

MIAMI-DADE COUNTY PUBLIC SCHOOLS



AMERICANS WITH DISABILITIES ACT



A GUIDE FOR ADMINISTRATORS
2006-2007

MIAMI-DADE COUNTY PUBLIC SCHOOLS

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INTRODUCTION

The Miami-Dade County Public Schools (M-DCPS) Civil Rights Compliance office, the Office of Personnel Support Programs, and the Division of Facilities ADA Compliance, have designed this publication, ***Americans with Disabilities Act: A Guide for Administrators***, to provide technical information to M-DCPS administrators in order to facilitate the orderly and uniform implementation of the employment-related provisions of the Americans with Disabilities Act (ADA) of 1990.

This publication, as well as related training activities for administrative staff, has been designed to ensure the District's compliance with federal laws and state statutes, as well as School Board rules regarding the employment of qualified individuals with disabilities.

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Policy Regarding the Employment of Persons with Disabilities

Statement of Policy

The School Board of Miami-Dade County, Florida adheres to a policy of nondiscrimination in employment and educational activities/programs and strives affirmatively to provide an equal opportunity for all, as required by federal laws and state statutes, on the basis of **disability**, as well as gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, and pregnancy.

The School Board strives to take positive steps to identify and overcome real or potential artificial barriers to employment, training, or promotional opportunities for qualified staff and applicants with disabilities.

Legal Authorization

Americans with Disabilities Act of 1990
Section 504 of the Rehabilitation Act of 1973
Florida Educational Equity Act, F.S. 228.2001
School Board Rules 6Gx13- 4A-1.01 and 6Gx13- 4A-1.32 (See Appendix A)

Implementation Responsibility

All school site and District administrators are responsible for the compliance of their school, department, division, or bureau with the requirements of the Americans with Disabilities Act (ADA). It is required that the technical information, herein contained, be conveyed to administrative staff under your supervision.

Three separate District offices are charged with providing the necessary technical and implementation support to all District and school site administrators as detailed in this guide under the section "School District Functions and Responsibilities." The office of Human Resources Standards is responsible for ensuring the efficient and expeditious processing of employees' requests for services/accommodations. The Division of Facilities ADA Compliance monitors and implements ADA accessibility requirements. Finally, the Civil Rights Compliance office investigates complaints from employees alleging that they have been harassed or discriminated against based on their disability.

Two separate posters (See Appendix B) that contain information for all staff regarding the District's functions and responsibilities under the ADA are available from the respective offices. Copies of these posters have been provided to all work locations. For additional copies of the ADA poster, call 305-995-7116; and to obtain a Discrimination/Harassment poster, call 305-995-1580.

The Americans with Disabilities Act (ADA) of 1990

School District Functions and Responsibilities

Services for Employees

Process and respond to requests for services/accommodations from school district employees with disabilities.

Serve as Chairperson of the ADA District Consultative Committee.

Convene and facilitate the work of the ADA District Consultative Committee, which is charged with determining if the employee is a qualified individual with a disability, and providing reasonable accommodations, if necessary.

Facilitate the provision of services/accommodations to employees with disabilities, as directed by the ADA District Consultative Committee.

Provide inservice training to school district staff regarding the requirements and implementation of the ADA and related issues.

Make recommendations to the ADA District Consultative Committee, as necessary or appropriate.

Lead Responsibility:

Human Resources Standards

Telephone: 305-995-7116

TDD: 305-995-2400

ada-employee@dadeschools.net

Facilities Accessibility Compliance

Survey the school district's facilities and make recommendations to ensure compliance with the ADA.

Serve as a resource to school district staff with respect to ADA accessibility requirements.

Receive, process, and respond to complaints from employees and the public regarding ADA accessibility compliance.

Serve as the school district's ADA Accessibility Coordinator and as a member of the District Consultative Committee.

Communicate with local, state, federal agencies, and educational entities regarding the implementation of ADA accessibility requirements.

Lead Responsibility:

Division of Facilities ADA Compliance

Telephone: 305-995-4650

TDD: 305-995-2400

ada-facilities@dadeschools.net

Compliance with the ADA

Receive, process, and investigate internal complaints from employees alleging discrimination or harassment on the basis of disability.

Receive, process, and investigate complaints from employees, students and applicants alleging that the school district is not meeting its obligations under the provisions of ADA.

Serve as a resource to school district staff on requirements of the ADA, and as a member of the ADA District Consultative Committee.

Provide inservice training to school district staff regarding compliance issues.

Respond to state and federal agencies regarding complaints of discrimination filed against the school district on the basis of disability.

Lead Responsibility:

Civil Rights Compliance

Telephone: 305-995-1580

TDD: 305-995-2400

crdc@dadeschools.net

The Americans with Disabilities Act (ADA)

What is the ADA?

The ADA is a civil rights law protecting qualified individuals with disabilities from employment discrimination and giving them access to public services, public accommodations, public transportation, commercial facilities, and telecommunications. In general, it covers all employers who have 15 or more employees (including certain part-time employees) working for them for 20 or more calendar weeks in the current or preceding calendar year.

The ADA is not a “guaranteed-jobs law” for people with disabilities. If an individual with a disability who meets the minimum requirements applies for a job and a nondisabled individual with more experience also applies, it is not a violation for the employer to select the more experienced applicant.

What Does the ADA Require?

The **public accommodations provisions of the law** requires the removal of architectural and structural barriers that limit access to disabled individuals from places of public access where doing so is readily achievable meaning, easily accomplished and able to be carried out without much difficulty or expense. Factors to be considered in determining whether barrier removal is readily achievable include the nature and cost of the barrier removal, the overall financial resources of the institution, and the number of people employed.

The United States Department of Justice suggests that the institutions rank priorities for achieving accessibility in the following order:

- ♿ entrances, including providing signage for designated parking, passenger loading zones, curb cuts, and widening entrances and ramping steps;
- ♿ location of services, including, for example, moving services to ground floors when lacking elevators;
- ♿ public restroom accessibility and features; and
- ♿ other accessibility measures.

The **ADA’s employment provisions** prohibit discriminating against qualified individuals with disabilities in the recruiting, application, and hiring processes, as well as in the terms and conditions of employment, including promotion and training opportunities. Discrimination includes, but is not limited to, limiting, segregating, classifying, or treating a job applicant or employee in a way that adversely affects job opportunities or status because of the individual’s disability.

The ADA requires covered entities to provide “reasonable accommodations” to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless the entity can demonstrate that the accommodation would impose an undue hardship.

Employers are not only prohibited from outright, blatant discrimination against employees with disabilities but also from using practices that have the effect of discriminating; for example, qualification standards,

employment tests, or selection criteria that tend to screen out individuals with disabilities, unless the standard is “job related.”

The law requires employers to engage in an “interactive” process, in good faith, with an employee to consider and make “reasonable accommodations” to the known physical or mental limitations, of a qualified individual with a disability, unless doing so would impose an undue hardship on the employer. Additionally, under certain circumstances, applicants for jobs may also require reasonable accommodation in the application process.

Who is a Disabled Individual Under the ADA?

The ADA prohibits employment discrimination against “**qualified individuals with disabilities.**”

Definition

A **disabled** individual, under the ADA, is a person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. “Major life activities” refer to activities that are of central importance to most people’s daily lives. They include such things as seeing, hearing, walking, caring for oneself, performing manual tasks central to daily life, speaking, breathing, learning, and working. Other examples of major life activities include sitting, standing, lifting, and mental and emotional processes, such as thinking, sleeping, concentrating, and interacting with others.

As indicated by the above definition, an individual may qualify as “disabled” if (s)he has a record of such an impairment. An employee has a record of a substantially limiting impairment if (s)he:

- has a history of a substantially limiting impairment, or
- has been classified or misclassified as having a substantially limiting impairment.

Additionally, an individual may qualify as “disabled” if (s)he is **regarded** as having a substantially limiting impairment. An employee is regarded as disabled if (s)he:

- has an impairment that does not substantially limit the major life activity of work, but is treated by the employer as if it did, or
- has an impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment.

The crucial factor in the “regarded as” scenario is that by treating an individual, who may not otherwise qualify under the ADA, as having an impairment that significantly restricts her/him from working, the employer is regarding the employee as having an impairment that substantially limits the major life activity of working, whether or not the employee truly has such an impairment, and thereby extending the protections of the ADA to that employee.

What is “Substantially Limiting”?

Definition

An impairment is ***substantially limiting*** if it prevents or to a large degree restricts an individual's ability to perform a major life activity, as compared to the ability of the average person in the general population performing the same activity.

The determination of whether an impairment substantially limits a major life activity depends on the nature and severity of the impairment, the duration or expected duration of the impairment. The impairment's impact must be permanent or long-term.

Short-term, temporary restrictions are generally not substantially limiting, but an impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities, if they are severe.

What is an Impairment?

Definition

An ***impairment*** is a physiological disorder or condition affecting one or more body systems or a mental or psychological disorder such as emotional or mental illness. It is not the name of the impairment or condition that determines whether a person is disabled under the ADA, but rather, the effect the impairment has on the major life activities of the particular person.

Individuals with disabilities such as vision, hearing, and mental and motor impairments as well as those with debilitating diseases such as HIV/AIDS are included and, therefore, covered by the ADA.

Persons with temporary disabilities, such as a broken leg, and those with minor impairments (such as poor vision that is correctable with eyeglasses) that do not substantially limit major life activities, are not covered by the ADA.

The following conditions are not impairments:

- environmental, cultural, and economic disadvantages;
- homosexuality and bisexuality;
- pregnancy;
- physical characteristics (eye and hair color, left-handedness);
- personality traits or behaviors; and
- normal deviations in height, weight, or strength.

The regulations implementing the ADA define “mental impairment” to include “any mental or psychological disorder.” Mental or psychological disorders are further defined to include, but are not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The following are not considered to be mental impairments:

- gender identity disorders, not resulting from physical impairments, or other sexual disorders; and
- conditions resulting from current illegal use of drugs.

Who is “Qualified” Under the ADA?

Definition

A ***qualified individual with a disability*** is one who has a disability, within the meaning of the ADA, who satisfies the requisite skills, experience, education, and licensing requirements, and who, with or without a reasonable accommodation, can perform the essential functions of the job.

Essential Functions of the Job

The essential functions of a position are those that are central to accomplishing the tasks that are required of the position, not those that are marginally related to the outcome. In determining whether a particular duty is an essential function, the employer needs to focus on the purpose of the function and the result to be obtained, and consider whether transferring the function to another employee would fundamentally alter the nature of the job. Although not required by the ADA, job descriptions can be considered evidence of the employer’s intent in so far as essential/marginal functions are concerned.

The following types of questions can provide assistance in determining which functions are essential to a job:

- Will removing the functions fundamentally alter the position?
- Is the function included in the written job description?
- Is the function specified under collective bargaining agreements?
- How much time is spent performing the function?
- What are the consequences of the employee failing to perform the function?
- How many other employees are available to perform the job function?
- Does the position exist to perform the function?
- What experience is needed to perform the function?
- What is the experience of past and/or current incumbents of the job?

The term “*essential functions*” refers only to the tasks to be performed, and not to the manner in which those tasks are performed.

