state policies relating to WIOA implementation. This policy will be reviewed and updated based on any additional federal or state guidance.