



OPERATING MANUAL OF THE BOARD

Reasonable Accommodations under the Americans with Disability Act (ADA) Policy

Policy - Reasonable Accommodations under the Americans with Disability Act (ADA)

A. PURPOSE. Mercer County Community College (MCCC) is committed to providing reasonable accommodations to its employees and applicants for employment to ensure that individuals with disabilities enjoy equal access to all employment opportunities. Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 requires employers receiving federal assistance to provide reasonable accommodations for qualified employees or applicants with disabilities, unless to do so would cause undue hardship. This Policy, and the accompanying Procedures, fully comply with the ADA and Rehabilitation Act of 1973, which require employers to establish procedures to facilitate the provision of reasonable accommodation for eligible employees and applicants.

B. APPLICABILITY. All employees of MCCC.

C. Definition of Key Terms.

1. **Disability:** To be eligible for a reasonable accommodation, an individual must either have a physical or mental impairment that substantially limits a major life activity, or must have a record (a history) of a physical or mental impairment that substantially limited a major life activity. An individual who is only regarded as having a disability is not entitled to reasonable accommodation. Determination of disability will comply with the requirements of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) which requires a broad interpretation of the term and generally does not require an extensive analysis.

2. **Essential Functions:** Essential functions are those job duties that are fundamental to the position that the individual holds or desires. The

term "essential functions" does not include marginal functions of the position. "Marginal functions" are those job duties that are less important or critical to the success or failure of the specific position. A function can be "essential" if, among other things: the position exists to perform the function; a limited number of other employees are available to perform the function; or the function is highly specialized and the individual is hired based on her having those specialized skills. Evidence of whether a particular function is essential includes:

- i. MCCC's judgment (generally a supervisor's, manager's and/or office director's judgment in consultation with Human Resources)
- ii. a written position description developed before a job is advertised
- iii. the amount of time spent performing the job tasks of the position
- iv. a physical job description relative to essential duties of the job
- v. the consequences of not requiring the person in the position to perform the function
- vi. the terms of a policy and/or agreement
- vii. the work experience of past incumbents in the job or current incumbents in similar jobs

Determination of whether a particular function is essential must be done on a case-by-case basis because the duties of a specific job may deviate from what is indicated in a position description or from the duties of employees holding a similar job.

3. Extenuating Circumstances: Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation or limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. (e.g., identified software such as a Screen Reader is not compatible with existing equipment).

4. Health Care or Rehabilitation Professional: A person who has completed a course of study and is licensed to practice in a field of health care, which includes the diagnosis and assessment of the particular disability or disabilities in question.

5. Interactive Process: The interactive process refers to an information-gathering approach used by an employer with the employee to evaluate a request for accommodation. It is intended to be a flexible approach that centers on the communication between an employer and the individual requesting reasonable accommodation, but may (and often does) involve obtaining relevant information from a supervisor and an individual's health care provider. This process begins upon receipt of an oral or written request for reasonable accommodation. The designated ADA Coordinator (ADAC) within Human Resources is the person who will decide whether to grant or deny a reasonable accommodation. The ADAC

will engage MCCC in the interactive process with the requestor and other relevant individuals (e.g., a supervisor, a requestor's health care provider) to collect whatever information is necessary to make an informed decision about whether the requestor is covered as an individual with a disability; and, if so, whether the requestor qualifies for an accommodation(s). If the employee is qualified to receive a reasonable accommodation, the ADAC will determine what reasonable accommodation(s) will effectively eliminate the barrier identified by the requestor and permit an equal opportunity to apply for a job, to perform a job, or to gain access to the workplace, or to enjoy access to the benefits and privileges of employment. Reasonable accommodations are intended to support an eligible employee in performing the essential functions of their position and not supplant such essential functions.

6. **Interim Accommodation:** Any temporary or short-term measure put in place until a granted accommodation is available.

7. **Invisible/Hidden Impairments:** Disabilities or conditions that are not obviously apparent or visible, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, HIV infection, chronic depression, learning disabilities, autism spectrum disorder, and mild intellectual disability.

8. **Major Life Activities:** Major life activities include activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

9. **Mental Impairment:** Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness (major depression, bipolar disorder, anxiety disorders), schizophrenia, and specific learning disabilities.

10. **Physical Impairment:** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, immune systems, respiratory, genitourinary, hemic, circulatory and lymphatic, skin, normal cell growth, and endocrine system.

11. **Qualified:** An individual with a disability is qualified for the position that such individual holds or desires if the individual:

- a. satisfies the requisite skill, experience, education, and other job-related requirements of the position, and
- b. can perform the essential functions of the position, with or without reasonable accommodation.

12. **Reasonable Accommodation:** A reasonable accommodation is any change in the workplace or in the way things are customarily done that provides an equal employment opportunity to an individual with a disability. The MCCC provides reasonable accommodation

- a. when an individual with a disability needs an accommodation to have an equal employment opportunity in the application process;
- b. when an employee with a disability needs an accommodation to perform the essential functions of the job held or desired, or to gain access to the workplace; and
- c. when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office-sponsored events). If there are several effective and reasonable accommodations that would provide an equal employment opportunity, or if the employee or applicant with a disability prefers to provide his or her own accommodation, the employee's or applicant's preference will be given first consideration. However, the ADA permits the MCCC to choose among effective and reasonable accommodations, and it may choose one that is less expensive or easier to provide, even though it might not be the employee's or applicant's preferred accommodation.

