

# Accommodating Persons with Disabilities

Personnel – Human Rights

**EWU Policy 402-03**

**Effective: May 21, 2021**

**Authority: EWU Board of Trustees**

**Proponent: University President**

**Purpose:** This policy prescribes university standards and responsibilities related to the requirements of the Americans with Disabilities Act (ADA) of 1990; the ADA Amendments Act of 2008; the Washington State Law Against Discrimination, RCW 49.60; and Section 504 of the 1973 Rehabilitation Act which prohibits discrimination against individuals on the basis of disability.

**History:** This policy revises EWU Policy 402-03, dated December 6, 2019, with housekeeping changes approved on December 19, 2019. It was adopted by the EWU Board of Trustees on May 21, 2021.

**Applicability:** This policy applies to applicants, employees, prospective students, students, and individuals who wish to participate in university sponsored events which are open to the public.

## 1. DEFINITIONS

For the purposes of this policy, the following definitions apply:

### 1-1. Disability

- a. The presence of a sensory, mental or physical impairment, whether temporary or permanent, that:
- b. Has a substantially limiting effect on the individual's ability to perform one or more major life activities; and,
- c. Is medically cognizable or diagnosable, exists as a record or history, or the person is perceived to have an impairment. Solely for purposes of determining whether a person is entitled to a reasonable accommodation, an impairment must be known or shown through an interactive process to actually exist.

### 1-2. Essential functions for employees

The fundamental job duties of the position that the individual with the disability holds or desires. It does not include the marginal functions of the position.

### 1-3. Health care professional

A person who is licensed to diagnose and/or treat the particular medical condition or conditions which are the basis of the accommodation.

### 1-4. Impairment

- a. The term "impairment" includes, but is not limited to, any physiological disorder or condition, cosmetic disfigurement, or anatomical loss of a major bodily system, and 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. ,

- b. A temporary impairment is an impairment with an actual or expected duration of six months or less.

### 1-5. Major Life Activities

Includes, but is 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.

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.

### 1-6. Perception of Impairment

A person is perceived as having an impairment for purposes of this policy if the person demonstrates he or she has been subjected to discrimination because of an actual or perceived physical or mental impairment, which is not transitory and minor, whether or not the impairment limits or is perceived to limit a major life activity.

### 1-7. Qualified person with a disability

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.

### 1-8. Qualified student with a disability

A student who, with or without reasonable accommodations, meets the academic and technical

standards required for admission to, participation in, and/or fulfilling the essential requirements of university programs or activities.

**1-9. Reasonable accommodation**

Any modification or adjustment to the work or university environment that makes it possible for a qualified person or student with a disability to perform the essential functions of the job or to participate in a program, activity or benefit from a service provided by the university but which does not result in undue hardship to the university or a fundamental alteration to its educational programs and activities.

**1-10. Service Animals**

Policies and procedures regarding service animals are covered in EWU Policy 603-10 (Service Animals) and EWU Policy 204-08 (Service and Assistance Animals in University Housing).

**1-11. Substantially Limits**

“Substantially limits” means a person’s ability to perform a major life activity is limited when compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every limitation will constitute a disability and a limitation is not substantial if it has only a trivial effect. Whether an impairment substantially limits a major life activity is determined without regard to the ameliorative effects of mitigating measures, such as medication, except for ordinary eyeglasses or contacts.

**2. GENERAL**

**2-1. Policy**

Persons with disabilities are an integral part of the Eastern Washington University community, and the provision of equal access to programs, services and activities through reasonable accommodation is a campus-wide responsibility and commitment. In accordance with the Americans with Disabilities Act (ADA) of 1990; the ADA Amendments act of 2008, the Washington State Law Against Discrimination, RCW 49.60; and Section 504 of the 1973 Rehabilitation Act, Eastern Washington University is committed to preventing discrimination against persons with disabilities and shall provide reasonable accommodation as described herein and to the extent required by state and federal law.

A qualified person with a disability has the right to request and receive reasonable accommodation in all aspects of employment and education. This includes, but is not limited to, all phases of employment, training, promotions, transfers, benefits, leave, performance

evaluations, compensation, separation from employment, academic adjustments, auxiliary aids, and housing or dining accommodations.

Nothing in this policy shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit provided, which such individual chooses not to accept.

