

ADAAA REASONABLE ACCOMMODATIONS PROCEDURES

In accordance with the Titles I and II of the Americans with Disabilities Act Amendments Act (ADAAA), Section 504 of the Rehabilitation Act of 1973, Title 20 of the State Government Article, Annotated Code of Maryland, and Title VII of the Civil Rights Act, the Maryland State Department of Education (“MSDE” or the “Department”) does not discriminate against persons with a disability in the provision of services, programs, benefits or activities. Procedures outlined in this document have been established to assist MSDE employees with maintaining compliance with State and Federal statutes and laws.

Definitions:

Disability

A mental or physical impairment that substantially limits at least one major life activity of an individual; a record of such an impairment; or being regarded as having such an impairment.

Major life activities include, but are not limited to: caring for oneself, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working, and the operation of major bodily functions.

Major bodily functions include but are not limited to functions of the immune, digestive, neurological, respiratory, circulatory, endocrine and reproductive systems, normal cell growth, bowel, bladder and brain.

Qualified individual with a disability- EMPLOYMENT

A person with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Qualified individual with a disability- PUBLIC PROGRAM or SERVICE RECIPIENTS

For purposes of receiving services, education or training, qualified individuals with disabilities are disabled persons who meet the essential eligibility requirements established by the service, education, or training.

Request for Reasonable Accommodations Definition:

A reasonable accommodation is any modification or adjustment to a job, work environment or program that will enable a qualified employee, applicant or recipient with a disability to perform essential job functions, participate in the application process, or benefits of the service and/or program.

Interactive Process

The interactive process is an informal contact involving both the requesting party and the determining party, where the precise job limitation(s) resulting from the disability is identified and potential reasonable accommodations that could overcome those limitations are discussed.

Requests for Reasonable Accommodations for Disabilities Due to Pregnancy

Effective October 1, 2013, pursuant to Chapters 547 and 548 of the 2013 Acts of the Maryland General Assembly and State Government Article § 20-609 employees are now granted a statutory right to reasonable accommodations if the pregnancy causes or contributes to a disability, and if the accommodation does not impose an undue hardship for the employer.

Employers are required to recognize disabilities caused by pregnancy or childbirth as temporary disabilities for all job-related purposes and shall explore with the employee all possible means of providing the reasonable accommodation throughout the duration of the employee's pregnancy without creating an undue hardship to the employer. This law requires that under these circumstances, the pregnancy be treated as a temporary disability under any health or temporary disability insurance or sick leave plan available in connection with employment.

Employers may require medical documentation from an employee's health care provider regarding the medical advisability of a reasonable accommodation to the same extent certification is required for other temporary disabilities. The certification shall include: date a reasonable accommodation is medically advisable; probable duration; explanation as to the medical advisability of the reasonable accommodation.

Further, this law requires that employers post in a conspicuous location, and include in any employee handbook, information concerning the employee's rights regarding this law.

Accommodations Procedure:

1. Requests for reasonable accommodations shall be made to the [Director of Equity Assurance and Compliance or their designee](#). (For the purpose of this document, these individuals will be noted as the *designated party or parties*.)
 - a. **Note:** requests may be made in writing or verbal. While MSDE encourages that the *Request for Accommodation* Form be completed and submitted by the requesting party for recordkeeping purposes, the law does not require the request be made in writing; the interactive process begins once MSDE becomes aware of the request, written or verbal. However, the information requested in the form is necessary to effectively analyze the request.
2. Once the request has been made, the designated party (cited in section 1) will meet with the program participant or employee to clarify the request and **only if necessary**, request that the employee or participant submit sufficient medical documentation. (*e.g., the medical limitation is not obvious and/or the nexus between the accommodation request and the disability is unclear.*)
3. After all necessary documentation has been received from the employee or program participant, the designated party (cited in section 1), and other applicable parties may meet to make determinations for the accommodation request.
 - a. The medical documentation should explain the disability and functional limitations. The medical documentation must also substantiate why the requested reasonable accommodation is needed.
 - b. The designated party should not request documentation that is unrelated to determining the limitation and the necessity for an accommodation (e.g., requesting entire medical records or asking the requesting party's health care provider to reveal limitations not related to the request).
 - c. In employment related matters, if medical documentation does not address specific concerns held by the employer regarding the employee's ability to perform the essential functions of the job, the employee should be asked to have their health care provider complete and return a task analysis. If the task analysis is not returned in a timely manner (e.g., within 14 calendar days) or remains unclear, the employee may be referred to the State Medical Director for the completion of the task analysis. Upon receipt of the task analysis and no or minimal improvement in the performance of essential job functions over a reasonable timeframe, (e.g., 30, days, 60 days, etc.), the employee may be referred to the State Medical Director for a workability evaluation, if the referral is consistent with business necessity.