For example: In a job requiring the use of a computer, the essential function is the ability to access, input, and retrieve data from the computer. It is not “essential” that the employee be able to use a keyboard or be able to visually read the data from a computer screen. Adaptive devices or software may enable a person with no arms or with impaired vision to control the computer and access information.

What is a Reasonable Accommodation?

Definition

A ***reasonable accommodation*** is any change in the work environment or the manner in which a job is usually performed that enables an individual with a disability to enjoy equal employment opportunities. It includes modifications or adjustments to processes, job positions, worksites accessibility, work schedules, or equipment which allows an applicant to apply for a job or an employee to perform the essential functions of the job.

Some of the major issues to consider in regard to reasonable accommodation, include the following:

- In general, it is the responsibility of the employee to inform her/his supervisor of the need for accommodation(s);
- Administrators should immediately refer employees’ requests for accommodation to Ms. Madeleine Rodriguez, Executive Director, Human Resources Standards, and Chairperson of the M-DCPS ADA District Consultative Committee (hereinafter referred to as the Committee), at 305-995-7116;
- The determination as to what may constitute a reasonable accommodation should be made, on a case-by-case basis, by the Committee, after its determination of the employee’s eligibility under the provisions of the law; and
- The accommodation offered need not be the best accommodation, or the one preferred by the employee; but it must be adequate to enable the employee to perform the essential functions of the job.

Examples of reasonable accommodations include the following:

- job restructuring (reallocating non-essential or marginal job functions);
- acquisition or modifications of equipment or devices;
- provision of qualified readers or interpreters;
- making existing facilities readily accessible to and usable by persons with disabilities (“path of travel”);

- ☑ part-time or modified work schedule;
- ☑ appropriate adjustments or modifications of examinations, training materials, or policies;
- ☑ provision of assistance by other support personnel for specific non-essential/marginal functions;
- ☑ permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment; and
- ☑ reassignment to a vacant job position for which the employee is qualified, if the disabled person is unable to perform the original job. (Reassignment should be considered only where there are no possible accommodations that would allow the employee to perform the current position without creating an undue hardship on the employer. The employee should identify vacant positions for which the individual is qualified and which have equivalent pay status and conditions of employment).

Communication Access for the Blind/Low Vision and Deaf/Hard-of-Hearing

Communication access is essential for the productive employment of blind/low vision and deaf/hard-of-hearing individuals. Access refers not only to equipment, but also to ways to improve the flow of communication. This includes eliminating barriers to communication and ensuring that blind/low vision and deaf/hard-of-hearing employees are kept informed and included in the school and district activities.

Open communication between employers and visually and hearing impaired employees is critical to complying with the law. Employers should encourage employees with visual or hearing impairments to discuss their needs. It is the responsibility of the employee with the visual or hearing impairment to let employers know what kind of accommodation(s) they need to effectively perform the essential functions of their job. **It is the employers' obligation to make sure that the accommodation(s) is implemented.**

Reasonable accommodations for the **blind/low vision** individuals include, but are not limited to, the following:

- Assistive technology, including:
 - a closed circuit television system (CCTV) for reading printed materials;
 - an external computer screen magnifier;
 - cassette or digital recorders;
 - software that will read information on the computer screen; and
 - an optical scanner that can convert print documents into electronic form.
- Written materials in an accessible format, such as in large print, Braille, audio cassette, or electronic format;

- Allow use of guide dog in the workplace;
- Modification of an employment test;
- A human reader when materials cannot be converted electronically;
- An accessible website; and
- Modified training or training in the use of assistive technology.

For Example: A school site has decided to upgrade its computer programs. In order to teach its staff about the new systems, it has set up several “hands-on” training classes in which groups of employees will be shown how to execute various functions using the new software and then will have an opportunity to complete a series of exercises using those functions with guidance from the instructor. Most of the demonstrations and exercises will involve use of a computer mouse to execute functions. A blind employee who uses a screen reading program is unable to use a computer mouse effectively and will require individualized instruction that will enable him/her to learn how to perform necessary functions using keyboard commands.

Reasonable accommodations for individuals with hearing loss, include but are not limited to, the following:

- Telecommunication Devices for the Deaf (TDD) which include text telephones (TTY), amplified telephones;
- Visual alarms which include fire alarms, smoke alarms, doorbells, school bell schedule, and telephone ring signalers;
- Visible accommodations to communicate audible messages (i.e., announcements made over the public address system);
- Assistive listening systems (i.e., FM system, infrared loop);
- Captioned media (i.e., closed-captioned decoders, televisions with built-in decode chip(s), open-captioned videotapes, closed-captioned videotapes);
- Sign language interpreter services for deaf employees who rely on sign language; and
- Oral interpreter or transcription services for deaf/hard-of-hearing employees who do not use sign language.

Under the ADA, the employer must provide a sign language or oral interpreter for all mandatory faculty meetings, workshops, parent conferences, and special activities in which the deaf and/or hard of hearing employee is required to participate. To ensure the availability of interpreting services, requests should be made at least ten (10) business days prior to the date of the event. The employer should request that the sign language interpreter possess national certification or at least a minimum of a Quality Assurance Level II (QAII) to ensure effective communication. Please refer to Appendix C for a list of local agencies that provide interpreting services on a contractual basis.

Drug and Alcohol Abuse

The ADA specifically permits employers to ensure that the workplace is free from the illegal use of drugs and the abuse of alcohol, and to comply with other federal laws and regulations regarding alcohol and drug abuse.

An employer may discharge or deny employment to current users of illegal drugs, on the basis of such drug use, without fear of being held liable for disability discrimination. Current users of illegal drugs are not “*individuals with disabilities*” under the ADA. If an individual tests positive on a test for the use of illegal drugs, the individual will be considered a current drug user under the ADA where the test correctly indicates that the individual is engaging in the illegal use of a controlled substance.

Persons who are addicted to drugs, but who are no longer using illegal drugs and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of **past** drug addiction. The employee may be protected because (s)he has a history of addiction or because (s)he may be “*regarded as*” being addicted if the employee is regarded as being substantially limited in a major life activity.

An employee claiming discrimination because of past history or perceived illegal drug addiction, may be asked by the Committee to prove that (s)he has a record of, or is regarded as having an addiction to drugs.

For example: If a supervisor perceived someone to be addicted to illegal drugs based upon rumor and the groggy appearance of the employee, but the rumor was false and the appearance was the side effect of a lawfully prescribed medication, this individual would be “*regarded as*” an employee with an impairment (drug addiction), and would be protected from discrimination based upon that false assumption if the employee is regarded as being substantially limited in a major life activity.

While a current user of illegal drugs has no protection under the ADA if the employer acts on the basis of such use, a person who currently abuses alcohol is not automatically denied protection simply because of the alcohol abuse. An alcoholic is a person with an impairment under the ADA and may be entitled to consideration for accommodation, if (s)he otherwise, meets the requirements of the ADA definition of “disability.” In so far as an individual’s job performance or conduct is adversely affected by the abuse of alcohol, the employer may discipline, discharge, or deny employment based on said conduct. However, the employer may not discipline an alcoholic employee more severely than (s)he does other employees for the same performance or conduct.

For example: If an individual who suffers from alcoholism is frequently late to work or is not able to perform the duties of the job, an employer may take disciplinary action only on the basis of the poor performance and conduct.

Workers’ Compensation and the ADA

The workers’ compensation law is designed to provide compensation and assistance to employees who suffer work-related injuries, while the purpose of the ADA is to protect people from discrimination on the basis of a disability.

Whether an employee out on workers' compensation is protected by the ADA will depend on whether or not the individual meets the definition of a "*qualified individual with a disability*." The employee must have an impairment that substantially limits a major life activity, or have a record of, or be regarded as having such an impairment.

Therefore, not every employee injured on the job will meet the definition of a "*qualified individual with a disability*" and thus be entitled to the protections afforded by the ADA. Work-related injuries do not always cause a physical or mental impairment severe enough to substantially limit a major life activity. A great number of job injuries heal within a short period of time and have little or no long-term or permanent impact. Such injuries are not, therefore, considered "disabilities" under the ADA.

The fact that an employee is awarded workers' compensation benefits or even is assigned a disability rating under the state workers' compensation laws does not automatically establish that the person is "disabled" and within the protection of the ADA. The Committee will consider work-related injuries on a case-by-case basis to determine whether or not the employee may qualify for protection under the ADA.

Even though a work-related injury may not be disabling under the ADA, it is possible that such an impairment could result in a disability in certain circumstances.

Additionally, if an impairment or condition caused by an on-the-job injury does not substantially limit an employee's ability to work, but the supervisor regards the individual as having an impairment that makes her/him unable to perform a class of jobs, such as "heavy labor," this employee would be "regarded" by the supervisor as having a disability.

Finally, **under the provisions of the ADA**, an employer cannot refuse to let an individual with a disability return to work because the employee is not fully recovered from an injury, except when (s)he: 1) cannot perform the essential functions of the job that (s)he held or desired, with or without an accommodation; or 2) would pose a significant risk of substantial harm that could not be reduced to an acceptable level with reasonable accommodation(s).

Because a reasonable accommodation may include reassignment to a vacant position, an employer may be required to consider an employee's qualifications to perform other vacant jobs for which (s)he is qualified, when the employee can no longer perform the job held at the time of the injury.

Family Medical Leave Act and the ADA

The Family Medical Leave Act (FMLA) of 1993 requires employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees. Employees are eligible if they have worked for a covered employer for at least one year and working 1,250 hours over the previous 12 months.

Unpaid leave must be granted for **any** of the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

The employer may require medical certification to support a request for leave of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness to work examination for the employee's return.

The United States Labor Department states that the FMLA is not intended to modify or affect the ADA. Employees entitled to leave under both the FMLA and the ADA are entitled to the benefits of whichever law provides the greater rights. If an employee is a "qualified individual with a disability" within the definition of the ADA, the employer must make a reasonable accommodation under that law, while at the same time granting applicable FMLA rights.

If an employee is entitled to FMLA leave, the Department of Labor states that an employer may not, instead of granting the leave, require an employee to take a job.

All worksite administrators are required to grant FMLA leave to employees for the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

M-DCPS Procedures for ADA Eligibility Determination and Accommodations

All worksite administrators are required to:

- Post in visible areas the Discrimination/Harassment and ADA School District Functions and Responsibilities posters; (See Appendix B)
- Refer employees seeking assistance under the ADA to Ms. Madeleine Rodriguez, Executive Director, Human Resources Standards, at 305-995-7116;
- Provide appropriate information, to facilitate the Committee's assessment of the merits of the request. This may entail, but is not limited to, providing technical assistance to determine essential functions of a job; attending Committee meeting(s); providing job performance information, and other relevant information;
- Maintain confidentiality of medical records submitted to the site administrator; and
- Refer any complaints from employees alleging that the school district is not meeting its obligations under the employment and/or accessibility requirement provisions of the ADA to the Civil Rights Compliance office, at 305-995-1580.

The determination of eligibility under the ADA, as well as the review of requests for accommodation from employees and job applicants has been delegated to the ADA District Consultative Committee. This Committee meets the third Tuesday of every month. It is comprised of a core group of District personnel representing the School Board Attorney's Office, Office of Personnel Support Programs, Division of

Facilities ADA Compliance, Office of Human Resources, Civil Rights Compliance, Office of Risk and Benefits Management, Regional Centers, Office of Professional Standards, and a Board-approved medical consultant. Additionally, other individuals from the district or outside agencies are requested to provide assistance or expertise as necessary, based upon the need for information required by the particular case(s) under review.

