



Book	Administrative Guideline Manual
Section	For Superintendent Review - Administrative Guidelines Vol. 34, No. 1
Title	SECTION 504/ADA - PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT
Code	ag3123 - Rescind
Status	
Adopted	October 15, 2018
Last Revised	May 20, 2024

### ~~3123~~ **SECTION 504/ADA - PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT**

The Board prohibits discrimination against any employee or applicant based on a disability. As such, the Board will not engage in employment practices or adopt policies that discriminate on the basis of disability against qualified individuals with disabilities in every aspect of employment. Specifically, the Board does not discriminate on the basis of disability against a qualified individual in regard to:

- ~~A. recruitment, advertising, and job application procedures;~~
- ~~B. hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;~~
- ~~C. rates of pay or any other form of compensation and changes in compensation;~~
- ~~D. job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;~~
- ~~E. leaves of absence, sick leave, or any other leave;~~
- ~~F. fringe benefits available by virtue of employment, whether or not administered by the District;~~
- ~~G. selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;~~
- ~~H. activities sponsored by the Board, including social and recreational programs; and~~
- ~~I. any other term, condition, or privilege of employment.~~

The District will provide a reasonable accommodation to a qualified applicant and employee who has an actual disability or who has a record of a disability that is needed for the employee/applicant to perform the essential functions of the position, unless the accommodation would impose an undue hardship on the operation of the District's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

An individual with a disability is anyone who:

- ~~A. has a physical or mental impairment that substantially limits one or more major life activities ("actual disability");~~

- B. has a record of having (i.e., has a history of, or has been misclassified as having) a physical or mental impairment that substantially limits one or more major life activities; or
- C. is regarded as having a physical or mental impairment that substantially limits one or more major life activities (i.e., has a physical or mental impairment that does not substantially limit major life activities but is treated by the District as constituting such a limitation, or has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment, or has none of the physical or mental impairments recognized by Section 504 but is treated as having such an impairment).

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

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:
  1. neurological;
  2. musculoskeletal;
  3. special sense organs;
  4. respiratory, including speech organs;
  5. cardiovascular;
  6. reproductive;
  7. digestive;
  8. genitourinary;
  9. hemic and lymphatic;
  10. skin;
  11. immune;
  12. circulatory;
  13. endocrine;
- B. any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

While the determination of whether an impairment substantially limits a major life activity is an individualized one that is case specific, given the inherent nature of the following impairments, as a practical matter, they almost always will be found to impose a substantial limitation, at a minimum, on the major life activity indicated: deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune functions; multiple sclerosis substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia substantially limit brain function.

Physical or mental impairments that are episodic in nature or in remission may constitute a disability for the purposes of Section 504/ADA if the impairment would substantially limit a major life activity when active, such as asthma, allergies, or cancer.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or "auxiliary aids or services," learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

Individual with a disability does not include the following (i.e., Section 504 and/or the ADA specifically **excludes**):

- A. individuals who currently are engaging in the use of illegal drugs, when the District acts on the basis of such use;
- B. with respect to employment, any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others;
- C. with respect to employment, an individual who currently has a contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the contagious disease or infection, is unable to perform the duties of the job;
- D. an individual on the basis of homosexuality or bisexuality; and
- E. an individual on the basis of:
  1. transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, or other sexual behavior disorders;
  2. compulsive gambling, kleptomania, or pyromania; or
  3. psychoactive substance use disorders resulting from current use of illegal drugs.

Individual with a disability includes an individual who:

- A. has completed a supervised drug rehabilitation program successfully and is no longer engaging in the illegal use of drugs, or otherwise has been rehabilitated successfully and is no longer engaging in such use;
- B. is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- C. is erroneously regarded as engaging in the use of illegal drugs, but is not engaging in such use.

Under Wisconsin law, an "individual with a disability" means an individual who has a real or perceived physical or mental impairment "which makes achievement unusually difficult or limits the capacity to work." This definition has generally been interpreted as a broader definition than that which exists under Federal law discussed above.

## Notice

Pursuant to policy, the identity of the District's Compliance Officers (COs) will be published on the District's website and posted throughout the District and included in all recruitment statements or general information publications.

Recruitment materials, job announcements and all other materials/publications published by the Board must contain the following statement:

The Board does not discriminate against individuals with disabilities for employment or the provision of services.

The requirement regarding recruitment materials may be met by including an insert in existing publications or revising and reprinting publications.

## Equal Employment Opportunity Statement

The Ripon Area School District Board does not discriminate on the basis of race, color, sex, (including gender status, change of sex, sexual orientation, or gender identity) religion, age, pregnancy, disability, national origin, ancestry, arrest record, conviction record, use or non-use of lawful products off the District's premises during non-working hours, declining to attend an employer sponsored meeting or to participate in any communication with the employer about religious matters or political matters, or any other characteristic protected by law in its employment practices.

