

July 25, 2001

ADOPT POLICY ON SECTION 504 OF THE REHABILITATION ACT OF 1973

THE GENERAL COUNSEL RECOMMENDS:

That the Board adopt the following policy regarding Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1974 ("Section 504"), 29 U.S.C. 794.

PURPOSE:

To notify all interested persons that the Board has, in accordance with section 504 of the Rehabilitation Act of 1973 ("Section 504"), adopted a policy prohibiting discrimination on the basis of disability, and to create a mechanism for the promulgation, review and periodic revision of procedures for implementation and enforcement of this policy. Section 504 prohibits any recipient of Federal financial assistance from engaging in discrimination on the basis of disability in admission or access to, or treatment or employment in, its programs or activities.

PRESENT POLICY AND PROCEDURES:

The policy on accessibility under the Americans With Disabilities Act ("ADA") is encompassed in Board Report 00-0823-PO5 and Board Report 95-0222-P01.

HISTORY OF BOARD ACTION:

The Board has not previously adopted a specific policy for addressing complaints or requests brought pursuant to Section 504.

POLICY TITLE:

POLICY ON SECTION 504 OF THE REHABILITATION ACT OF 1973

POLICY TEXT:

I. POLICY

A. Purpose

This policy is intended to reiterate provisions of Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1974 ("Section 504"), 29 U.S.C. 794, and to create a mechanism for promulgating, reviewing and revising procedures for addressing requests for reasonable accommodation and/or complaints covered by Section 504.

Nothing in this policy is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this policy shall be construed to create contractual or other rights or expectations. Nothing herein is intended to affect the right of any person to make a charge of disability discrimination at any agency with jurisdiction over such claims.

B. Scope of Section 504

1. Section 504 applies to any recipient of Federal financial assistance from the United States Department of Education and to the program or activity that receives such assistance.
2. Section 504 prohibits a recipient of Federal financial assistance from engaging in discrimination on the basis of disability in its programs or activities. Section 504 provides that no otherwise qualified individual with a disability shall, on the basis of disability, be excluded from admission or access to, or treatment or employment in, or be subjected to discrimination under, a program or activity provided by the recipient.

C. Notice

The Board does not discriminate on the basis of disability. The Board will make available to applicants, participants, employees, beneficiaries, and other interested persons information regarding this policy, including information regarding complaint procedures and procedures for requesting an accommodation. The Board shall also make available the name, office address and telephone number of the employee or employees designated to coordinate the Board's efforts to comply with and carry out its responsibilities under this policy.

D. Definition of Key Terms under Section 504

1. Disability means with respect to an individual:
 - (a) a physical or mental impairment which substantially limits one or more major life activities of such individual; or
 - (b) a record of such an impairment; or
 - (c) being regarded as having such an impairment.
2. Physical or mental impairment means:
 - (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or
 - (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - (c) A physical or mental impairment does not include compulsive gambling kleptomania, pyromania, or various sexual behavior disorders. Homosexuality and bisexuality are not impairments and so are not disabilities as defined by this policy.
3. Qualified individual with a disability, with respect to employment, means an individual with a disability who satisfies the requisite skill, experience, licensure, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
4. Qualified individual with a disability, with respect to public preschool, elementary, secondary or adult education services, means a person with a disability:
 - (a) who is of an age during which non-disabled persons are provided such services;

- (b) who is of any age during which it is mandatory under state law to provide such services to persons with disabilities, or
 - (c) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act ("IDEA").
5. A disabled person with respect to other services, activities or programs is a person with a disability who meets the essential eligibility requirements for receipt of such services or participation in such activities or programs.
- The terms disability and "qualified individual with a disability" do not include individuals engaging in the illegal use of drugs.
6. Essential Functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term essential functions does not include the marginal functions of the positions.
7. Reasonable Accommodation means:
- (a) modifications or adjustments to a job application process that enables a qualified applicant with a disability to be considered for the position desired; or
 - (b) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - (c) modifications or adjustments that enable Board employees and school personnel with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.
8. Undue Hardship means significant difficulty of expense in, or resulting from, the provision of the accommodation. Undue hardship refers to any accommodation that would be unduly costly, extensive substantial, or disruptive, or that would fundamentally alter the nature or operation of the Board's business.

Terms not specifically defined herein, but used in the interpretation and implementation of this policy will be defined consistent with Section 504, the ADA and IDEA.

E. Discrimination Prohibited

1. No qualified individual with a disability shall, on the basis of such disability, be excluded from participation in or, be denied the benefits of, or otherwise be subjected to discrimination under any Board program or activity which receives Federal financial assistance.
- (a) The Board shall take appropriate steps to ensure that communication with applicants, participants, and members of the public with disabilities are as effective as communications with others.
 - (b) Except as otherwise provided by law, the Board shall operate each service, program, or activity, so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

2. This policy prohibits discrimination against qualified individuals with disabilities, on the basis of disability, in providing any aid, benefit, or service, directly or through contractual licensing, or other arrangements.
 - (a) The board shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified person with a disability, except as otherwise provided by law, and/or unless such accommodation would impose an undue hardship on the operations of the Board's business.
 - (b) The Board shall conduct its medical examinations and inquiries consistent with the regulatory requirements of Section 504.
3. Retaliation against any person for having made a good faith request or complaint under this policy or for participating or aiding in an investigation conducted under this policy is strictly prohibited.

F. Relationship to Other Board Policies and to Other Laws

This policy does not invalidate or limit the remedies, rights, and/or procedures granted under any existing Board policy. Nor does it invalidate or limit the remedies, rights, and/or procedures of any applicable federal, state, or local laws that provide greater or equal protection for the rights of individuals with disabilities.

II. PROCEDURES

Student complaints and student accommodation requests under this policy will be referred to the Office of Specialized Services for appropriate action. All other complaints and accommodation requests initiated under this policy shall be handled by the Department of Human Resources. The Board authorizes the Department of Human Resources and the Office of Specialized Services in conjunction with the Law Department to promulgate, review and periodically revise procedures for addressing requests for reasonable accommodation and complaints covered by the ADA and Section 504. Such procedures shall: incorporate appropriate due process standards; provide a mechanism for the prompt and equitable resolution of complaints; be publicized and available to all interested persons by and through the Department of Human Resources and the Office of Specialized Services.

III. CONFIDENTIALITY

The ADA Administrator or designee shall be responsible for maintaining a filing system on all requests, complaints, investigations, and decisions. To the extent possible, the reporting and investigation of all requests and complaints filed under this policy will be kept confidential. However, in certain appropriate circumstances, the Board is obligated by law to investigate allegations of disability discrimination. Therefore, when the ADA Administrator or designee learns from whatever source of a possible violation of this policy, the ADA Administrator or designee is authorized to take any action deemed appropriate. These actions may include but are not limited to training, assessment of the workplace or educational environment, site visits, or a full investigation.

Recommendations and reports made by the ADA Administrator or designee to the Board regarding requests and complaints filed under this policy will be confidential under the Attorney-Client privilege.

IV. EDUCATION, TRAINING, TECHNICAL ASSISTANCE

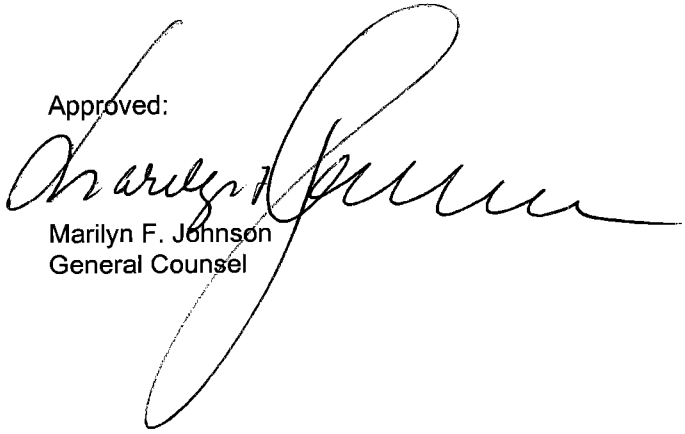
The ADA Administrator or designee shall be responsible for responding to questions raised under this policy and for providing technical assistance to interested persons affected by this policy. The ADA Administrator or designee will conduct or facilitate the conduct of education and training on this policy to appropriate personnel as deemed necessary.

Amends/Rescinds:

Cross References: 00-0823-PO5

Legal References: 29 USC 794

Approved:

A large, stylized handwritten signature in black ink, appearing to read 'Marilyn F. Johnson', is written over the printed name and title.

Marilyn F. Johnson
General Counsel