The Committee's process involves the following steps:

- Identification of employee seeking accommodation through the following types of referrals to the Chairperson of the Committee:
 - Employee Self-Referral;
 - Referral by a collective bargaining unit representative; and
 - Referral by a district level support office (e.g., Workers' Compensation, Civil Rights Compliance, Employee Assistance Program, Administrative/Professional and Technical Staffing, Worksite Administrator, etc.).
- Employee completes the Employee Self-Referral Form (See Appendix D) and provides a Release of Medical Information Form (See Appendix D), and requested medical documentation.
- If necessary, a conference will be scheduled, to include the Chairperson of the Committee, the employee, and the site administrator or designee.
- The Committee meets to accomplish the following possible actions:
 - Review of the employee's request for accommodation(s);
 - Review of findings of the on-site consultative conference;
 - Review of medical and other appropriate support documentation;
 - Determination of employee's eligibility as a "qualified individual with a disability";
 - Determination regarding the requested accommodation; and
 - Recommendation for closing the case or further follow-up by the Chairperson of the Committee.
- Follow-up Committee meeting(s) convened in response to one or more of the following:
 - The Committee has requested follow-up from the Chairperson, including gathering of additional documentation or expert opinion from an outside agency/medical personnel;
 - The Committee has requested follow-up in regard to accessibility requirement issues;
 - The Committee has requested clarification from the School Board's Attorney's Office;

- The Committee has requested follow-up from District or Regional Center personnel; and
- Employee has not accepted the determination/accommodation(s) offered by the Committee and requests to personally make a presentation before the Committee.

Job Application and Interview Do's and Don'ts

According to the United States Equal Employment Opportunity Commission (EEOC), the following are examples of questions that **CANNOT** be asked on a job application or during a job interview:

- Have you ever had or been treated for a medical condition or disease?
- Please list any conditions or diseases for which you have been treated in the past three years.
- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- Is there a health-related reason why you may not be able to perform the job for which you are applying?
- Have you had a major illness in the last five years?
- How many days were you absent from work because of illness last year?
- Do you have any physical defects which preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations.
- Do you have any disabilities or impairments which may affect your performance in the position for which you are applying?
- Are you taking prescribed drugs?
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever filed for workers' compensation?

Pre-employment questions that **CAN** be asked are the following:

- Can you meet the requirements of our attendance policy?
- Can you perform the tasks of this position with or without accommodation?
- Describe or demonstrate how you would perform this function, with or without an accommodation. (Such a question can be asked of an applicant who has a known disability that might prevent her/him from performing a job function. If the disability would not interfere

with a job function, however, the person could only be asked to demonstrate job performance if all other candidates are also asked to do so.)

Interviewing Applicants with Specific Disabilities

Interviewing people with disabilities is generally the same as interviewing people without disabilities. The focus of the interview should be on the applicant's qualifications and competencies, including experience and skills for doing the job. At times, employers may be at a loss when interviewing someone with a disability. The following are some basic guidelines for keeping a job interview focused on the applicant's qualifications.

When interviewing an applicant who uses a wheelchair:

- Keep accessibility in mind. If a chair poses a barrier to the wheelchair user, move it aside.
- Don't hold or lean on the wheelchair.
- Don't assume that the individual wants to be pushed; always ask first.
- Maintain eye contact and eye level with the applicant.
- Don't be embarrassed to use such phrases as, "Let's walk over to the other office."

When interviewing applicants who are blind or have vision impairments:

- Immediately identify yourself and others in the room or have the individuals introduce themselves. This will assist the applicant with orientation to the room and its occupants.
- Tell the applicant when someone is leaving the room.
- Use verbal cues; be descriptive in giving directions.
- Verbalize chair location, or place the person's hand on the back of the chair, but **do not** place the person in the chair.
- Speak directly to the applicant using a normal tone of voice.
- Don't be embarrassed to use such phrases as, "Do you see what I mean?"
- Keep doors either open or closed, a half-open door is a serious hazard.
- Never touch or distract a service guide dog.

Be prepared to read aloud information that is written, or ask the person if (s)he could use the services of a trained reader.

When interviewing an applicant who is deaf or hard of hearing:

- You may need to use a physical signal to attract the applicant's attention before starting a conversation.

- If the applicant is lip reading, enunciate clearly and keep your mouth clear of obstructions.
- Don't shout. Speak directly to the applicant using a normal tone of voice.
- If you cannot understand what the applicant is telling you, ask the applicant to repeat the sentence.
- Not all people who are deaf or hard-of-hearing know or use sign language. Do not assume they need interpreters.
- If using a sign language or oral interpreter, always face and speak directly to the applicant, not the interpreter. Speak clearly and keep your hands away from your face.

Accessibility Requirements

The thrust of the ADA in regard to facilities is to provide a working environment that is readily accessible and “user friendly” to people with disabilities. New facilities being designed and constructed today can readily incorporate such features. However, it is a more complicated proposition to retrofit existing buildings.

A survey of a facility can be made as part of an overall assessment, or as an independent assessment that focuses solely on ADA compliance. Elements that are routinely considered in such a survey include, but are not limited to:

- | | |
|--------------------------------|---|
| ✓ Means of egress | ✓ Counters |
| ✓ Parking | ✓ Drinking fountains |
| ✓ Alarms/life safety | ✓ Signage |
| ✓ Curb ramps | ✓ Public telephones |
| ✓ Entrances | ✓ Tables and seating |
| ✓ Ramps and stairs | ✓ Assembly/Work areas |
| ✓ Elevators and platform lifts | ✓ Restrooms, including toilet stalls, toilets, urinals, sinks, and mirrors |
| ✓ Doors and door hardware | ✓ Bathrooms, including bathtubs, shower stall, tub/shower seats and grab bars |

Modifying the work environment is a traditional form of making a reasonable modification. It entails examining the worksite to meet the needs of a qualified individual with a disability. Alterations of the site can include the following:

- removing architectural barriers, for example, installing a ramp or modifying a bathroom;
- rearranging files or shelves for accessibility to people in wheelchairs;
- placing tactile labels on shelves and controls so that visually-impaired individuals can identify them;
- relocating meetings to an accessible site; or
- rearranging parking to allow a disabled person to park at the entrance closest to her or his worksite.

The above list is far from exclusive. Additionally, the employer should approach proposed modifications from the perspective of allowing disabled employees to function independently, affording them dignity and respect in their worksite.

In many cases, modifications to the worksite do not require costly purchases or alterations; a common sense approach being the best method.

For Example: If an employee in a wheelchair cannot use the standard desk given to staff at a particular worksite, it might be possible to elevate the desk (e.g., using blocks) to a height that allows access to the wheelchair, rather than purchasing a specially constructed desk.

Disabled employees themselves are often the best sources of ideas for cost-effective modifications and their requests are always fully considered by the members of the Committee.

The M-DCPS Division of Facilities ADA Compliance was established by Board action on January 19, 1994. The purpose of the Division is to support the District by surveying all Board owned/leased facilities for ADA compliance and to identify necessary changes to make **programs accessible** to disabled individuals, with minimal physical changes to existing facilities. The Division supports the Office of School Facilities in its remodeling and renovation projects to achieve the incorporation of ADA requirements into projects during the planning/design phase or through change orders, as appropriate.

ADA deficiencies are categorized by the Division into three levels:

- Level 1** – deficiencies to be corrected to provide immediate access/signage to all public areas on ground level (disabled parking, administration office, auditorium, cafeteria, male/female restrooms, and specific classrooms);
- Level 2** – deficiencies that can be made accessible by way of personnel assistance (reaching shelves, access to specialty equipment, etc.); and
- Level 3** – deficiencies preventing access to upper floors (elevators, lifts, etc.).

The District's multi-year ADA compliance plan is managed in conjunction with the Five (5) Year Capital Construction/Maintenance program to provide **PROGRAM ACCESSIBILITY** to the disabled; and is prioritized using the following three (3) categories:

Category 1 – Emergency – existing student/staff requiring immediate on site accommodation(s);

Category 2 – Urgent – ADA accommodations required within one to six months; and

Category 3 – Planned – ADA deficiency corrections to be incorporated in the Five (5) Year Plan.

The Division of Facilities ADA Compliance is also responsible for the investigation of complaints alleging ADA accessibility violations. In such cases, the Division conducts a Violation Verification Inspection and forwards recommendations for compliance to the Office of School Facilities and the Civil Rights Compliance office.

All questions, concerns, and complaints covering accessibility under the ADA, including scope of work, interpretation, and implementation, must be addressed to Mr. Auguste Nicoleau, Executive Director, Division of Facilities ADA Compliance, at 305-995-4650.

Guidelines for Designing Universal Accessible Websites

As the web becomes increasingly important in our society, access to the web becomes vital for people with disabilities. Technology plays an important role in providing individuals with disabilities an opportunity to increase their independence and become active members of the community. Poorly designed websites, however, can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some from entering. The design or format of a web page may determine whether this resource can be conveniently accessed by everyone – including users with disabilities.

Many people with disabilities use “assistive technology” to enable them to use computers and access the Internet. Blind people who cannot see computer monitors may use screen reader devices that speak the text that would normally appear on a monitor. People who have difficulty using a computer mouse can use voice recognition software to control their computers with verbal commands and people with other types of disabilities may use still other kinds of assistive technology.

Guidelines have been developed to assist web page writers with the development of universal accessibility of web pages. When developing and revising web pages, the following suggestions should be used to ensure accessibility by a diverse audience.

Web Content Accessibility Guidelines:

- Make documents clear and simple;
- Maintain a simple, consistent page layout throughout the site;
- Provide context and orientation information;
- Provide clear navigation mechanisms;
- Keep backgrounds simple with good contrast;
- Use standard HTML (Hypertext Markup Language);
- Design large buttons;

- Provide equivalent alternatives to auditory and visual content;
- Don't rely on color alone; and
- Include notes about accessibility.

The following suggestions will greatly assist access for people facing vision barriers:

- Design screens with little clutter;
- Leave considerable space around all items;
- Avoid placing more than one hyperlink on any one line;
- Avoid tile backgrounds; text can become obscured;
- Avoid dark or bright colored backgrounds; high contrast between text and background is desirable;
- Avoid the use of multi-column presentations or tables;
- For each page which contains images, provide a text-only alternative page. This alternative page can then be “spoken” with screen reading software; and
- Include text descriptions for images (which can be “spoken” by those using screen reading software).

Compliance Provisions

All District and school site administrators are responsible for the compliance of their school, department, division, or bureau with the requirements of the Americans with Disabilities Act (ADA). It is recognized that discrimination or harassment complaints on the basis of a disability may arise from actual or perceived situations.

In order for complaints to be resolved in an expeditious, orderly, and equitable manner, School Board Rule 6Gx13- 4A-1.32, Discrimination/Harassment: Complaint Procedures for Employees, establishes appropriate procedures to ensure nondiscrimination in employment. Any individual, who after discussing the allegations with the worksite administrators, as appropriate, feels that her/his complaint is not satisfactorily resolved, may file a complaint with the Civil Rights Compliance office at 305-995-1580.