The Board also will include a notice of reasonable accommodation requirements on District employment application forms and post notices that employee reasonable accommodation Request Forms may be obtained from the District's Section 504/ADA Coordinator(s) (hereinafter referred to as the Compliance Officer(s) or CO(s)).

### **Decision-Making Process for Determining/Identifying Reasonable Accommodations and Undue Hardship**

In determining the appropriate accommodation in the employment situation, the District will take into account two (2) factors:-

- A. the specific abilities and functional limitations of the particular applicant or employee with a disability; and
- B. the specific functional requirements of the particular job.

A reasonable accommodation is "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." Many times a reasonable accommodation will be obvious and made without difficulty and at little or no cost. The CO will first inquire of the individual with the disability as to any possible suggestions s/he may have for a simple change or adjustment that will serve as an effective accommodation. The District recognizes that employees with disabilities can be useful sources of information on what type of accommodation they need, where to obtain information on appropriate accommodations, and where to purchase accommodations.

If, however, the identification of a reasonable accommodation proves difficult, the District will utilize an informal, interactive process whereby it and the individual will work together to identify the appropriate accommodation. The interactive process will include any and/or all of the following steps, as appropriate:-

- A. Examination of the particular job involved and determination of its purpose and essential functions. The District will conduct an individual assessment of the particular job at issue in order to analyze the actual job duties ("essential functions") and determine the true purpose or object of the job. Preferably, a written job description already will be in place that lists the essential functions of the job.
- B. The District will consult with the individual with a disability to find out the individual's specific physical or mental abilities and limitations as they relate to the essential job functions. This will help the parties identify the barriers to job performance and assess how these barriers could potentially be overcome with an accommodation.
- C. In consultation with the individual, the District will identify potential accommodations and assess how effective each would be in enabling the individual to perform essential job functions.
- D. If the parties still are not able to identify an appropriate accommodation, the District will seek technical assistance.
- E. If there are several effective accommodations that would provide an equal employment opportunity, the District will select the accommodation that best serves the needs of the individual and the District. While the District will give the individual with a disability's preference first consideration, the District may choose among effective accommodations and select the accommodation that is less expensive or easier to provide. The District may consider the cost, efficiency and availability of the alternative accommodations in selecting an effective accommodation. The District does not have the obligation to provide the "best" accommodation possible, so long as it provides an accommodation that is sufficient to meet the job-related needs of the individual being accommodated.

The District will not provide an accommodation without first checking with the employee since the employee may not need or want an accommodation, or the unrequested accommodation may not meet the employee's functional limitations. The District will respect an individual with a disability's right not to accept an accommodation if the individual has not requested it and does not feel one is necessary. However, if this results in the individual failing to perform essential functions, the individual may be considered unqualified and either may be refused employment or discharged.

The District may decline to provide desired accommodations if it determines such accommodations will result in an undue hardship. An undue hardship entails a significant difficulty or expense in, or resulting from, the provision of the accommodation. Such hardship is not limited to financial difficulty but rather encompasses any accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operation of the program. If the cost of an accommodation would impose an undue hardship, the District will give the individual with the

disability the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation. Further, the District will not consider employee morale or the attitudes of others when determining undue hardship.

Decisions not to provide a reasonable accommodation will be in writing and accompanied by an explanation of the decision.

Reasonable accommodations may include:

- A. making facilities used by employees readily accessible to and usable by individuals with disabilities;
- B. job restructuring, part time or modified work schedule, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions;
- C. making modifications to existing leave policies and providing leave when needed for a disability, even where an employer does not offer leave to other employees;
- D. reassignment to a new job because the disability prevents the employee from performing one (1) or more essential functions of the current job, even with a reasonable accommodation, or because any accommodation in the current job would result in undue hardship. If reassignment is required, the Board will place the employee in a vacant position for which s/he is qualified, without requiring the employee to compete with other applicants for open positions, except reassignment does not include promotion, and generally does not involve placing an employee in a vacant position when another employee is entitled to the position under a uniformly applied seniority system, if any.

Factors to be considered when determining whether an accommodation would impose an undue hardship on the operation of the District's program or activity include:

- A. the overall size of the District's program or activity with respect to number of employees, number and type of facilities, and size of budget;
- B. the type of the District's operation, including the composition and structure of the District's workforce; and
- C. the nature and cost of the accommodation needed.

Accommodation obligations under the Wisconsin Fair Employment Act may be broader than that required under the ADA, as Wisconsin does not employ the "essential functions of the job" analysis as is used under Federal law.

## Employment Criteria

The District will not use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the Board, is shown to be job related for the position in question and consistent with business necessity.

The District will select and administer tests concerning employment so that when administered to an applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factors the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

## Pre-employment Inquiries

Except as authorized by law, the District will not conduct a pre-employment medical examination or make a pre-employment inquiry of an applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability. The District will, however, make a pre-employment inquiry into an applicant's ability to perform job-related functions; this includes requesting the applicant to describe or demonstrate how the applicant would perform the functions.