4. Employees referred to the State Medical Director are required to report for the evaluation, with all expenses incurred by the Department. After such evaluation, the State Medical Director will make a determination regarding the employee's ability to perform the essential functions of the job, with or without a reasonable accommodation.
5. The employee or program participant must be promptly notified of the outcome of their accommodations request after the interactive process has been completed and all necessary documentation is reviewed.
6. Information obtained by the employer regarding the medical condition or history of the applicant or employee must be maintained on separate forms and in separate files from the personnel record. This information is treated as a confidential medical record and shall only be disclosed to supervisors or managers that are related to the accommodation, first aid and safety personnel, when appropriate (e.g., emergency medical treatment is required) and government officials investigating compliance with the ADA.
7. COMAR 17.04.03.16 (D) requires that the reasonable accommodation process is documented in writing. This includes the specific accommodations that were considered, offered, rejected by the employee or denied by management, as well as reasons for the denial. All approved accommodations should be documented as well.

Task Analysis

The Task Analysis is a form that is completed by a medical professional who evaluates an employee's physical ability to perform his/her essential job functions.

In accordance with COMAR 17.04.03.16(D), the appointing authority shall prepare an appropriate task analysis sheet and request that an examining physician complete and return it before an applicant is denied employment or an employee is involuntarily demoted or separated for medical reasons.

Compliance Monitoring

The unit ADA Designee will track all requests for employment related reasonable accommodations within their respective department(s) and report the information annually to OEAC by October 15th of each year. A tracking form is attached.

Undue Hardship

MSDE has a statutory obligation to provide a requested reasonable accommodation only if such a modification or adjustment does not cause an undue hardship. Undue hardship is defined as a request that poses a significant negative impact on the expenses and/or resources of the organization. Such an impact is determined by the cost of the accommodation in relation to the size, total financial resources, legitimate safety concerns, nature and structure of the employer's business and the facility providing the accommodation. In this case, all finances and resources under Maryland State Government will be considered for MSDE requests.

MSDE does not have to provide the accommodation that an employee wants. MSDE may choose among accommodations if the chosen accommodation is effective.

Complaint Investigations

Any person who alleges discrimination on the basis of disability, including alleged failure to accommodate, in the provision of employment, services, activities, programs or benefits by MSDE may file a complaint with OEAC. All complaints or suspicions of potential discrimination, harassment or retaliation will be promptly investigated.

Internal complaints may be filed in writing or by contacting the MSDE Director of OEAC. Complaints filed with OEAC, must be filed **no later than one year** after the alleged violation, by contacting:

Delinda Johnson Blake
Director, Office of Equity Assurance and Compliance
Maryland State Department of Education
Office of Equity Assurance and Compliance
200 W. Baltimore Street, Baltimore, Maryland 21201
Office: (410) 767-1126
delinda.blake1@maryland.gov

Within 15 calendar days of receipt of the complaint, the complainant will be contacted to discuss the complaint and possible informal resolutions, including mediation. Within 15 days after the discussion or 30 days after the complaint has been filed, the MSDE Director, OEAC will notify the complainant of the Department's decision or will request an extension pending further need for investigation. The OEAC Director will make every attempt to resolve the complaint as soon as possible.

