TACOMA COMMUNITY COLLEGE ADMINISTRATIVE POLICY AND PROCEDURE

REASONABLE ACCOMMODATION

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| Section:  Human Resources  IV. ADSV - 205 | President’s Authorization:  Approved by Dr. Pamela Transue                      November 15, 2010 |
| President’s Signature                                                Date |

**PURPOSE**

To provide guidance under which the college will provide reasonable accommodation for qualified persons with disabilities.  This policy should not be construed as providing rights or obligations not provided under applicable laws.

**TO WHOM DOES THIS POLICY APPLY**

This policy applies to qualified disabled employees and candidates for employment.

**REFERENCES**

Americans with Disabilities Act (ADA) of 1990

ADA Amendments Act of 2008

Rehabilitation Act of 1973

Governor’s Executive Order 96-04 – Implementing the Americans with Disabilities Act and Superseding Executive Order 93-03

WAC 162-22 Employment – Handicapped Persons

WAC 357-26 Reasonable Accommodation

WAC 357-46-160 Disability Separation

RCW 49.60 Discrimination – Human Rights Commission

**DEFINITIONS**

**Equal Employment Opportunity** means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to a similarly-situated applicant or employee without a disability.

**Essential Functions** -means the primary job tasks and responsibilities of a position that are fundamental and necessary to accomplish the required outcomes of the job. The term "essential functions" does not include the marginal functions of the position that are incidental to the performance of the primary job function.

**Health Care Professional** means a person who has completed a course of study and is licensed to practice in a field of health care, which includes the diagnosis and assessment of the particular disability or disabilities in question.

Major Life Activities:   In general, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major bodily functions:  A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**Qualified Individual with a Disability** - means an individual with a disability who meets the skill, experience, education, and other job‑related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.  A qualified individual with a disability has the right to refuse an accommodation.  However, if the individual cannot perform the essential functions of the job without the accommodation, s/he will not be considered to be an otherwise qualified individual with a disability after refusing the accommodation.

**Person with a Disability**– Federal and state definitions vary.  The term disability is substitute for the term handicap in the following definitions:

The Federal Affirmative Action and Equal Opportunity Definition – A person is disabled who:(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).

Regarded as having such an impairment:  An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.  Regarded as having such impairment shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

The definition of disability shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of the ADA.

The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:  1) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; 2 ) use of assistive technology; 3) reasonable accommodations or auxiliary aids or services; or 4) learned behavioral or adaptive neurological modifications.

4(a) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.  1) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and 2) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

        The Washington State Affirmative Action Definition – A person is disabled who: "Disability" means the presence of a sensory, mental, or physical impairment that: 1) Is medically cognizable or diagnosable; or 2) Exists as a record or history; or 3) Is perceived to exist whether or not it exists in fact.  
  
 A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.  
  
"Impairment" includes, but is not limited to: 1) 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, genitor-urinary, hemic and lymphatic, skin, and endocrine; or 2)Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.  
  
A limitation is not substantial if it has only a trivial effect.

**Reasonable Accommodation**means a) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; 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 the position; or c) modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment that are enjoyed by its other similarly situated employees without disabilities.

**Undue Hardship** means an excessively costly, extensive, substantial, or disruptive modification or one that would fundamentally alter the nature or operation of the college.  The following criteria shall be considered in determining undue hardship:

        The nature and net cost of the accommodation needed, taking into consideration the availability of  tax credits and deductions, and/or outside funding;

        The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of employees, and the effect on expenses and resources;

      The overall financial resources of the college with respect to the number of employees and the number and type and location of its facilities;

        The type of operation or operations of the college, including composition, structure and function of the work force of such entity, and the geographic separateness, and administrative or fiscal relationship of the facility or facilities in questions to the covered entity; and

        The impact of the accommodation on the operation of the facility including the impact on the ability of other employees to perform their duties and the impact on the college's ability to conduct business.

**POLICY**

It is the policy of Tacoma Community College to provide reasonable accommodation to qualified disabled employees and applicants for employment in accordance with the American’s with Disabilities Act, The Americans with Disabilities Amendment Act of 2008, Washington Law against Discrimination (WLAD), Governor’s Executive Order 96-04 and applicable state law.

**PROCEDURE**

**A. Initiating the Reasonable Accommodation Process (Employee or Job Applicant).**

1. Requests for accommodation must be directed to the Human Resources department.

2. The qualified employee or applicant must request an accommodation.  This request must be directed to the Human Resources department and include the following components:

**Request from the Employee or Candidate for Employment** addressing The specific nature of the disability and indicates how the disability impacts the employee or applicants ability to do the essential job function, the ability to participate in the application process, or the ability to enjoy the benefits and privileges of employment.  The employee or candidate for employment may make a recommendation regarding an accommodation.