**2-2. ADA Compliance Officer**

The University’s Director of Equal Opportunity serves as the University ADA/Section 504 Compliance Officer. The Director serves as the primary point of contact for all issues related to compliance with ADA. The ADA Compliance Officer:

- a. Monitors and reports on ADA compliance issues;
- b. investigates failure to accommodate and disability discrimination complaints;
- c. provides advice and consultation to the university community regarding ADA requirements; and
- d. provides assistance as needed in coordinating efforts to address ADA requirements.

Director of Equal Opportunity

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**2-3. Training**

- a. The provisions of this policy shall be conveyed to new employees during employee orientation.
- b. EWU employees and their supervisors are expected to be familiar with EWU policy and procedure for requesting reasonable accommodations.

Training sessions are offered through the cooperation of Disability Support Services, the Office of Equal Opportunity, and the Human Resources Office.

**2-4. Confidentiality**

Information pertaining to a person’s disability or a request for reasonable accommodation is considered sensitive and is protected by federal and state laws. To protect the privacy of those involved, all information will be maintained in a confidential manner. During any process under this policy, information will be disseminated on a need-to-know basis. Supervisors, managers, faculty members, advisors and coaches may be informed regarding necessary restrictions on the work or duties of an employee or student and necessary accommodations.

Employees and students are not required to disclose to their supervisors, faculty members, advisors or coaches the medical basis for a requested accommodation. Supervisors and faculty members must not ask for personal medical information if it is not volunteered. Persons seeking an accommodation may be required to submit medical documentation of a disability and any resulting significant limitations to the Human Resources Office and/or Disability Support Services.

Medical records related to an employee's reasonable accommodation shall be kept in the employee's accommodation file that is maintained by the Human Resources Office which is separate from the personnel file.

Medical records related to a student's reasonable accommodation shall be kept in the Disability Support Services office and are considered student education records under the Family Education Rights and Privacy Act (FERPA). These records are kept separate from the student's academic record.

### **2-5. Undue Hardship**

Eastern Washington University does not have an obligation to provide a reasonable accommodation that would impose an undue hardship on the operation of the institution or fundamentally alter University programs or activities. An accommodation that would be excessively costly, extensive, substantial, or disruptive, or result in a fundamental alteration of the nature or operation of the institution, program, or course may pose an undue hardship.

Determinations of undue hardship will be made in accordance with the provisions of the Americans with Disabilities Act and related federal and state laws.

The Vice President for Business and Finance is the approval authority for undue hardship determinations.

If it is determined that a particular accommodation would impose an undue hardship, Eastern Washington University will consider whether there are alternative reasonable accommodations that would not impose such hardship.

### **2-6. Discrimination**

EWU does not discriminate on the basis of disability or the use of a trained service animal by a person with a disability, nor does it exclude qualified individuals with disabilities from participation in or receipt of EWU's programs and activities, as provided for in state and federal law.

Additional information about EWU's commitment to non-discrimination is contained in EWU Policy 402-02 (Diversity & Nondiscrimination).

### **2-7. Limitations**

This policy does not provide rights or obligations not provided by applicable laws.

### **2-8. Direct Threat**

An individual with a disability may be prohibited from participating in a program, activity or job duty if the individual poses a direct threat to the health and safety of others, to the extent permitted by federal law.

### **2-9. Student Threat of Harm to Self**

EWU expects and encourages students to maintain a reasonable concern for their own wellbeing. In the event the Dean of Students receives credible information that a student has threatened or attempted suicide, engaged in efforts to prepare to commit suicide, or expressed a preoccupation with suicide, the Dean of Students may require the student to engage in an assessment process that may include a series of up to three meetings with a member of the Student Life team, Counseling and Psychological Services (CAPS), or an outside provider. Students are required to participate in the process only with respect to assessing the threat of a potential harm to self. Students are not required to engage in counseling or therapy. A student may elect to go beyond the required assessment process and participate in counseling or therapy, only after CAPS obtains the student's permission.

If information is provided to the Dean of Students that a student's behavior renders the student unable to effectively function in the residential or educational community without harming themselves, the Dean of Students may initiate the Mandatory Medical Leave of Absence & Return process set forth in chapter 172-135 WAC.