Parties may also file an external complaint with the **Maryland Commission on Civil Rights**, 6 St. Paul Street, Suite 900, Baltimore, Maryland 21202, 410-767-8600 (Phone), 410-333-1841 (Fax), Website: <https://mccr.maryland.gov/Pages/default.aspx> or the **Equal Employment Opportunity Commission (employees only)**, GH Fallon Federal Building, 31 Hopkins Plaza, Suite 1432, Baltimore, Maryland 21201, 410-209-2237 (Phone), 1-800-669-4000 (Phone), 410-962-4270 (Fax), Website: <https://www.eeoc.gov/> ***within 300 days of the alleged violation.***

As an alternative to contacting, the Maryland Commission on Civil Rights, a program participant may with the following agencies within 180 days of alleged violation:

U.S. Department of Education Office for Civil Rights

400 Maryland Avenue, SW Washington, DC 20202-1100

1-800-421-3481; Fax: 202-245-6840; TDD: 877-521-2172

Email: OCR@ed.gov

U.S. Department of Justice Civil Rights Division

950 Pennsylvania Ave., NW Washington, DC 20530

1-877-292-3804 or 202-514-4092; Fax: 202-514-8337; TDD: 202-353-3926

Email: education@usdoj.gov

Complaints may be filed with any one of the external agencies and OEAC simultaneously.

Discipline

Any employee found to have violated the ADA may be subject to disciplinary action that includes, but is not limited to reprimand, demotion, suspension, or dismissal.

Appeals

For employment related matters: If the employee is dissatisfied with the OEAC's decision, a request for an appeal may be submitted to the Office of the Statewide Equal Employment Opportunity Coordinator (OSEEOC), 301 West Preston Street, Suite 607, Baltimore, MD 21201, and (410) 767-3800. This appeal must be made in writing to OSEEOC no later than 10 days of receiving OEAC's decision.

For Title II ADA requests -If the response by the Director, OEAC does not satisfactorily resolve the issue, the complainant and/or their designee may appeal the decision within 15 calendar days after receipt of the response to the State Superintendent of Schools or his/her designee

Confidentiality

Pursuant to the Annotated Code of Maryland, State Personnel and Pensions §5-214 Information obtained as part of an investigation conducted under this subtitle is confidential within the meaning of Title 10, Subtitle 6 of the State Government Article.

Retaliation

It is unlawful to retaliate against individuals for opposing an alleged discriminatory activity or participating in the investigation of an alleged violation of discrimination. Any employee found to have violated Federal or State laws prohibiting retaliation may be subject to disciplinary action that includes, but is not limited to reprimand, demotion, suspension or dismissal.

REQUEST FOR REASONABLE ACCOMMODATION

Requesting Party's Name:

Job Title / Position Applied to or Program Name:

Daytime Phone Number:

Request Date: Address:

Email Address:

Please check one:

Employee

Applicant

Program Participant

If employee, Supervisor's Name and Phone Number:

State the functional limitations that you experience as a result of your health condition:

My limitation(s) prevents me from performing the following program or work-related activities:

I am requesting accommodation because:

I am applying for employment and the accommodation will allow me to participate in the application / selection process.

I am currently employed by the State of Maryland and require an accommodation in my current position.

I am a person seeking an accommodation so that I may participate in a MSDE program, service or activity for which I am otherwise qualified.

The accommodation I am requesting is:

(Describe the type of accommodation, suggestions for work site, exam or program site modifications or specific job duties that may be restructured to facilitate your employment or participation, and the details of how or where the accommodation (if purchasable) may be obtained, including the cost, if known).

This accommodation will allow me to perform the functions of my job or participate in the application / selection process or program as follows:

(Describe how the accommodation will assist you)

I UNDERSTAND THAT I MAY BE REQUIRED TO PROVIDE MEDICAL INFORMATION FROM MY HEALTH CARE PROVIDER AS PART OF THIS PROCESS.

SIGNATURE

DATE

PRINT NAME

PLEASE FORWARD TO: oeac.msde@maryland.gov

**AUTHORIZATION FOR RELEASE OF
MEDICAL INFORMATION FOR REASONABLE ACCOMMODATIONS**

Patient Information

Name:

Date of Birth:

Mailing Address:

City, State, Zip:

Office #:

Mobile #:

Medical Provider Information

Name:

Specialty:

Mailing Address:

City, State, Zip:

Office #:

Fax #:

By my signature, I authorize my medical provider listed above to discuss directly and/or in writing my mental and physical health condition with my employer, the Maryland State Department of Education, as it relates to my request for a reasonable accommodation. I understand that the requested information is solely for the purpose of determining whether I have a disability and the need for a reasonable accommodation to perform the essential functions of my position.

Signature of Patient

Date: