

**REASONABLE ACCOMMODATION**

Except when undue hardship would result to the district, the Superintendent or designee shall provide reasonable accommodation:

1. In the job application process, to any qualified job applicant with a disability
2. To enable any qualified employee with a disability to perform the essential functions of the position he/she holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities

No employee or job applicant who requests an accommodation for his/her physical or mental disability shall be subjected to discrimination or to any punishment or sanction, regardless of whether the request for accommodation was granted. (Government Code 12940)

The district designates the position specified in AR 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

**Definitions**

*Disability*, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such an impairment
3. Being regarded as having such an impairment

*Limits* shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

*Essential functions* are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (Government Code 12926; 29 CFR 1630.2)

(cf. 4119.3/4219.3/4319.3 - *Duties of Personnel*)

*Reasonable accommodations* that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that

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enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to: (Government Code 12926; 29 CFR 1630.2)

1. Making existing facilities accessible and usable
2. Restructuring the job duties
3. Offering part-time or modified work schedules
4. Acquiring or modifying equipment or devices
5. Changing tests, training materials or policies
6. Providing qualified readers or interpreters
7. Reassigning the employee to a vacant position

*Qualified individual with a disability* means a job applicant or employee with a disability who:

1. Satisfies the requisite skill, experience, education and other job-related requirements of the employment position he/she holds or desires
2. Can perform the essential functions of position with or without reasonable accommodation (29 CFR 1630.2)
3. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to himself/herself or others in the job he/she holds or desires

*Undue hardship* is a determination based on an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding
2. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at this facility, the effect on expenses and resources of the facility, or the impact on the operations of the facility
3. The overall financial resources, size, number of employees, and the number, type and location of facilities of the district

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4. The type of operation of the district, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation
5. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business

### **Requests for Reasonable Accommodation**

The district designates the position specified in BP 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

When requesting reasonable accommodation, the employee or employee's representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition. The supervisor shall inform the coordinator of the employee's request as soon as practicable. When requesting reasonable accommodation during the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation for the process. Employees' requests for reasonable accommodation may first be considered informally by the site administrator. The site administrator shall consult with the coordinator before any decision as to accommodation is made.

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the district to submit a list of specific questions to the health care or vocational professional.

If the documentation submitted by the employee does not specify the existence of a qualifying disability and explain the need for reasonable accommodation, the coordinator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the district may require the employee to submit to an examination by a health care professional selected and paid for by the district.

The district may make a medical or psychological inquiry of a job applicant or require him/her to submit to a medical or psychological examination after he/she has been given a conditional offer of employment but before the commencement of his/her job duties, provided the inquiry or

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examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification. (Government Code 12940)

The coordinator shall not request any job applicant's or employee's genetic information except as authorized by law.

In accordance with law, the coordinator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, he/she shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment. (42 USC 12112)

Upon receiving a request to reasonably accommodate a qualified employee with a disability, the coordinator shall:

1. Determine the essential functions of the job
2. Engage in an informal, interactive process with the employee to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodation, and assess their effectiveness
3. Develop a plan for reasonable accommodation which is effective and allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment and does not impose undue hardship on the district

To qualify for a job, an individual shall not pose a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation. (29 CFR 1630.2)

The determination of whether an individual poses a significant risk of substantial harm to himself/herself or others shall be made on a case-by-case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risks, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of potential harm. (29 CFR 1630.2)

The coordinator may confer with the site administrator, the district medical advisor and/or other district staff before making a final decision as to the accommodation.

**Reasonable Accommodation Committee**

The coordinator may appoint a Reasonable Accommodation Committee to review or assist in the development of appropriate plans to reasonably accommodate an employee or qualified job applicant who has requested an adjustment in work duties or environment because of known

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physical or mental disabilities. The membership of this committee may change on a case-by-case basis. The committee may include:

1. A district administrator
2. A site administrator
3. A medical advisor or rehabilitation specialist
4. A certificated employee
5. A classified employee

Committee members shall be selected on the basis of their knowledge of the relevant issues, including:

1. The specific functions and duties required in the position
2. The physical work environment
3. Available accommodations

At the coordinator's discretion, the employee or applicant requesting accommodation may participate in or be excluded from committee meetings. If the employee or applicant is excluded from committee meetings, the coordinator shall communicate with him/her so that he/she has the opportunity to interact and contribute to planning the reasonable accommodation.

The coordinator shall take steps to ensure the confidentiality of information related to medical conditions.

**Appeal Process**

If the employee or applicant is not satisfied with the decision of the coordinator, he/she may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The Superintendent or designee shall give the employee or applicant his/her decision within 15 working days of receiving the appeal.

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Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Board of Education in accordance with the district's procedure for such complaints.

### *Legal Reference:*

#### CIVIL CODE

51 Unruh Civil Rights Act

#### GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

#### UNITED STATES CODE, TITLE 29

701-794e Vocational Rehabilitation Act

#### UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

#### CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act, especially:

35.107 Designation of employee

36.101-36.608 Nondiscrimination on the basis of disability by public facilities

#### CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 Direct threat

#### COURT DECISIONS

Colmenares v. Braemar Country Club, Inc., 2003 Cal.LEXIS 1131

Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045

US Airways, Inc. v. Barnett, (2002) 535 U.S., 122 S.Ct. 1516

### *Management Resources:*

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

#### WEB SITES

EEOC: <http://www.eeoc.gov>

Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

Regulation

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**VACAVILLE UNIFIED SCHOOL DISTRICT**

Vacaville, California