**Medical Documentation** that provides the college with the information and documentation necessary to verify the disability and indicates how the disability impacts the employee or applicants ability to do the essential job functions, the ability to participate in the job application process, or the ability to enjoy the benefits and privileges of employment.  This statement must also indicate whether the disability is of a permanent or temporary nature.

3. The employee or candidate for employment must provide additional documentation if requested by the college on the nature and extent of the disability so that the college may determine the appropriate accommodation.

4. The college is not required to select the accommodation of the employee or applicant’s choosing.   A qualified individual with a disability has the right to refuse an accommodation.  If, the employee or candidate for employment refuses the reasonable accommodation offered by the college and is not able to perform the essential functions of the job, the individual will no longer be considered qualified.

5. Accommodations such as  assisting the employee to apply for other positions require that the employee provide current information that demonstrates skills, abilities, training, and experience; identify the types of jobs s/he is interested in and qualified for; apply for vacant positions; and advise the college of any changes of pertinent information such as address or telephone number.

6. The employee and/or applicant have a responsibility to cooperate with the college in the accommodation process and to provide information and documentation as necessary for the college to proceed.

**B.        Responding to a Request for Accommodation**

1. The College will determine the essential functions of the position if not previously identified.

2. The College will consult with the individual with a disability to determine the specific abilities and limitations as they relate to the essential job functions, identify the barriers to job performance and assess how an accommodation can overcome these barriers.  As defined above, verification of the disability/limitations and/or a second opinion may be appropriate.

The College may request verification of the individuals' disability from the employee or applicant's health care provider when an applicant/employee requests a reasonable accommodation where their disability is not readily apparent and has not been previously documented.  The college may obtain a second opinion, at its own expense, from a health care provider of its selection.  Such inquiries must be limited to verification of the employee's/applicants claims, except that the college may also request suggestions for alternative accommodations.

Information regarding the presence or nature of an employee's or applicant's disability will be treated as a confidential medical record and shall be maintained in a secure manner, apart from personnel files with access restricted to designated personnel on a need-to-know basis.

3. The College will consult with the employee/applicant and may consult with other knowledgeable sources, to identify potential accommodations and assess how effective each would be in enabling the individual to perform the essential job functions.

4. If there are two or more effective accommodations that would allow the individual with a disability to perform essential job functions, after considering the preference of the individual with a disability, the College will select the accommodation to be provided.

5. When an accommodation in an employee's present position is not reasonable, or would cause an undue hardship, the college will attempt to accommodate the employee through reassignment to a vacant position, at the same pay range or lower, for which s/he is qualified.  Within practical limitations, the college may also assist the employee in identifying and applying for vacant positions for which s/he is qualified within other agencies/institutions.

6. Written justification, signed by the President, must be provided for any decision not to provide a reasonable accommodation because of undue hardship.  The justification should demonstrate a consideration of the Disability Accommodation Revolving Fund at the Department of Personnel and should explore the practical and available limits of the institution's ability to draw upon resources available elsewhere within state government.

7. If the cost of a reasonable accommodation would impose an undue hardship, and there are no other financial resources available, the individual with a disability must be given the option of providing the accommodation(s), or paying that portion of the cost which would constitute an undue hardship.

8. If no reasonable accommodation can be made, a separation due to disability is initiated.

**C.        Separation for Disability Reasons**

An employee who is unable to perform the duties of his or her position or class due to mental, sensory, or physical incapacity may be separated for disability reasons.  Such action is taken after the institution has made a good faith effort to reasonably accommodate the employee's disability.  A permanent classified employee being separated due to disability shall be provided with a pre‑separation notice, which includes information regarding the employee's option to apply for return‑to‑work.  A separated classified employee may appeal his/her separation, as provided by  WAC 357-46-160 or the applicable collective bargaining agreement.  Separations due to disability shall not be considered disciplinary actions.

In addition to the information listed above, the employee will be provided with a list of benefits/assistance programs offered by other agencies (i.e., public assistance, disability retirement, social security, etc.) and information concerning COBRA.

**D.        Resolution of Disputes**

The college’s internal procedures as set forth in College policy or in its collective bargaining agreements for represented staff provide guidance on addressing disputes.

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| Initial Adoption Date: August 30, 2004 (as a policy)  Prior Revision Dates: None.  Last Revision Date: November 15, 2010  Last Review Date: July 1, 2011 |