The District may give a physical agility test at any point in the application or employment process since such tests are not medical exams. When the District decides to give such a test it must give the test to all similarly situated applicants or employees regardless of disability.

Some examples of alternative test formats and reasonable accommodations are:

- A. allowing people with certain learning or dexterity disabilities to take extra time on a test;

- ~~B. assuring the test site is accessible to a person with a mobility impairment;~~
- ~~C. allowing a person with a mental disability who cannot perform well with distractions to take a test in a separate room, if a group test setting is not relevant to the job; and~~
- ~~D. providing Braille, large print, a reader, or a computer for people with vision impairments.~~

~~If the District conditions an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, the District will:~~

- ~~A. subject all entering employees in the same job classification to such an examination regardless of disability; and~~
- ~~B. use the results of the examination only as authorized by law.~~

~~The successful candidate who is required to submit to a medical examination, as well as the medical provider that is designated by the District to conduct the examination, will be directed not to collect or provide any genetic information, including the candidate's medical history, in the report of the medical examination.~~

~~Information obtained as to the medical condition of the applicant, including any inadvertently provided genetic information, will be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:~~

- ~~A. supervisors and managers may be informed regarding restrictions on the work or duties of individuals with disabilities and necessary accommodations;~~
- ~~B. first aid and safety personnel may be informed when appropriate, if the condition might require emergency treatment; and~~
- ~~C. government officials investigating compliance with Section 504, the ADA and/or the Genetic Information Nondiscrimination Act ("GINA") shall be provided relevant information upon request.~~

## **Interviews**

~~All of the topics labeled off limits with respect to job applications likewise are prohibited as subjects of inquiry during job interviews. The District, however, may ask questions that relate to an applicant's ability to perform job related functions so long as they do not phrase the questions in terms of disability. The interviewer may ask about an applicant's ability to perform both essential and marginal job functions. In addition, the interviewer may describe or demonstrate job function(s) and inquire whether the applicant can perform that function(s) with or without reasonable accommodation. Along the same lines, the interviewer may ask the applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will perform the job related functions. Any questions concerning the need for reasonable accommodation always should be linked with performance of a specific job function. The interviewer never should ask an open ended question such as, "Will you need a reasonable accommodation?"~~

~~Interviews should thus concentrate on how applicants will complete tasks that are essential functions, rather than on eliciting information about the applicant's physical or mental condition. Similarly, the District may inquire as to an applicant's ability to perform a job effectively and safely.~~

~~According to the EEOC, the following are examples of questions that cannot be asked on a job application or during an interview:~~

- ~~A. Have you ever had or been treated for any of the following conditions or diseases?~~
- ~~B. Please list any conditions or diseases for which you have been treated in the past three (3) years.~~
- ~~C. Have you ever been hospitalized? If so, for what condition?~~
- ~~D. Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?~~
- ~~E. Have you ever been treated for any mental condition?~~
- ~~F. Is there any health related reason you may not be able to perform the job for which you are applying?~~
- ~~G. Have you had a major illness in the last five (5) years?~~

- H. How many days were you absent from work because of illness last year?
- I. Do you have any physical defects that preclude you from performing certain kinds of work? If yes, describe such defects and specific work limitations?
- J. Do you have any disabilities or impairments that may affect your performance in the position for which you are applying?
- K. Are you taking prescribed drugs?
- L. Have you ever been treated for drug addiction or alcoholism?
- M. Have you ever filed for workers' compensation insurance?

Interviewers should not ask a Reference question about an applicant that they could not ask the applicant directly (i.e., previous employers cannot be asked about a former employee's disabilities, illness or workers' compensation history/claims).

The following are pre-employment questions that can be asked:

- A. Can you meet the requirements of our attendance policy?
- B. Can you perform the tasks of this position with or without an accommodation?
- C. Describe or demonstrate how you would perform this function, with or without an accommodation? Such a question can be asked of applicants who have a known disability that might prevent them from performing a job function. If the disability would not interfere with a job function, however, the person could be asked to demonstrate job performance only if all other candidates must do so.

If an applicant indicates the applicant has performed a particular function with an accommodation, the potential employer may inquire about it.

### **Investigation and Complaint Procedure**

Any employee or applicant who believes that s/he has been subjected to discrimination, retaliation, or denied reasonable accommodation may seek resolution of his/her complaint through the procedures described in Policy 8913—Section 504/ADA Prohibition Against Disability Discrimination In Employment. The complaint procedure involves an investigation of the individual's claims and a process for rendering a decision regarding whether the charges are substantiated.

### **Privacy/Confidentiality**

The District will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants will be advised that their identities may become known to the Respondent(s) through the investigation process.

During the course of an investigation, the CO will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that s/he learns and/or provides during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained in accordance with the Board's records retention policy.

Revised 4/15/19

Revised 1/17/22

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