APPENDIX A

Permanent Personnel

EQUAL OPPORTUNITY EMPLOYMENT AND ASSIGNMENT

The School Board of Miami-Dade County, Florida adheres to a policy of nondiscrimination in employment and strives affirmatively to provide equal opportunity for all as required by state and federal law. The Board attempts to identify and overcome real or potential artificial barriers to employment, training, or promotional opportunities for its staff and applicants.

Employment:

The School Board strives to ensure a highly qualified staff (in terms of educational background and experience) that reflects the overall diversity (in terms of factors such as race, ethnicity and gender) of the pool of qualified candidates. In recruiting applicants for School Board positions, the School Board also encourages men and women to enter non-traditional occupational areas where their gender is under-represented.

The School Board continually develops and reviews job descriptions and entry qualifications in order to ensure that the tasks and duties required are reasonable and do not impose artificial barriers to qualified applicants.

It is the policy of the School Board that no person will be denied access, employment, training, or promotion on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability, and that merit principles will be followed.

The School Board offers inservice training programs designed to assist employees in achieving new competencies and/or promotion.

Personnel Management and Services will conduct job advertising and recruitment activities in a manner designed to apprise persons of diverse backgrounds relative to gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, disability, or who may be pregnant or experiencing pregnancy-related medical conditions, of the job advertised.

Equitable Faculty Composition:

It is the School Board's goal that every school have a diverse, high quality faculty (that is, instructional staff and counselors) that reasonably reflects the qualifications (in terms of advanced degrees, experience and teaching

out-of-field), experience and diversity (in terms of race, ethnicity and gender) of the pool of teachers at that grade level configuration districtwide.

I. Hiring:

To promote this goal, Personnel Management and Services will recruit a highly qualified and diverse applicant pool (See School Board Rule 6Gx13-4C-1.19). Personnel shall provide all site administrators with information concerning the entire pool of qualified applicants. In addition, site administrators shall seek to interview a broad range of candidates for all available positions. All hiring decisions should be made by the site administrator based on the applicants' qualifications and the needs of the school and not on the basis of race, ethnicity or gender. Site administrators should be provided with continual training opportunities on multicultural issues, interviewing techniques, effective recruitment and retention practices, and public policy and legal issues related to employment and equity in order to help them to make appropriate hiring decisions and to develop and maintain diverse faculties. In addition, the Board may provide financial or other incentives for highly-qualified teachers (such as those possessing advanced degrees, specialized training, or National Board certification or those demonstrating exceptional instructional abilities) who commit to teach for at least five years at a school having difficulty retaining an experienced and highly-qualified faculty or at schools with a relatively high percentage of low-income or low-performing students.

**II. Assignment
And Transfer:**

To promote the goal of a diverse, highly-qualified faculty at each school, the overall diversity (in terms of factors such as educational background, experience, race, ethnicity and gender) of the school's staff may be considered as one factor in assessing requests for transfer to or from the school and in making assignments of teachers already hired by the M-DCPS. In addition, the Board may provide financial or other incentives for highly-qualified teachers (such as those possessing advanced degrees, specialized training, or National Board certification or those demonstrating exceptional instructional abilities) who commit to teach for at least five years at a school having difficulty retaining an experienced and highly-qualified faculty or at schools with a relatively high percentage of low-income or low-performing students.

**III. Monitoring
And Accountability:**

Each year, Personnel Management and Services, School Operations, and Equal Educational Employment Opportunity and Diversity Compliance

(“EEEODC), jointly will establish goals for the qualifications and diversity of school faculties by grade level configuration. The EEEODC will also monitor and annually report the qualifications (in terms of factors such as advanced degrees, experience and teaching out-of-field) and the diversity (in terms of factors such as race, ethnicity and gender) of each individual school’s faculty. Each site administrator shall be responsible for ensuring that these goals are met to the extent practicable on an annual basis. As noted above, staff development activities for site administrators should be provided to support them in meeting this responsibility. Where a school fails to meet the M-DCPS annual goals in terms of the qualifications (that is, falls below a specified minimum in terms of education or experience or exceeds a certain maximum in terms of out-of-field teachers) or diversity (that is, fails to reasonably reflect school level district-wide averages in terms of race, ethnicity or gender) of its faculty for two consecutive years, the authority to hire teachers for and approve transfers to and from that school may revert to the Superintendent of Schools or his or her designee.

Employee Relations:

The Board believes that democracy cannot be taught in the Miami-Dade County Public Schools without demonstrating its belief in democracy in the way the schools are operated.

All employees are hereby notified that they are expected to teach or work with other employees, to teach students, and to supervise or be supervised in their work by other employees without regard for the gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability of the individual. This is a unitary school system and should be understood as such by all persons connected with it.

It is understood that harassment or discrimination based on an employee's gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability is a violation of state and federal laws and a breach of the EEEODC policy, which shall be grounds for disciplinary action including but not limited to a discharge.

Sexual harassment including same sex harassment, is a violation of Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. It is defined as a pattern of behavior that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; (2) submission to or rejection of such conduct by

an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Such conduct needs to be severe or pervasive.

Complaints:

Complaints alleging employment harassment or discrimination on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability should be referred to EEO/DC.

Specific Authority: 230.22(2); 230.23(22) F.S.

Law Implemented, Interpreted, or Made Specific: 112.042; 112.043; 230.23(5); 230.23005(6)(11); 230.33(7)(a),(b),(c),(d); 231.02 F.S.; 6A-19.010 FAC; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination in Employment Act of 1967, as amended; Equal Pay Act of 1963; Florida Educational Equity Act, F.S. 228.2001; the Americans With Disabilities Act of 1990; the Pregnancy Discrimination Act of 1978; the Florida Civil Rights Act of 1992; and the Family and Medical Leave Act of 1993.

History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

Repromulgated: 12-11-74

Amended: 8-19-81; 6-8-94; 8-25-99; 6-19-02

Permanent Personnel**DISCRIMINATION/HARASSMENT: COMPLAINT PROCEDURES FOR EMPLOYEES****PROCEDURES FOR ASSURANCE OF COMPLIANCE
WITH FEDERAL/STATE REGULATIONS/SCHOOL BOARD POLICIES
OF NONDISCRIMINATION/HARASSMENT IN EMPLOYMENT****I. Purpose**

The School Board of Miami-Dade County, Florida, has established procedures to assure nondiscrimination in employment, and the elimination of harassment, including sexual harassment. It is the policy of the School Board that all employees will be treated with respect. Hostile treatment or violence against an employee because of his/her gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy or disability, will not be tolerated.

It is recognized that discrimination or harassment complaints by employees may arise from actual or perceived situations and circumstances related to the prohibition of discrimination. It is the intent of these procedures to assure that discrimination or harassment complaints are resolved in an expeditious, orderly, and equitable manner that serves to fulfill the letter and intent of the law. All administrators and principals are required to make a conscientious effort to fully consider and understand the nature and basis of the discrimination or harassment complaint of an employee and resolve it, to the satisfaction of the complainant, without delay or refer it, without delay, to the appropriate office for resolution. The initiation of a discrimination or harassment complaint by an employee will not be used as a basis for actions that adversely affect the complainant's standing in his/her work location. Additionally, participation in or assistance in the investigation of a complaint shall not to be used as the basis for any adverse employment action on an employee.

Discrimination or harassment complaints made under the provisions of this rule will be handled using federal enforcement agencies' procedures and standards in the processing and investigation of discrimination/harassment charges and without extraneous administrative barriers. No anonymous complaints shall be accepted or processed. The complaint must be signed attesting that it is true to the best of the complainant's knowledge, information and belief. Any complainant who knowingly submits false information will be subject to disciplinary action. A record will be maintained of each discrimination or harassment complaint investigation to include the final disposition of each.

II. Procedure for Filing Complaints

A School Board employee who has a reasonable and good-faith belief that he/she has been the subject of discrimination or harassment because of his/her gender, race, color, religion, ethnic or national origin, political beliefs marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability, shall communicate in writing the allegation(s) to his/her principal or supervising administrator.

If the employee does not feel comfortable discussing his/her complaint at the work site or next administrative level, the employee may file the complaint directly with the School Board's Civil Rights and Diversity Compliance (CRDC) office.

Due to the sensitive nature of sexual harassment complaints, employees may file such a complaint directly with the School Board's CRDC office.

If the complaint is submitted to the principal or administrator, the principal or administrator will be responsible for scheduling a meeting with the complainant to discuss the complaint. In the event the complaint involves the employee's principal or supervising administrator, the employee may go directly to the next level of administration, such as an Assistant/Associate/Deputy Superintendent. If the employee does not feel comfortable discussing his/her complaint at his/her work location, the employee may file the complaint with the next administrative level.

If the complaint is not resolved to the complainant's satisfaction after discussion with the principal or supervising administrator, or cannot be resolved at that level, the employee may appeal at the next level of administration, i.e., Assistant/Associate/Deputy Superintendent.

If the complaint is not satisfactorily resolved at the second level of administration, as determined by the employee, he/she may file a complaint with the School Board's CRDC office. The employee will be requested to provide to the School Board's CRDC office signed, specific information regarding the discriminatory or harassing action(s) or inaction(s), the basis (e.g., age, race, disability, etc.) for the action(s) or inaction(s), the alleged offender(s), witnesses, etc.

III. Appeals

If the employee does not agree with the final determination made by the School Board's CRDC office, he/she may appeal the determination to the Superintendent's designee to hear such appeals by submitting a letter of appeal within 15 workdays of the date of the final determination.

IV. Special Provisions

- A. Failure on the part of the employee to initiate and/or follow-up on a complaint in a timely manner may result in the complaint being considered abandoned. A complaint must be filed within 300 days of the alleged discriminatory act(s).
- B. Failure by a principal or appropriate administrator to address a complaint, within ten (10) workdays will automatically allow the complainant to move the complaint to the next level of administration.
- C. In general, School Board employees are obligated to perform their duties, as directed, while complaints are pending resolution.
- D. Records of an ongoing investigation shall remain confidential and not subject to disclosure pursuant to Chapter 119, Florida Statutes, until a final determination is made on the case.
- E. Suspensions, dismissals, and reductions in pay grade are not subject to federal/state regulations in the absence of discrimination.

This rule is intended to effect compliance with federal/state regulations, i.e., Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination in Employment Act of 1967, as amended; Equal Pay Act of 1963; the Florida Educational Equity Act, F.S. 1000.05; the Americans with Disabilities Act of 1990; the Pregnancy Discrimination Act of 1978; the Florida Civil Rights Act of 1992; and the Family and Medical Leave Act of 1993.

Specific Authority: 1001.41(1)(2); 1001.42(22); 1001.43(10) F.S.

Law Implemented, Interpreted, or Made Specific: 1001.43(11) F.S.; 6A-19.009 FAC; Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination in Employment Act of 1967, as amended; Equal Pay Act of 1963; the Florida Educational Equity Act, F.S. 1000.05; the Americans with Disabilities Act of 1990; the Pregnancy Discrimination Act of 1978; the Florida Civil Rights Act of 1992; and the Family and Medical Leave Act of 1993.

History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

New: 6-4-86

Amended: 9-17-86; 3-4-92; 6-8-94; 8-25-99; 10-22-03

APPENDIX B

**THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, ADHERES TO
A POLICY OF NONDISCRIMINATION IN THE EDUCATIONAL AND WORK
ENVIRONMENTS**

DISCRIMINATION/HARASSMENT

It is the policy of the School Board, that all students and employees be treated with respect. The School Board strives affirmatively to provide a workplace and educational environment free from discrimination and harassment (including sexual harassment), as required by law. Through this policy, the School Board establishes its intent to provide equal access, opportunity, and treatment to students in the provision of educational programs and activities and to applicants and employees in all aspects of employment. Slurs, innuendos, hostile treatment, violence, or other verbal or physical conduct against a student or employee reflecting on his/her race, ethnic or national origin, gender, or any other of the categories described below, will NOT be tolerated by the School Board.

The School Board Policy covers the following protected categories:

- | | |
|--------------|--------------------------------|
| → Gender | → Marital Status |
| → Race | → Linguistic Preference |
| → Color | → Sexual Orientation |
| → Religion | → Ethnic or National Origin |
| → Age | → Social and Family Background |
| → Disability | → Political Beliefs |
| → Pregnancy | |

Sexual Harassment will NOT be tolerated.

Sexual Harassment includes:

- unwelcome sexual advances;
- requests for sexual favors; and,
- other verbal or physical conduct of a sexual nature,

When:

- submission to such conduct is made - either explicitly or implicitly - a term or condition of employment or participation in an educational program;
- submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating hostile, or offensive working or educational environment.

RETALIATION AGAINST A STUDENT OR EMPLOYEE WHO FILES A COMPLAINT IS PROHIBITED BY LAW

If any student, employee, or applicant has a complaint of discrimination/harassment that cannot be resolved with the appropriate school system administrator, the complaint may be made to:

Civil Rights and Diversity Compliance
1500 Biscayne Boulevard, Suite 234
Miami, Florida 33132
Phone: (305) 995-1580 TDD: (305) 995-2400
crdc@dadeschools.net

THE AMERICANS WITH DISABILITIES ACT (ADA) OF 1990

SCHOOL DISTRICT FUNCTIONS AND RESPONSIBILITIES

SERVICES FOR EMPLOYEES

Process and respond to requests for services/accommodations from school system employees with disabilities.


Convene and facilitate the work of the ADA District Consultative Committee which is charged with determining whether the employee is a qualified individual with a disability and provide reasonable accommodations, if necessary.

Facilitate the provision of services/accommodations to employees with disabilities, as directed by the ADA District Consultative Committee.

Provide inservice training to school district staff regarding the requirements and implementation of the ADA and related issues.

Make recommendations to the ADA District Consultative Committee, as necessary or appropriate.

For more information, please contact the following office:

Human Resources Standards
305-995-7116  TDD: 305-995-2400
ada-employee@dadeschools.net

FACILITIES ACCESSIBILITY COMPLIANCE

Survey the school district's facilities and make recommendations to ensure compliance with the ADA.

Serve as a resource to school district staff with respect to ADA accessibility requirements.

Receive, process, investigate and respond to complaints from employees and the public regarding ADA accessibility compliance.

Serve as the school district's ADA Accessibility Coordinator and as a member of the ADA District Consultative Committee.

Communicate with local, state, federal agencies, and educational entities regarding the implementation of ADA accessibility requirements.

For more information, please contact the following office:

Division of Facilities ADA Compliance
305-995-4650  TDD: 305-995-2400
ada-facilities@dadeschools.net

COMPLIANCE WITH THE ADA

Receive, process, and investigate internal complaints from employees alleging discrimination or harassment on the basis of disability.


Receive process and investigate complaints from employees, students, and applicants alleging that the school district is not meeting its obligations under the provisions of ADA.

Serve as a resource to school district staff on the requirements of the ADA and as a member of the ADA District Consultative Committee.

Provide inservice training to school district staff regarding compliance issues.

Respond to state and federal agencies regarding complaints of discrimination filed against the school district on the basis of disability.

For more information, please contact the following office:

Civil Rights Compliance
305-995-1580  TDD: 305-995-2400
crc@dadeschools.net

APPENDIX C

List of Local Agencies that Provide Interpreting Services

Accommodating Ideas, Inc.

3807 West Sierra Highway, #6
PMB 4535
Acton, CA 93510
(818) 386-6348 V/TTY
(818) 836-6352 FAX
(877) 237-3031 TDD

Adriana Schaked Translations LLC

P.O. Box 630635
North Miami, FL 33163
(305) 933-9595 V
(305) 933-3969 FAX

Accommodating Ideas, Inc.

South Florida Division
3801 West State Road 84, #104
Davie, FL 33312
(305) 788-9310

CODA Link, Inc.

1304 SW 160 Ave
Sunrise, FL 33326
(954) 423-6893 V
(954) 423-2315 FAX/TTY

Deaf Services Bureau, Inc.

1250 NW 7th Street, Suite 207
Miami, FL 33125
(305) 560-2866 V/TTY
(305) 560-2854 FAX

Nationwide Interpreter Resources, Inc.

P.O. Box 272142
Boca Raton, FL 33427
(888)-NIR-9788 V/TTY
(561) 362-9785

Accessible Communication for the Deaf

19451 Sheridan Street, Suite 340
Pembroke Pines, FL 33332
(954) 347-5749 V
(954) 241-5033 FAX

APPENDIX D



**MIAMI-DADE COUNTY PUBLIC SCHOOLS
AMERICANS WITH DISABILITIES ACT (ADA) DISTRICT CONSULTATIVE COMMITTEE**

**EMPLOYEE SELF-REFERRAL FORM
REQUEST FOR REASONABLE ACCOMMODATIONS UNDER THE ADA**

Instructions: *When this questionnaire is fully completed, sign, date, and return it to Madeleine Rodriguez, Chairperson, ADA District Consultative Committee, School Mail Code 9322. Please print legibly or type the information requested. If you need additional space, please attach separate sheets of paper identifying your response to the question by number.*

Name: _____ Employee Number: _____

Home Address: _____ Home Telephone: _____

Immediate Supervisor's Name: _____

Worksite Name: _____ Mail Code: _____

Your Job Title: _____ Worksite Telephone: _____

1. Do you currently possess the experience, training, certification or licensure for the job position you occupy? Yes ___ No ___ Please specify _____
2. Do you have a physical and/or mental condition/impairment? Yes ___ No ___
3. What type of condition(s)/impairment(s) are you requesting accommodations for (Diagnosis)?

4. Who made the diagnosis (provide name(s), address(es) and telephone number(s) of the health care provider(s) who made the diagnosis)?

Please attach a medical statement or other current documentation from your current health care provider regarding the specific conditions/impairments listed in item three. Current documentation must be dated within the past six months from the date this questionnaire is submitted. Additionally, the documentation must indicate the specific doctor(s) treating the conditions listed above.

5. On what date(s) were you first diagnosed with the condition(s)/impairment(s)?

Date(s): _____

6. On what date(s) did you start treatment for the condition(s)/impairment(s)?

Date(s): _____

7. Do you experience any limitations in your personal life (outside of work) as a direct result of the condition or impairment? Yes No If so, please state whether any of the following activities are limited:

- | | | | | | |
|---------------------|--|--------------------------|--|-----------|--|
| Walking: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Seeing: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Hearing: | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Speaking: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Breathing: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Learning: | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Sitting: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Standing: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Lifting: | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Thinking: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Concentrating: | Yes <input type="checkbox"/> No <input type="checkbox"/> | | |
| Caring for oneself: | Yes <input type="checkbox"/> No <input type="checkbox"/> | Performing manual tasks: | Yes <input type="checkbox"/> No <input type="checkbox"/> | | |

8. If you answer "yes" to any of the above, please explain *in detail* how the condition/impairment limits or restricts those activities:

9. Does any medical treatment, use of prosthetic devices, or taking of medications reduce your symptoms or limitations? If so, list all treatments, prosthetic devices, and/or medications below. If you are not taking any corrective measures, explain why.

10. Are you consistently following your treatment plan, as specified by your doctor, and if not, why not?

11. If you suffer side effects from the medications or treatments, please list them below:

12. Do you experience any limitations in your work (specific job tasks) as a direct result of the condition or impairment? If so, list those limitations.

13. Can you perform the essential functions of your job with or without a reasonable accommodation? Please explain your response.

14. What reasonable accommodations would allow you to perform the functions of your job? (List all possible accommodations.)

15. Is the reasonable accommodation needed *because* of the impairment? Yes ___ No ___

16. If you **cannot** perform a function of your job with reasonable accommodations, please list those job functions below:

SAMPLE

17. Does your impairment/condition prevent you from working in any type/kind of job? If so, list all jobs which you are prevented from performing.

18. Please list the name(s), address(es), telephone number(s) and specialties of all health care providers who will be submitting a completed "Medical Information Form" attached to this questionnaire and execute an "Authorization for Release of Medical/Psychological Information" for each health care providers listed below:

NAME OF PROVIDER	SPECIALTY	TELEPHONE NUMBER
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SAMPLE

Signature: _____

Date: _____

The School Board of Miami-Dade County, Florida, adheres to a policy of nondiscrimination in employment and educational programs/activities and programs/activities receiving Federal financial assistance from the Department of Education, and strives affirmatively to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin.

Title VII of the Civil Rights Act of 1964, as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of gender.

Age Discrimination in Employment Act of 1967 (ADEA), as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

The Equal Pay Act of 1963, as amended - prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled.

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

Florida Educational Equity Act (FEEA) - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

Florida Civil Rights Act of 1992 - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

School Board Rules 6Gx13- 4A-1.01, 6Gx13- 4A-1.32, and 6Gx13- 5D-1.10 - prohibit harassment and/or discrimination against a student or employee on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability.

Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.

The Americans with Disabilities Act (ADA) of 1990

School District Functions and Responsibilities

Services for Employees

Process and respond to requests for services/accommodations from school district employees with disabilities.

Serve as Chairperson of the ADA District Consultative Committee.

Convene and facilitate the work of the ADA District Consultative Committee, which is charged with determining if the employee is a qualified individual with a disability, and providing reasonable accommodations, if necessary.

Facilitate the provision of services/accommodations to employees with disabilities, as directed by the ADA District Consultative Committee.

Provide inservice training to school district staff regarding the requirements and implementation of the ADA and related issues.

Make recommendations to the ADA District Consultative Committee, as necessary or appropriate.

Lead Responsibility:

Human Resources Standards

Telephone: 305-995-7116

TDD: 305-995-2400

ada-employee@dadeschools.net

Facilities Accessibility Compliance

Survey the school district's facilities and make recommendations to ensure compliance with the ADA.

Serve as a resource to school district staff with respect to ADA accessibility requirements.

Receive, process, and respond to complaints from employees and the public regarding ADA accessibility compliance.

Serve as the school district's ADA Accessibility Coordinator and as a member of the District Consultative Committee.

Communicate with local, state, federal agencies, and educational entities regarding the implementation of ADA accessibility requirements.

Lead Responsibility:

Division of Facilities ADA Compliance

Telephone: 305-995-4650

TDD: 305-995-2400

ada-facilities@dadeschools.net

Compliance with the ADA

Receive, process, and investigate internal complaints from employees alleging discrimination or harassment on the basis of disability.