### **2-10. Other References**

Americans with Disabilities Amendment Act

EWU Policy 203-05 (Accessible Technology)

EWU Policy 204-08 (Service & Assistance Animals in University Housing)

EWU Policy 402-02 (Diversity & Nondiscrimination)

EWU Policy 603-10 (Service Animals)

EWU Guideline 402-01 (Investigations)

EWU Guideline 501-03: Supplemental Instructional Materials for Students with Print Access Disabilities

Section 504 of the Rehabilitation Act

WAC 172-115 (Pet Control)

Washington Law Against Discrimination

### 3. ACCOMMODATIONS FOR STUDENTS AND PROSPECTIVE STUDENTS

A student or prospective student who seeks accommodation must contact the Disability Support Services (DSS) office to initiate a request for accommodation. Lack of advance notice and documentation may delay the availability of accommodation(s). Student employees who are seeking accommodations for their employment at EWU must follow the process set forth in chapter 5 and request an accommodation through Human Resources.

#### 3-1. Disability Support Services

The Disability Support Services (DSS) will:

- a. Maintain a website that provides information about this policy and how to request accommodation;
- b. Process requests for reasonable accommodation for qualified students with disabilities and prospective students;
- c. Assess, on a case-by-case basis, the effect of a student's disability on their ability to perform the essential functions of their program based on appropriate, current documentation;
- d. Coordinate and facilitate an interactive process that includes review of relevant and appropriate documentation and discussion with the student, to identify reasonable accommodation(s) to recommend so the student can access University programs, activities and services;
- e. Coordinate implementation of reasonable accommodations in consultation with faculty and departments/units;
- f. Provide assistance to departments and programs in matters related to ADA compliance and reasonable accommodation; and,
- g. Assist with the acquisition of auxiliary aids and adaptive equipment.

#### 3-2. Qualifying for Reasonable Accommodation

To qualify for reasonable accommodation, a student or prospective student must have a disability and request an accommodation from DSS. In order to develop a reasonable accommodation plan, DSS will request an evaluation of a student's ability to perform essential functions of a class, program, or activity and a recommendation for a reasonable accommodation plan from a qualified health care provider.

EWU will provide reasonable accommodations for known physical or mental limitations of qualified

students with disabilities so long as doing so does not impose an undue hardship on EWU or fundamentally alter an educational program or activity. Reasonable accommodations may include providing appropriate core services necessary to ensure equal access, such as early registration or providing materials in alternative formats.

DSS will facilitate an interactive process between a faculty member and the student seeking an accommodation, and, if needed, the chair of the department. DSS will determine which reasonable accommodations must be provided to a student. If a faculty member believes a requested accommodation is an undue hardship or fundamentally alters an educational program or activity, the faculty member has three university instructional days after being notified of the DSS' approved accommodation to request a review of DSS' decision by filing a request with the DSS Manager. If a student disagrees with the approved accommodation, the student also has three instructional days after being notified of DSS' decision to request a review by filing a request with the DSS Manager. Upon receipt of a request for review, the DSS Manager will contact the applicable department chair to see if they can resolve the concerns in a way that is agreeable to both the student and faculty member. If they are not able to resolve the concerns within five business days, they will send the request to review on to the appropriate college dean and the Dean of Students or designee. The college dean and Dean of Students or designee will make the ultimate determination of whether or not a requested accommodation fundamentally alters an educational program or activity and what accommodations must be provided. As set forth above, the Vice President for Business and Finance has the ultimate authority to determine whether an accommodation constitutes an undue hardship. If a student continues to believe they have not been provided with necessary accommodations, they may file a grievance/complaint with the Director of Equal Opportunity and ADA Coordinator or an external entity as set forth in chapter 7.

#### 3-3. Obligations of Faculty and Staff

When working with students with disabilities, faculty and staff will:

- a. Inform students of academic and programmatic standards established by the department and make these available in written and alternative format.
- b. Refer students who inquire about accommodation to Disability Support Services.
- c. Coordinate efforts regarding accommodations for students with the disabilities support services office.

- d. Fully comply with the requirements contained in approved accommodation plans.
- e. Ensure instructional materials are accessible. Faculty and staff may seek assistance from DSS or Information Technology.

