



TO: Dr. Clarence G. Ellis, Superintendent of Schools
Dr. Ogechi Iuowha, Assistant Superintendent for Business

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RE: The Americans with Disabilities Act

As part of the District's efforts to ensure that administrators are aware of employer obligations prescribed by the Americans with Disabilities Act and the NYS Human Rights Law we are providing the following information. Please distribute this memo to call cabinet members and building administrators in the District.

The ADA Overview

The Americans with Disabilities Act ("ADA") prohibits discrimination based on disability (and retaliation for exercising rights under the ADA). New York Human Rights Law creates additional protections from discrimination. "Covered entities" may not discriminate against "qualified individuals" on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C. §12112(a). The East Ramapo Central School District IS a covered entity under federal and state law.

Discrimination includes, but is not limited to, failure of a covered entity to make a reasonable accommodation to the known physical or mental limitations of the qualified individual with a disability, unless the covered entity can show that the accommodation would impose an undue hardship on the operations of the covered entity. 42 U.S.C. § 12112 (b)(5)(A).

A qualified individual is someone who, with or without a reasonable accommodation, can perform the essential functions of the position the individual holds or desires. 42 U.S.C. § 12111(8). A disability is a physical or mental impairment that substantially limits one or more major life activities of an individual, a record of such impairment, or being regarded as having such impairment. 42 U.S.C. §12102(1)(A). "Disability" under the New York State Human Rights Law has been construed broadly. The definition requires, in part, a physical, mental, or medical impairment which prevents the exercise of a normal bodily function. There are no qualifiers as to the severity of the disability. Determination of reasonable accommodation is arrived at through the interactive process *with the employee*.

STEPS IN THE ADA INTERACTIVE PROCESS

I. What does a Request for Accommodation Look Like?

- *A request can be formal or informal. It does not need to be in writing.*
- *Regardless of form, the request comes from the employee and the employee does NOT need to reference the ADA or use the words “reasonable accommodation” to be entitled to an accommodation or to prompt the employer’s responsibility under the Act. It is enough to indicate a medical need related to work.*
- *When the employee makes a request for accommodation or indicates they have a medical issue which may restrict their day-to-day job functions, the responsible employer representative should respond: “How can I help?”*

II. Does the person have a disability?

- *Confirm understanding of the disability and seek to understand the accommodation needed. The employer can ask for medical documentation. This may involve the employee completing a HIPPA waiver. The District should also have a form to be completed by the employee when an accommodation request is made. It is also helpful to establish whether such disability is permanent or temporary.*
- *Every employer representative should contact the Human Resources Department whenever an employee requests accommodation. Involve HR early in the process so you have the support and back-up necessary to properly accommodate the employee.*

III. The Timeframe for Response

- *The District must respond “expeditiously” to a request for reasonable accommodation. There is no set timeframe, but the more time that passes the more time an employee with a potential disabling condition goes without assistance and accommodation to which they are legally entitled. The goal is to provide the employee with the assistance to which they are rightfully entitled within a reasonable period.*

IV. The Interactive Process – Employer and Employee Engage

- *The interactive process is legally required. It refers to a discussion between employer and employee regarding the employee’s disabling condition and what may be needed to accommodate it so they may effectively perform the essential functions of their position. Part of the process is for the employee to share health care provider information related to the employee’s disability and the limitation that may impact their ability to perform essential job functions.*
- *There are multiple aspects of the interactive process. The employer should review the accommodation request from the employee or their health care provider. While the ADA does not require the request in writing, documentation is a good practice.*

- *Employers should obtain medical releases or permission from the employee, so the employer fully understands the medical issue and properly accommodates. Bear in mind the employee's health care provider may not disclose health information without express written consent of the employee.*
- *As part of the interactive process employers might ask: "How can we help you do your job?" or "What do you need?" Also if this is permanent or temporary. The process is INTERACTIVE. Neither employee nor employer can dictate a result. ALWAYS involve HR in these discussions.*

V. The Accommodation

- **Employers must determine if they can provide a reasonable accommodation.**
There are three main categories of accommodation. Modification or adjustment to: (1) *job application process*; (2) *work environment*; or, *the position itself*. Each must be reasonable. Restructuring an entire department or displacing other employees may not be reasonable.
- **Examples of Reasonable Accommodations**
 - *making existing facilities accessible;*
 - *job restructuring;*
 - *acquiring or modifying equipment;*
 - *changing tests, training materials, or policies;*
 - *providing qualified readers or interpreters; and*

VI. Undue Burden

- **Not all accommodations are reasonable.**
 - *Ask whether it may be an undue burden on the District to accommodate this person?*
 - *The District does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA.*
 - *Nor is the District required to lower standards, qualitative or quantitative, that are applied uniformly to employees with and without disabilities.*
- **What does the analysis look like to determine whether an accommodation would be an undue burden? Look at:**
 - *The nature and cost of the accommodation needed.*
 - *The overall financial resources, size and number of employees of the District.*
 - *The number employed in that particular area.*
 - *The overall impact of the accommodation on the operation of the District.*

VII. Change in Circumstance

1. The disability or the impact of the disability lessens? (e.g. employee recovers)

It is possible that a disability changes or ends. It is permissible, when this occurs, for any corresponding accommodation to end. Before doing so, the interactive process must be reengaged. Employer and employee must meet and discuss the continued need for the accommodation.

2. District needs change? (e.g. more in person instruction?)

It is also possible the District's needs change. For example, during COVID it was common for instruction to be remote. That ended and the need for in-person instruction reemerged. This could necessitate reexamination of accommodations. Again, the interactive process is to be engaged. Nothing is to be done unilaterally by employee or employer.