Receive, process, and investigate complaints from employees, students and applicants alleging that the school district is not meeting its obligations under the provisions of ADA.

Serve as a resource to school district staff on requirements of the ADA, and as a member of the ADA District Consultative Committee.

Provide inservice training to school district staff regarding compliance issues.

Respond to state and federal agencies regarding complaints of discrimination filed against the school district on the basis of disability.

Lead Responsibility:

Civil Rights Compliance

Telephone: 305-995-1580

TDD: 305-995-2400

crdc@dadeschools.net

The Americans with Disabilities Act (ADA)

What is the ADA?

The ADA is a civil rights law protecting qualified individuals with disabilities from employment discrimination and giving them access to public services, public accommodations, public transportation, commercial facilities, and telecommunications. In general, it covers all employers who have 15 or more employees (including certain part-time employees) working for them for 20 or more calendar weeks in the current or preceding calendar year.

The ADA is not a “guaranteed-jobs law” for people with disabilities. If an individual with a disability who meets the minimum requirements applies for a job and a nondisabled individual with more experience also applies, it is not a violation for the employer to select the more experienced applicant.

What Does the ADA Require?

The **public accommodations provisions of the law** requires the removal of architectural and structural barriers that limit access to disabled individuals from places of public access where doing so is readily achievable meaning, easily accomplished and able to be carried out without much difficulty or expense. Factors to be considered in determining whether barrier removal is readily achievable include the nature and cost of the barrier removal, the overall financial resources of the institution, and the number of people employed.

The United States Department of Justice suggests that the institutions rank priorities for achieving accessibility in the following order:

- ♿ entrances, including providing signage for designated parking, passenger loading zones, curb cuts, and widening entrances and ramping steps;
- ♿ location of services, including, for example, moving services to ground floors when lacking elevators;
- ♿ public restroom accessibility and features; and
- ♿ other accessibility measures.

The **ADA’s employment provisions** prohibit discriminating against qualified individuals with disabilities in the recruiting, application, and hiring processes, as well as in the terms and conditions of employment, including promotion and training opportunities. Discrimination includes, but is not limited to, limiting, segregating, classifying, or treating a job applicant or employee in a way that adversely affects job opportunities or status because of the individual’s disability.

The ADA requires covered entities to provide “reasonable accommodations” to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless the entity can demonstrate that the accommodation would impose an undue hardship.

Employers are not only prohibited from outright, blatant discrimination against employees with disabilities but also from using practices that have the effect of discriminating; for example, qualification standards,

employment tests, or selection criteria that tend to screen out individuals with disabilities, unless the standard is “job related.”

The law requires employers to engage in an “interactive” process, in good faith, with an employee to consider and make “reasonable accommodations” to the known physical or mental limitations, of a qualified individual with a disability, unless doing so would impose an undue hardship on the employer. Additionally, under certain circumstances, applicants for jobs may also require reasonable accommodation in the application process.

Who is a Disabled Individual Under the ADA?

The ADA prohibits employment discrimination against “**qualified individuals with disabilities.**”

Definition

A **disabled** individual, under the ADA, is a person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. “Major life activities” refer to activities that are of central importance to most people’s daily lives. They include such things as seeing, hearing, walking, caring for oneself, performing manual tasks central to daily life, speaking, breathing, learning, and working. Other examples of major life activities include sitting, standing, lifting, and mental and emotional processes, such as thinking, sleeping, concentrating, and interacting with others.

As indicated by the above definition, an individual may qualify as “disabled” if (s)he has a record of such an impairment. An employee has a record of a substantially limiting impairment if (s)he:

- has a history of a substantially limiting impairment, or
- has been classified or misclassified as having a substantially limiting impairment.

Additionally, an individual may qualify as “disabled” if (s)he is **regarded** as having a substantially limiting impairment. An employee is regarded as disabled if (s)he:

- has an impairment that does not substantially limit the major life activity of work, but is treated by the employer as if it did, or
- has an impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment.

The crucial factor in the “regarded as” scenario is that by treating an individual, who may not otherwise qualify under the ADA, as having an impairment that significantly restricts her/him from working, the employer is regarding the employee as having an impairment that substantially limits the major life activity of working, whether or not the employee truly has such an impairment, and thereby extending the protections of the ADA to that employee.

What is “Substantially Limiting”?

Definition

An impairment is ***substantially limiting*** if it prevents or to a large degree restricts an individual's ability to perform a major life activity, as compared to the ability of the average person in the general population performing the same activity.

The determination of whether an impairment substantially limits a major life activity depends on the nature and severity of the impairment, the duration or expected duration of the impairment. The impairment's impact must be permanent or long-term.

Short-term, temporary restrictions are generally not substantially limiting, but an impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities, if they are severe.

What is an Impairment?

Definition

An ***impairment*** is a physiological disorder or condition affecting one or more body systems or a mental or psychological disorder such as emotional or mental illness. It is not the name of the impairment or condition that determines whether a person is disabled under the ADA, but rather, the effect the impairment has on the major life activities of the particular person.

Individuals with disabilities such as vision, hearing, and mental and motor impairments as well as those with debilitating diseases such as HIV/AIDS are included and, therefore, covered by the ADA.

Persons with temporary disabilities, such as a broken leg, and those with minor impairments (such as poor vision that is correctable with eyeglasses) that do not substantially limit major life activities, are not covered by the ADA.

The following conditions are not impairments:

- environmental, cultural, and economic disadvantages;
- homosexuality and bisexuality;
- pregnancy;
- physical characteristics (eye and hair color, left-handedness);
- personality traits or behaviors; and
- normal deviations in height, weight, or strength.

The regulations implementing the ADA define “mental impairment” to include “any mental or psychological disorder.” Mental or psychological disorders are further defined to include, but are not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The following are not considered to be mental impairments:

- gender identity disorders, not resulting from physical impairments, or other sexual disorders; and
- conditions resulting from current illegal use of drugs.

Who is “Qualified” Under the ADA?

Definition

A ***qualified individual with a disability*** is one who has a disability, within the meaning of the ADA, who satisfies the requisite skills, experience, education, and licensing requirements, and who, with or without a reasonable accommodation, can perform the essential functions of the job.

Essential Functions of the Job

The essential functions of a position are those that are central to accomplishing the tasks that are required of the position, not those that are marginally related to the outcome. In determining whether a particular duty is an essential function, the employer needs to focus on the purpose of the function and the result to be obtained, and consider whether transferring the function to another employee would fundamentally alter the nature of the job. Although not required by the ADA, job descriptions can be considered evidence of the employer’s intent in so far as essential/marginal functions are concerned.

The following types of questions can provide assistance in determining which functions are essential to a job:

- Will removing the functions fundamentally alter the position?
- Is the function included in the written job description?
- Is the function specified under collective bargaining agreements?
- How much time is spent performing the function?
- What are the consequences of the employee failing to perform the function?
- How many other employees are available to perform the job function?
- Does the position exist to perform the function?
- What experience is needed to perform the function?
- What is the experience of past and/or current incumbents of the job?

The term “*essential functions*” refers only to the tasks to be performed, and not to the manner in which those tasks are performed.

For example: In a job requiring the use of a computer, the essential function is the ability to access, input, and retrieve data from the computer. It is not “essential” that the employee be able to use a keyboard or be able to visually read the data from a computer screen. Adaptive devices or software may enable a person with no arms or with impaired vision to control the computer and access information.

What is a Reasonable Accommodation?

Definition

A ***reasonable accommodation*** is any change in the work environment or the manner in which a job is usually performed that enables an individual with a disability to enjoy equal employment opportunities. It includes modifications or adjustments to processes, job positions, worksites accessibility, work schedules, or equipment which allows an applicant to apply for a job or an employee to perform the essential functions of the job.

Some of the major issues to consider in regard to reasonable accommodation, include the following:

- In general, it is the responsibility of the employee to inform her/his supervisor of the need for accommodation(s);
- Administrators should immediately refer employees’ requests for accommodation to Ms. Madeleine Rodriguez, Executive Director, Human Resources Standards, and Chairperson of the M-DCPS ADA District Consultative Committee (hereinafter referred to as the Committee), at 305-995-7116;
- The determination as to what may constitute a reasonable accommodation should be made, on a case-by-case basis, by the Committee, after its determination of the employee’s eligibility under the provisions of the law; and
- The accommodation offered need not be the best accommodation, or the one preferred by the employee; but it must be adequate to enable the employee to perform the essential functions of the job.

Examples of reasonable accommodations include the following:

- job restructuring (reallocating non-essential or marginal job functions);
- acquisition or modifications of equipment or devices;
- provision of qualified readers or interpreters;
- making existing facilities readily accessible to and usable by persons with disabilities (“path of travel”);

- ☑ part-time or modified work schedule;
- ☑ appropriate adjustments or modifications of examinations, training materials, or policies;
- ☑ provision of assistance by other support personnel for specific non-essential/marginal functions;
- ☑ permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment; and
- ☑ reassignment to a vacant job position for which the employee is qualified, if the disabled person is unable to perform the original job. (Reassignment should be considered only where there are no possible accommodations that would allow the employee to perform the current position without creating an undue hardship on the employer. The employee should identify vacant positions for which the individual is qualified and which have equivalent pay status and conditions of employment).

Communication Access for the Blind/Low Vision and Deaf/Hard-of-Hearing

Communication access is essential for the productive employment of blind/low vision and deaf/hard-of-hearing individuals. Access refers not only to equipment, but also to ways to improve the flow of communication. This includes eliminating barriers to communication and ensuring that blind/low vision and deaf/hard-of-hearing employees are kept informed and included in the school and district activities.

Open communication between employers and visually and hearing impaired employees is critical to complying with the law. Employers should encourage employees with visual or hearing impairments to discuss their needs. It is the responsibility of the employee with the visual or hearing impairment to let employers know what kind of accommodation(s) they need to effectively perform the essential functions of their job. **It is the employers' obligation to make sure that the accommodation(s) is implemented.**

Reasonable accommodations for the **blind/low vision** individuals include, but are not limited to, the following:

- Assistive technology, including:
 - a closed circuit television system (CCTV) for reading printed materials;
 - an external computer screen magnifier;
 - cassette or digital recorders;
 - software that will read information on the computer screen; and
 - an optical scanner that can convert print documents into electronic form.
- Written materials in an accessible format, such as in large print, Braille, audio cassette, or electronic format;

- Allow use of guide dog in the workplace;
- Modification of an employment test;
- A human reader when materials cannot be converted electronically;
- An accessible website; and
- Modified training or training in the use of assistive technology.

For Example: A school site has decided to upgrade its computer programs. In order to teach its staff about the new systems, it has set up several “hands-on” training classes in which groups of employees will be shown how to execute various functions using the new software and then will have an opportunity to complete a series of exercises using those functions with guidance from the instructor. Most of the demonstrations and exercises will involve use of a computer mouse to execute functions. A blind employee who uses a screen reading program is unable to use a computer mouse effectively and will require individualized instruction that will enable him/her to learn how to perform necessary functions using keyboard commands.

