

**WESTMORLAND UNION ELEMENTARY SCHOOL DISTRICT**

**I.**

**Board Policies Covering All Employees**

Board Policy No. 4021

**REASONABLE ACCOMMODATION OF EMPLOYMENT  
APPLICANTS AND EMPLOYEES**

**A. General.**

The Governing Board of the Westmorland Union Elementary School District is committed to providing equal employment opportunity for individuals with disabilities and medical conditions. It is the policy of the District to provide reasonable accommodations when necessary for persons qualified under the Americans with Disabilities Act ("ADA") and the California Fair Employment and Housing Act ("CFEHA"). This Policy clarifies the rights and responsibilities of the District, its employees, and applicants for District employment under the ADA and applicable CFEHA provisions. This Policy and accompanying Regulation may apply to employees who have suffered an industrial injury or illness which prevents them from performing in their usual and customary classification pursuant to Board Policy BP 4161.2 and AR4161.22 Where the terms of CFEHA and the ADA differ, the term(s) most beneficial to employees shall apply.

Federal and State law prohibit an employer from discriminating against qualified individuals with disabilities and/or medical conditions in regard to job application procedures, hiring, advancement, discharge, compensation, job training, and other terms, conditions and privileges of employment. An employer is also required to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship. An employer is not required to employ or to continue to employ an individual with a disability who is not otherwise qualified for the position, or who poses a substantial danger to himself or others and who cannot perform the job at a safe level with or without reasonable accommodation.

The District's designated Coordinator for Nondiscrimination in Employment including District efforts to comply with the ADA and CFEHA shall be the Superintendent.

**B. Definitions.**

For purposes of this Policy and Regulation, the following terms shall apply:

1. "Disability" means a person who has a physical or mental condition as defined by Federal or State law that limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. The District recognizes that there are a vast number of identified disabilities. Therefore, it will apply the definitions of disabilities on a case-by-case basis. A disability does

not include current illegal drug use, psychoactive substance abuse disorders resulting from current illegal drug use, compulsive gambling, kleptomania, pyromania, or sexual behavior disorders.

2. "Medical Condition" means genetic characteristics, or any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.
3. "Major Life Activity" means those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities include physical, mental and social activities, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
4. "Limits" means a limit on a major life activity makes achievement of the life activity difficult. Whether a person has a disability is determined without respect to any mitigating measure unless the mitigating measure itself limits a life activity.
5. "Essential Functions" means those functions that an individual who holds the position must be able to perform with or without reasonable accommodation. A job function may be essential because the position exists to perform that function, there are limited employees available to perform the function, and/or the function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function. Factors that determine whether a particular function is essential include whether incumbents in the position are required to perform the duty, the supervisor's judgment as to which functions are essential, written job descriptions, the amount of time spent performing the function, the consequences of not requiring the employee to perform the function, the terms of an applicable collective bargaining agreement, the work experience of past employees in the position, and the current experience of incumbents in the same or similar jobs.
6. "Qualified Individual With a Disability" means an individual who satisfies the requisite skill, experience, educational and other job-related requirements of the position and one who can perform the essential functions of the job with or without reasonable accommodation(s).
7. "Reasonable Accommodations" means:
  - a. Modifications to the job application process that enable qualified disabled employment applicants to be considered;
  - b. Modifications to the work environment, manner and/or circumstances under which the work of the position is performed that enable a qualified disabled person to perform the essential functions of the position; and

- c. Modifications that enable disabled employees to perform the essential functions of a position in order to enjoy equal benefits and privileges of employment to those enjoyed by disabled employees in similar positions.
8. "Undue Hardship" means significant difficulty or expense imposed by an accommodation. For example, an accommodation imposes undue hardship when it would disrupt or prevent other employees from doing their jobs or presents a danger to the health and safety of the employee or others. In making the determination of whether an accommodation would pose an undue hardship on the District, factors which will be considered include, but are not limited to the following:
- a. The nature and cost of the requested or necessary accommodation;
  - b. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at the facility, the effect on other employees, and the impact on the operations of the facility;
  - c. The overall financial resources, size, number of employees, and the number, type and location of District facilities;
  - d. The functions of employees engaged in the same or similar work, their geographic separateness, any applicable collective bargaining agreement, State or Federal laws which may prohibit or limit the District's ability to provide a requested accommodation

### **C. Medical Examination and Pre - Employment Inquiries**

1. **Employment Applicants.** Before making a job offer, the District may ask about an applicant's ability to perform specific job functions, request that an applicant demonstrate how he or she will perform specific essential job functions with or without reasonable accommodation, and/or make a job offer that is conditioned on satisfactory results of a post-offer medical examination or inquiry. The District will not make disability related inquiries of employment applicants prior to making a job offer.
2. After making a conditional job offer and before an individual begins work, the District may conduct a medical examination or ask disability related questions, provided that all candidates who receive a conditional job offer in the same category are required to take the same examination and/or respond to the same inquiries, and that such examinations or inquiries are job related.
3. **Employees.** Where the need for any accommodation or the need for a specific requested accommodation is not obvious, the District may require that an employee provide sufficient job related medical documentation of an employee's qualifying disability or medical condition sufficient to permit the District to

determine that the disability or medical condition exists, the nature of any functional limitations which must be accommodated, what if any accommodations are necessary and available, what alternatives may be offered consistent with the employee's functional limitations, and the temporary or permanent nature of any functional limits.