13. **Reassignment:** Reassignment is a form of reasonable accommodation. It may be provided to an employee (not an applicant) who, because of a disability, can no longer perform the essential functions of her current job, with or without reasonable accommodation. A reassignment is made only to a vacant position that the MCCC has authorized to be filled at the time of the accommodation request and intends to fill. Where possible, reassignment is to an equivalent position, but if no equivalent position is available, may be to a lower level position that is as close as possible to the employee's current position. If the employee is qualified for such a position and the College chooses to offer it as an accommodation, the employee will be reassigned to the new job and will not have to compete for it.

14. **Undue Hardship:** Undue hardship means that an employer would incur significant difficulty or expense in providing a certain reasonable accommodation. The Rehabilitation Act does not require the MCCC to provide a reasonable accommodation that causes an undue hardship. Determination of undue hardship is *always* made on a case-by-case basis, considering such factors as the nature and net costs of the

accommodation, the overall financial resources of the MCCC, and the impact of the accommodation on the operation of the College, including the impact on the MCCC's ability to conduct business. Most undue hardship assessments involve non-financial considerations, such as the timely performance of job duties and the ability to effectively serve the public. The MCCC must consider the resources of the College as a whole, not simply the budget of a specific office, when determining whether an accommodation imposes significant cost; however, the MCCC does not have to include any funding that is designated for a specific purpose that does not include provision of reasonable accommodation.

D. ROLES AND RESPONSIBILITIES.

1. Vice President for Human Resources (VPHR)

- i. Reviews requests for reconsideration;
- ii. Issues final decisions within 15 business days from the date the request for reconsideration is received; and,
- iii. Designates another MCCC staff member as a substitute for the ADAC when the ADAC is unavailable for any extended length of time.

2. ADA Coordinator (ADAC)

- i. Coordinates and manages the reasonable accommodation program for the College;
- ii. Administers the reasonable accommodation program by reviewing requests for employees and applicants for completeness; assessing requests to determine whether the individual meets the definition of an individual with a disability and needs the accommodation requested; initiating the interactive process with the requesting employee and appropriate officials; issuing timely decisions granting or denying accommodation requests; and, implementing granted accommodations;
- iii. Obtains and evaluates documentation supporting an accommodation request (such as medical information) when the disability and/or need for accommodation is not obvious;
- iv. Works with the employee's supervisor to ensure that any accommodation, if appropriate, meets the individual's disability-related needs, does not entail eliminating essential functions of the position, is feasible, and does not pose an undue hardship;
- v. Works with applicants with disabilities who need accommodation to apply for or be interviewed for a job;
- vi. Makes the final decision on each request; and,

- vii. Administers the College budget to cover all costs associated with providing reasonable accommodations, including sign language interpreters, furniture, technology, and other significant purchases.

3. Employee and Applicant with a Disability:

- i. Notifies the MCCC of a need for accommodation;
- ii. Cooperates in the interactive process throughout the reasonable accommodation process (failure on the part of the employee or applicant to cooperate in the interactive process may result in a denial of the reasonable accommodation request);
- iii. Promptly provides any requested medical information about the disability, limitations, and need for accommodation to the ACAC Coordinator; and,
- iv. Submits any requests for reconsideration on reasonable accommodation decisions within ten (10) business days to the VPHR or designee.

4. Immediate Supervisor:

- i. Immediately forwards requests for reasonable accommodation to the ADAC (as soon as practicable, preferably within 2 business days);
- ii. Clarifies with the individual whether reasonable accommodation is requested if the nature of the initial communication is unclear;
- iii. Participates in the interactive process to ensure that any accommodation meets the individual's accommodation needs and enables the individual to perform the essential functions of the position; and,
- iv. Is familiar with these Procedures as well as other MCCC programs and resources available to employees.
- v. Maintains strict confidentiality on personal health information of the employee and work status.

E. REASONABLE ACCOMMODATION PROCEDURES

1. Requesting Reasonable Accommodation

Generally, an applicant or employee must inform the MCCC of a need for an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An individual need not have a particular accommodation in mind before making a request. An applicant or employee may request a reasonable accommodation at any time, orally or in writing. A request does not have to include any

special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication in which an individual asks or states a need for the MCCC to provide or to change something because of a medical condition. A person does not have to specify a particular accommodation although it is helpful if he or she can suggest one. It is sufficient for the individual requesting accommodation to state that some sort of change or assistance is required. The immediate supervisor, or the ADAC should ask an individual whether they are requesting a reasonable accommodation if the nature of the initial communication is unclear.

An employee should request a reasonable accommodation directly from the ADAC since this is the staff person who will handle the request. An employee who prefers to submit the request to someone other than the ADAC may submit it to a supervisor or manager in the employee's chain of command.

While there are some things that are not considered reasonable accommodations (e.g. removal of an essential job function or provision of personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits including office common areas, parking lots, and office events.

2. The MCCC will process requests for reasonable accommodation and will provide reasonable accommodations where appropriate, in a prompt and efficient manner in accordance with the time frames set forth in the Procedures applicable to this Policy.

F. Relation of Procedures to Statutory and Collective Bargaining Claim

These Policies and Procedures do not limit or supplant statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory claims remain unchanged, including the time frames for filing such claims.

G. Contacting the ADAC and Distribution of These Procedures

Any *employee or applicant* wanting further information concerning this Policy or related Procedures or otherwise seeking to request an accommodation directly from the ADAC may e-mail hr@mccc.edu. The Policy and Procedures shall be distributed to all employees upon issuance. They also will be posted on the MCCC's Intranet and Internet

sites, and will be available in the Human Resources Office. They will be distributed to all new employees as part of their orientation on their first day of work. These Procedures will be provided in alternative formats when requested from the ADAC by, or on behalf of, any MCCC employee.

Board of Trustees Meeting
September 17, 2020