Reasonable accommodations for individuals with hearing loss, include but are not limited to, the following:

- Telecommunication Devices for the Deaf (TDD) which include text telephones (TTY), amplified telephones;
- Visual alarms which include fire alarms, smoke alarms, doorbells, school bell schedule, and telephone ring signalers;
- Visible accommodations to communicate audible messages (i.e., announcements made over the public address system);
- Assistive listening systems (i.e., FM system, infrared loop);
- Captioned media (i.e., closed-captioned decoders, televisions with built-in decode chip(s), open-captioned videotapes, closed-captioned videotapes);
- Sign language interpreter services for deaf employees who rely on sign language; and
- Oral interpreter or transcription services for deaf/hard-of-hearing employees who do not use sign language.

Under the ADA, the employer must provide a sign language or oral interpreter for all mandatory faculty meetings, workshops, parent conferences, and special activities in which the deaf and/or hard of hearing employee is required to participate. To ensure the availability of interpreting services, requests should be made at least ten (10) business days prior to the date of the event. The employer should request that the sign language interpreter possess national certification or at least a minimum of a Quality Assurance Level II (QAII) to ensure effective communication. Please refer to Appendix C for a list of local agencies that provide interpreting services on a contractual basis.

Drug and Alcohol Abuse

The ADA specifically permits employers to ensure that the workplace is free from the illegal use of drugs and the abuse of alcohol, and to comply with other federal laws and regulations regarding alcohol and drug abuse.

An employer may discharge or deny employment to current users of illegal drugs, on the basis of such drug use, without fear of being held liable for disability discrimination. Current users of illegal drugs are not "*individuals with disabilities*" under the ADA. If an individual tests positive on a test for the use of illegal drugs, the individual will be considered a current drug user under the ADA where the test correctly indicates that the individual is engaging in the illegal use of a controlled substance.

Persons who are addicted to drugs, but who are no longer using illegal drugs and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of **past** drug addiction. The employee may be protected because (s)he has a history of addiction or because (s)he may be "*regarded as*" being addicted if the employee is regarded as being substantially limited in a major life activity.

An employee claiming discrimination because of past history or perceived illegal drug addiction, may be asked by the Committee to prove that (s)he has a record of, or is regarded as having an addiction to drugs.

For example: If a supervisor perceived someone to be addicted to illegal drugs based upon rumor and the groggy appearance of the employee, but the rumor was false and the appearance was the side effect of a lawfully prescribed medication, this individual would be "*regarded as*" an employee with an impairment (drug addiction), and would be protected from discrimination based upon that false assumption if the employee is regarded as being substantially limited in a major life activity.

While a current user of illegal drugs has no protection under the ADA if the employer acts on the basis of such use, a person who currently abuses alcohol is not automatically denied protection simply because of the alcohol abuse. An alcoholic is a person with an impairment under the ADA and may be entitled to consideration for accommodation, if (s)he otherwise, meets the requirements of the ADA definition of "disability." In so far as an individual's job performance or conduct is adversely affected by the abuse of alcohol, the employer may discipline, discharge, or deny employment based on said conduct. However, the employer may not discipline an alcoholic employee more severely than (s)he does other employees for the same performance or conduct.

For example: If an individual who suffers from alcoholism is frequently late to work or is not able to perform the duties of the job, an employer may take disciplinary action only on the basis of the poor performance and conduct.

Workers' Compensation and the ADA

The workers' compensation law is designed to provide compensation and assistance to employees who suffer work-related injuries, while the purpose of the ADA is to protect people from discrimination on the basis of a disability.

Whether an employee out on workers' compensation is protected by the ADA will depend on whether or not the individual meets the definition of a "qualified individual with a disability." The employee must have an impairment that substantially limits a major life activity, or have a record of, or be regarded as having such an impairment.

Therefore, not every employee injured on the job will meet the definition of a "qualified individual with a disability" and thus be entitled to the protections afforded by the ADA. Work-related injuries do not always cause a physical or mental impairment severe enough to substantially limit a major life activity. A great number of job injuries heal within a short period of time and have little or no long-term or permanent impact. Such injuries are not, therefore, considered "disabilities" under the ADA.

The fact that an employee is awarded workers' compensation benefits or even is assigned a disability rating under the state workers' compensation laws does not automatically establish that the person is "disabled" and within the protection of the ADA. The Committee will consider work-related injuries on a case-by-case basis to determine whether or not the employee may qualify for protection under the ADA.

Even though a work-related injury may not be disabling under the ADA, it is possible that such an impairment could result in a disability in certain circumstances.

Additionally, if an impairment or condition caused by an on-the-job injury does not substantially limit an employee's ability to work, but the supervisor regards the individual as having an impairment that makes her/him unable to perform a class of jobs, such as "heavy labor," this employee would be "regarded" by the supervisor as having a disability.

Finally, **under the provisions of the ADA**, an employer cannot refuse to let an individual with a disability return to work because the employee is not fully recovered from an injury, except when (s)he: 1) cannot perform the essential functions of the job that (s)he held or desired, with or without an accommodation; or 2) would pose a significant risk of substantial harm that could not be reduced to an acceptable level with reasonable accommodation(s).

Because a reasonable accommodation may include reassignment to a vacant position, an employer may be required to consider an employee's qualifications to perform other vacant jobs for which (s)he is qualified, when the employee can no longer perform the job held at the time of the injury.

Family Medical Leave Act and the ADA

The Family Medical Leave Act (FMLA) of 1993 requires employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees. Employees are eligible if they have worked for a covered employer for at least one year and working 1,250 hours over the previous 12 months.

Unpaid leave must be granted for **any** of the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

The employer may require medical certification to support a request for leave of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness to work examination for the employee's return.

The United States Labor Department states that the FMLA is not intended to modify or affect the ADA. Employees entitled to leave under both the FMLA and the ADA are entitled to the benefits of whichever law provides the greater rights. If an employee is a "qualified individual with a disability" within the definition of the ADA, the employer must make a reasonable accommodation under that law, while at the same time granting applicable FMLA rights.

If an employee is entitled to FMLA leave, the Department of Labor states that an employer may not, instead of granting the leave, require an employee to take a job.

All worksite administrators are required to grant FMLA leave to employees for the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

M-DCPS Procedures for ADA Eligibility Determination and Accommodations

All worksite administrators are required to:

- Post in visible areas the Discrimination/Harassment and ADA School District Functions and Responsibilities posters; (See Appendix B)
- Refer employees seeking assistance under the ADA to Ms. Madeleine Rodriguez, Executive Director, Human Resources Standards, at 305-995-7116;
- Provide appropriate information, to facilitate the Committee's assessment of the merits of the request. This may entail, but is not limited to, providing technical assistance to determine essential functions of a job; attending Committee meeting(s); providing job performance information, and other relevant information;
- Maintain confidentiality of medical records submitted to the site administrator; and
- Refer any complaints from employees alleging that the school district is not meeting its obligations under the employment and/or accessibility requirement provisions of the ADA to the Civil Rights Compliance office, at 305-995-1580.

The determination of eligibility under the ADA, as well as the review of requests for accommodation from employees and job applicants has been delegated to the ADA District Consultative Committee. This Committee meets the third Tuesday of every month. It is comprised of a core group of District personnel representing the School Board Attorney's Office, Office of Personnel Support Programs, Division of

Facilities ADA Compliance, Office of Human Resources, Civil Rights Compliance, Office of Risk and Benefits Management, Regional Centers, Office of Professional Standards, and a Board-approved medical consultant. Additionally, other individuals from the district or outside agencies are requested to provide assistance or expertise as necessary, based upon the need for information required by the particular case(s) under review.

The Committee's process involves the following steps:

- Identification of employee seeking accommodation through the following types of referrals to the Chairperson of the Committee:
 - Employee Self-Referral;
 - Referral by a collective bargaining unit representative; and
 - Referral by a district level support office (e.g., Workers' Compensation, Civil Rights Compliance, Employee Assistance Program, Administrative/Professional and Technical Staffing, Worksite Administrator, etc.).
- Employee completes the Employee Self-Referral Form (See Appendix D) and provides a Release of Medical Information Form (See Appendix D), and requested medical documentation.
- If necessary, a conference will be scheduled, to include the Chairperson of the Committee, the employee, and the site administrator or designee.
- The Committee meets to accomplish the following possible actions:
 - Review of the employee's request for accommodation(s);
 - Review of findings of the on-site consultative conference;
 - Review of medical and other appropriate support documentation;
 - Determination of employee's eligibility as a "qualified individual with a disability";
 - Determination regarding the requested accommodation; and
 - Recommendation for closing the case or further follow-up by the Chairperson of the Committee.
- Follow-up Committee meeting(s) convened in response to one or more of the following:
 - The Committee has requested follow-up from the Chairperson, including gathering of additional documentation or expert opinion from an outside agency/medical personnel;
 - The Committee has requested follow-up in regard to accessibility requirement issues;
 - The Committee has requested clarification from the School Board's Attorney's Office;

- The Committee has requested follow-up from District or Regional Center personnel; and
- Employee has not accepted the determination/accommodation(s) offered by the Committee and requests to personally make a presentation before the Committee.

Job Application and Interview Do's and Don'ts

According to the United States Equal Employment Opportunity Commission (EEOC), the following are examples of questions that **CANNOT** be asked on a job application or during a job interview:

- Have you ever had or been treated for a medical condition or disease?
- Please list any conditions or diseases for which you have been treated in the past three years.
- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- Is there a health-related reason why you may not be able to perform the job for which you are applying?
- Have you had a major illness in the last five years?
- How many days were you absent from work because of illness last year?
- Do you have any physical defects which preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations.
- Do you have any disabilities or impairments which may affect your performance in the position for which you are applying?
- Are you taking prescribed drugs?
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever filed for workers' compensation?

Pre-employment questions that **CAN** be asked are the following:

- Can you meet the requirements of our attendance policy?
- Can you perform the tasks of this position with or without accommodation?
- Describe or demonstrate how you would perform this function, with or without an accommodation. (Such a question can be asked of an applicant who has a known disability that might prevent her/him from performing a job function. If the disability would not interfere

with a job function, however, the person could only be asked to demonstrate job performance if all other candidates are also asked to do so.)

Interviewing Applicants with Specific Disabilities

Interviewing people with disabilities is generally the same as interviewing people without disabilities. The focus of the interview should be on the applicant's qualifications and competencies, including experience and skills for doing the job. At times, employers may be at a loss when interviewing someone with a disability. The following are some basic guidelines for keeping a job interview focused on the applicant's qualifications.

When interviewing an applicant who uses a wheelchair:

- Keep accessibility in mind. If a chair poses a barrier to the wheelchair user, move it aside.
- Don't hold or lean on the wheelchair.
- Don't assume that the individual wants to be pushed; always ask first.
- Maintain eye contact and eye level with the applicant.
- Don't be embarrassed to use such phrases as, "Let's walk over to the other office."

When interviewing applicants who are blind or have vision impairments:

- Immediately identify yourself and others in the room or have the individuals introduce themselves. This will assist the applicant with orientation to the room and its occupants.
- Tell the applicant when someone is leaving the room.
- Use verbal cues; be descriptive in giving directions.
- Verbalize chair location, or place the person's hand on the back of the chair, but **do not** place the person in the chair.
- Speak directly to the applicant using a normal tone of voice.
- Don't be embarrassed to use such phrases as, "Do you see what I mean?"
- Keep doors either open or closed, a half-open door is a serious hazard.
- Never touch or distract a service guide dog.