4. Confidentiality. Medical information shall be limited to diagnosis of the mental or physical condition(s) for which accommodation is claimed and the treatment provided for this condition, and to medical information regarding the disability for which accommodation is claimed that is necessary for the District in order to determine the existence, nature and extent of physical and mental limitations and possible reasonable accommodations. The District shall maintain such information as a confidential medical record. The District may provide such information only in limited circumstances to supervisors, managers, first aid and safety personnel, a vocational rehabilitation specialist for the purpose of determining possible reasonable accommodations, and government representatives investigating District compliance with the CFEHA, the ADA or other State or Federal discrimination laws.

#### **D. Procedure for Requesting Reasonable Accommodation**

1. Any employee or employment applicant seeking an accommodation in connection with employment should inform his or her supervisor or the District Superintendent of the need for accommodation. Supervisors may informally provide accommodations on the condition that they first consult with the Superintendent before any decision regarding a requested accommodation is made. Generally, it is the responsibility of the employee/employment applicant to inform the District that an accommodation is needed, and to provide in writing any necessary medical verification of a disability-related need for the requested accommodation. Although the responsibility for requesting reasonable accommodation rests primarily with the employee/applicant, the Superintendent is available for preparation, explanation, and dissemination of reasonable accommodation information or assistance.
2. Employment Applicants. The District shall inquire of all employment applicants determined to be otherwise qualified for a vacant position if the applicant has a disability or medical condition which will require reasonable accommodation. The Superintendent shall review all such requests, obtain additional information, if necessary, and consult with a vocational rehabilitation specialist, if necessary, to determine if the requested accommodation is necessary and reasonable. If the requested accommodation is necessary and can be provided without resulting in undue hardship to the District or unfair competitive advantage to the disabled applicant, the Superintendent may provide the accommodation without further inquiry. If the applicant is not an otherwise qualified candidate, is not disabled within the meaning of State or Federal law, or the requested accommodation is

unreasonable, the Superintendent will consult with the applicant to explore reasonable alternatives or to notify the applicant that the applicant is not disabled and/or otherwise qualified for the position.

**E. Required Medical Documentation**

The District may require the employee/applicant to provide documentation from an appropriate medical provider that is job related and consistent with business necessity. Such inquiry shall be limited to that necessary to substantiate that the individual has a disability and needs reasonable accommodation. Documentation is sufficient if it describes the nature, severity, and duration of the individual's impairment, the activity or activities that the impairment limits, the extent to which the impairment limits the individual's ability to perform the activity or activities, and substantiates why the requested accommodation is needed. The District may request the employee or applicant to sign a limited medical release allowing the District to submit a list of specific questions to the medical provider. The District will only request information that is necessary to determine whether the individual can perform the essential functions of the position and that information necessary

**F. The Interactive Process**

The process of determining whether a reasonable accommodation is available is an informal, interactive process that involves the Superintendent and the qualified individual with a disability. The determination of whether a reasonable accommodation is available is made on a case-by-case basis. Primary consideration will be given to the preferences of the individual requesting accommodation, however, the District has the ultimate discretion to choose between effective accommodations. The Superintendent, in consultation with the employee or applicant will:

1. Analyze the position and confer with the supervisor of the position, the site supervisor, and the Department manager, as well as any job analysis or outside consultant to identify the essential functions of the job.
2. Consult with the individual to determine or clarify the job-related limitations imposed by the individual's disability. Identify which essential functions of the position are affected by the individual's disability and what accommodations could enable the individual to perform those duties.
3. Consult with the individual and confer with the supervisor of the position, the department manager, and a vocational rehabilitation specialist, if necessary, to review the request for accommodation, identify the precise limitations resulting from the disability or medical condition, identify potential accommodations, and assess the effectiveness and reasonableness of each in enabling the individual to perform the essential functions of the position.

4. Determine whether a reasonable accommodation is available that will enable the employee and/or applicant to perform the essential functions of the job.
  - a. Consider the preference of the individual to be accommodated.
  - b. Determine whether the requested accommodation will impose an undue hardship on the District.
  - c. Determine whether an applicant or employee, if employed or placed in a modified or vacation position poses a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation. This determination must 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 the potential harm.
  - d. Select and implement the most appropriate effective accommodation for both the disabled individual and the District.
  - e. Document the reasons for denying a requested accommodation.

**G. Examples of Possible Accommodations**

Possible accommodations which may be reasonable on a case-by-case basis shall include, but not be limited to, acquiring or modifying assistive equipment or devices, altering when or how an essential job function is performed, restructuring a job, modifying training materials, making facilities readily accessible, relocating the work area, modifying work schedules, and providing paid or unpaid leave. If an accommodation cannot overcome existing barriers to performing the essential functions of the position, or if the accommodation would cause an undue hardship, the Superintendent and the employee shall work together to determine whether reassignment may be an appropriate accommodation. The District holds employees with disabilities to the same standards of performance as other employees in the same classification without disabilities for performing the essential functions of the job with or without reasonable accommodation. Therefore, eliminating essential functions of the position or applying lesser standards of performance of essential functions to disabled employees is not a form of reasonable accommodation.

Legal Reference:

The Americans With Disabilities Act of 1990, Title 42 U.S.C. §12101-12213;  
The Vocational Rehabilitation Act, 29 U.S.C. § 701-794e;  
28 Code of Federal Regulations § 35.101-35.90; California Fair Employment and  
Housing Act, Government Code § 12900-12996; Enforcement Guidance:  
Reasonable Accommodation and Undue Hardship under the Americans With  
Disabilities Act, October 2002

Date Policy Adopted By The Board: October 9, 2003