Be prepared to read aloud information that is written, or ask the person if (s)he could use the services of a trained reader.

When interviewing an applicant who is deaf or hard of hearing:

- You may need to use a physical signal to attract the applicant's attention before starting a conversation.

- If the applicant is lip reading, enunciate clearly and keep your mouth clear of obstructions.
- Don't shout. Speak directly to the applicant using a normal tone of voice.
- If you cannot understand what the applicant is telling you, ask the applicant to repeat the sentence.
- Not all people who are deaf or hard-of-hearing know or use sign language. Do not assume they need interpreters.
- If using a sign language or oral interpreter, always face and speak directly to the applicant, not the interpreter. Speak clearly and keep your hands away from your face.

Accessibility Requirements

The thrust of the ADA in regard to facilities is to provide a working environment that is readily accessible and “user friendly” to people with disabilities. New facilities being designed and constructed today can readily incorporate such features. However, it is a more complicated proposition to retrofit existing buildings.

A survey of a facility can be made as part of an overall assessment, or as an independent assessment that focuses solely on ADA compliance. Elements that are routinely considered in such a survey include, but are not limited to:

- | | |
|--------------------------------|---|
| ✓ Means of egress | ✓ Counters |
| ✓ Parking | ✓ Drinking fountains |
| ✓ Alarms/life safety | ✓ Signage |
| ✓ Curb ramps | ✓ Public telephones |
| ✓ Entrances | ✓ Tables and seating |
| ✓ Ramps and stairs | ✓ Assembly/Work areas |
| ✓ Elevators and platform lifts | ✓ Restrooms, including toilet stalls, toilets, urinals, sinks, and mirrors |
| ✓ Doors and door hardware | ✓ Bathrooms, including bathtubs, shower stall, tub/shower seats and grab bars |

Modifying the work environment is a traditional form of making a reasonable modification. It entails examining the worksite to meet the needs of a qualified individual with a disability. Alterations of the site can include the following:

- removing architectural barriers, for example, installing a ramp or modifying a bathroom;
- rearranging files or shelves for accessibility to people in wheelchairs;
- placing tactile labels on shelves and controls so that visually-impaired individuals can identify them;
- relocating meetings to an accessible site; or
- rearranging parking to allow a disabled person to park at the entrance closest to her or his worksite.

The above list is far from exclusive. Additionally, the employer should approach proposed modifications from the perspective of allowing disabled employees to function independently, affording them dignity and respect in their worksite.

In many cases, modifications to the worksite do not require costly purchases or alterations; a common sense approach being the best method.

For Example: If an employee in a wheelchair cannot use the standard desk given to staff at a particular worksite, it might be possible to elevate the desk (e.g., using blocks) to a height that allows access to the wheelchair, rather than purchasing a specially constructed desk.

Disabled employees themselves are often the best sources of ideas for cost-effective modifications and their requests are always fully considered by the members of the Committee.

The M-DCPS Division of Facilities ADA Compliance was established by Board action on January 19, 1994. The purpose of the Division is to support the District by surveying all Board owned/leased facilities for ADA compliance and to identify necessary changes to make programs accessible to disabled individuals, with minimal physical changes to existing facilities. The Division supports the Office of School Facilities in its remodeling and renovation projects to achieve the incorporation of ADA requirements into projects during the planning/design phase or through change orders, as appropriate.

ADA deficiencies are categorized by the Division into three levels:

- Level 1** – deficiencies to be corrected to provide immediate access/signage to all public areas on ground level (disabled parking, administration office, auditorium, cafeteria, male/female restrooms, and specific classrooms);
- Level 2** – deficiencies that can be made accessible by way of personnel assistance (reaching shelves, access to specialty equipment, etc.); and
- Level 3** – deficiencies preventing access to upper floors (elevators, lifts, etc.).

The District's multi-year ADA compliance plan is managed in conjunction with the Five (5) Year Capital Construction/Maintenance program to provide PROGRAM ACCESSIBILITY to the disabled; and is prioritized using the following three (3) categories:

Category 1 – Emergency – existing student/staff requiring immediate on site accommodation(s);

Category 2 – Urgent – ADA accommodations required within one to six months; and

Category 3 – Planned – ADA deficiency corrections to be incorporated in the Five (5) Year Plan.

The Division of Facilities ADA Compliance is also responsible for the investigation of complaints alleging ADA accessibility violations. In such cases, the Division conducts a Violation Verification Inspection and forwards recommendations for compliance to the Office of School Facilities and the Civil Rights Compliance office.

All questions, concerns, and complaints covering accessibility under the ADA, including scope of work, interpretation, and implementation, must be addressed to Mr. Auguste Nicoleau, Executive Director, Division of Facilities ADA Compliance, at 305-995-4650.

Guidelines for Designing Universal Accessible Websites

As the web becomes increasingly important in our society, access to the web becomes vital for people with disabilities. Technology plays an important role in providing individuals with disabilities an opportunity to increase their independence and become active members of the community. Poorly designed websites, however, can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some from entering. The design or format of a web page may determine whether this resource can be conveniently accessed by everyone – including users with disabilities.

Many people with disabilities use “assistive technology” to enable them to use computers and access the Internet. Blind people who cannot see computer monitors may use screen reader devices that speak the text that would normally appear on a monitor. People who have difficulty using a computer mouse can use voice recognition software to control their computers with verbal commands and people with other types of disabilities may use still other kinds of assistive technology.

Guidelines have been developed to assist web page writers with the development of universal accessibility of web pages. When developing and revising web pages, the following suggestions should be used to ensure accessibility by a diverse audience.

Web Content Accessibility Guidelines:

- Make documents clear and simple;
- Maintain a simple, consistent page layout throughout the site;
- Provide context and orientation information;
- Provide clear navigation mechanisms;
- Keep backgrounds simple with good contrast;
- Use standard HTML (Hypertext Markup Language);
- Design large buttons;

- Provide equivalent alternatives to auditory and visual content;
- Don't rely on color alone; and
- Include notes about accessibility.

The following suggestions will greatly assist access for people facing vision barriers:

- Design screens with little clutter;
- Leave considerable space around all items;
- Avoid placing more than one hyperlink on any one line;
- Avoid tile backgrounds; text can become obscured;
- Avoid dark or bright colored backgrounds; high contrast between text and background is desirable;
- Avoid the use of multi-column presentations or tables;
- For each page which contains images, provide a text-only alternative page. This alternative page can then be “spoken” with screen reading software; and
- Include text descriptions for images (which can be “spoken” by those using screen reading software).

Compliance Provisions

All District and school site administrators are responsible for the compliance of their school, department, division, or bureau with the requirements of the Americans with Disabilities Act (ADA). It is recognized that discrimination or harassment complaints on the basis of a disability may arise from actual or perceived situations.

In order for complaints to be resolved in an expeditious, orderly, and equitable manner, School Board Rule 6Gx13- 4A-1.32, Discrimination/Harassment: Complaint Procedures for Employees, establishes appropriate procedures to ensure nondiscrimination in employment. Any individual, who after discussing the allegations with the worksite administrators, as appropriate, feels that her/his complaint is not satisfactorily resolved, may file a complaint with the Civil Rights Compliance office at 305-995-1580.

Human Resources

AMERICANS WITH DISABILITIES ACT (ADA)

Children and adults with disabilities, including employees and applicants for employment, are welcome in all Miami-Dade County Public Schools facilities, programs, and activities. It is the policy of The School Board of Miami-Dade County, Florida that no individual will be denied access or opportunity in employment, training or promotion, or in the provision of educational programs and services on the basis of disability, gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, or linguistic preference. It is our policy to comply with all of the requirements of the Americans with Disabilities Act (see Americans with Disabilities Act (ADA) of 1990 District Functions and Responsibilities).

TO ACCESS SPECIAL NEEDS SERVICES

- If you have an employee with a disability who requires or requests assistance, please contact or have the employee contact the school district's ADA Coordinator at (305) 995-7116.
- If someone with a disability visiting your facility requests or requires assistance, please provide the individual with the requested assistance or contact the school district's ADA Coordinator at (305) 995-7116.
- Employees who are hearing impaired may request information or assistance by calling the Telecommunications Device for the Deaf (TDD) at (305) 995-2400.
- If you know that a person requiring a sign language interpreter will be visiting your facility, please advise said person to contact the school district's ADA Coordinator at (305) 995-7116 ♦ TDD at (305) 995-2400, well in advance of the visit (five days advance notice required), in order to ensure that a sign language interpreter will be available.

The document, Americans with Disabilities Act: A Guide for Administrators (2002-2003), provides technical information to administrators in order to facilitate the systematic and uniform implementation of the employment related provisions of the Americans with Disabilities Act (ADA) of 1990. The guide may be accessed as an e-handbook on the District's website at www.dadeschools.net.

THE AMERICANS WITH DISABILITIES ACT (ADA) OF 1990 DISTRICT FUNCTIONS AND RESPONSIBILITIES

The Americans with Disabilities Act (ADA) of 1990 prohibits employment discrimination against “qualified individuals with disabilities.” A **disabled** individual, under the ADA, is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. “Major life activities” include such things as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Other examples of major life activities include sitting, standing, lifting, and mental and emotional processes, such as thinking, concentrating, and interacting with others. The law requires employers to make “reasonable accommodations” to the physical or mental limitations, known about by the employer, of a qualified individual with a disability unless doing so would impose an undue hardship on the institution or business. Additionally, under certain circumstances, applicants for jobs may also require reasonable accommodation in the application process. The ADA District Consultative Committee (DCC) has been designated the responsibility of determining an individual’s eligibility under the ADA and reviewing requests for accommodation from employees and job applicants.

All work site administrators are required to:

1. Post in visible areas the “nondiscrimination” and ADA District Functions and Responsibilities posters disseminated by the Civil Rights and Diversity Compliance office and the Personnel Support Programs Office.
2. Refer employees seeking services/accommodations under the ADA to the Coordinator, ADA Employee Services, at 305-995-7116 ♦ TDD 305-995-2400.
3. Provide appropriate information, as requested, to facilitate the DCC’s assessment of the merits of the request. This may entail, but is not limited to, providing technical assistance to determine essential functions of a job, attending DCC meeting(s), and providing job performance information.
4. Maintain confidentiality of medical records submitted to the site administrator.
5. Refer to the Administrative Director of Civil Rights and Diversity Compliance, 305-995-1580 ♦ TDD 305-995-2400, any complaints from employees alleging that the District is not meeting its obligations under the employment and/or facilities requirements provisions of the ADA.
6. Refer to the Executive Director of Division of Facilities ADA Compliance, 305-995-4650, any complaints from employees or the public alleging that the school system’s facilities do not meet the ADA requirements.

School Board Rule #(s):
Contract Provision #(s):

Form #(s):
Administrative Directive(s)/Other:
Cross References:

6Gx13-4A-1.01
UTD Article XXI, Section 2 I. Employee Assistance
Program
FM-5588, FM-5589, FM-6089
Americans with Disabilities Act Title II
Americans with Disabilities Act: A Guide for Administrators