### 3-4. Course Substitutions

If a qualified student with a disability seeks a course substitution as a reasonable accommodation, the student should submit a request for such an accommodation and provide the necessary medical documentation to DSS. DSS will assist the student through the following process:

- a. If the student seeks substitution of a general education requirement as an accommodation, the student must submit a request for special consideration to the Academic Appeals Board.
- b. If the student seeks substitution of a requirement for a major or professional certification, the student must submit a request to the appropriate academic department.
- c. Procedure and Standards. Either the Academic Appeals Board or the academic department, depending on the request, will consider whether the student is a qualified student with a disability and whether other means of accommodation have been determined inappropriate and/or exhausted. Course substitutions are made on a case-by-case basis upon a student's request and when the Academic Appeals Board/department determines the student's disability makes completion of the requirement impossible, the course requested for substitution is not an essential component of the academic program, and, thus, the substitution does not fundamentally alter the integrity of the academic program.
- d. If a student is denied a substitution request by either the Academic Appeals Board or an academic department, the student may file an appeal with the Provost within 21 days of receiving notification that the board or department denied the request.

## 4. ACCOMMODATIONS FOR EMPLOYEES

The Human Resource Office provides information and assistance to job applicants who request accommodation. Human Resource Services shall:

- a. Ensure position announcements do not contain discriminatory language prior to posting the position and that qualification

standards, employment tests, or other selection criteria do not screen out or tend to screen out an individual with a disability unless they are consistent with the business necessities of the University.

- b. Ensure recruitment and advertising literature set forth legitimate requirements for positions based on job requirements and business necessities. The applicant portal will describe the process by which applicants with disabilities may request accommodations in the application process.
- c. Ensure information about job openings and guidance for applicants with disabilities is easily accessible.
- d. Serve as the point of contact for applicants who are requesting accommodation. Applicants requesting accommodations are responsible for initiating contact with the Human Resources Office.
- e. Respond to requests for accommodation allowing for sufficient time for the applicant to submit the application by the deadline date.

### 4-1. Pre-employment Testing & Inquiries

- a. Pre-employment testing. Pre-employment tests may be used at any phase of the application process to determine if an applicant possesses the requisite skills to perform an essential function of the job. Alternative or accessible testing shall be made available, if feasible, on request.
- b. Pre-employment inquiries. Pre-employment inquiries shall be made based on an individual's ability to perform the essential functions of a position, and not be phrased in terms of the existence, nature or severity of a disability. Under no circumstance shall medical examinations be made prior to a conditional offer of employment.

## 5. ACCOMMODATIONS FOR EMPLOYEES

An employee who seeks accommodation must contact the Human Resources Office (HR) to initiate their request.

### 5-1. Human Resource Office

HR serves as the point of contact for employee accommodation requests. HR will:

- a. Maintain a website that provides information about this policy and how to request accommodation.

- b. Process employee requests for reasonable accommodation.
- c. Assess on a case-by-case basis based on relevant and appropriate documentation whether the effect of the employee's disability on his/her ability to perform the essential functions of his/her job.
- d. Coordinate and facilitate an interactive process between the employee, the employee's supervisor. The supervisor is responsible for ensuring that needed accommodations are provided.
- d. does not result in an undue administrative or financial hardship. All resources of the university should be taken into consideration to determine if an accommodation would be an undue hardship for the university. A denial based on undue hardship must be approved by the Vice President for Business and Finance.
- e. A written rationale must be provided detailing the factors that were taken into consideration if an accommodation is determined not to be reasonable.

### 5-2. Qualifying for Accommodation

To qualify for reasonable accommodation, an employee must have a disability as defined in the Americans with Disabilities Act and Chapter 49.60 RCW and be able to perform the essential job functions, with or without accommodation, at the established performance standards.

In order to implement a reasonable accommodation plan, HR may require an employee provide documentation from a health care professional sufficient to substantiate the employee has a disability and the functional limitations that require a reasonable accommodation. If medical information appears to be contradictory or EWU cannot get clear information from the employee's health care provider, EWU may require the employee to participate in an independent medical examination (IME). IMEs are obtained at EWU's expense.

Failure to provide the appropriate requested documentation or to cooperate with EWU's efforts to obtain such documentation will prevent the employee from being considered a qualified person with a disability.

### 5-3. Consideration of Reasonable Accommodation Requests

Through an interactive process, the university will assess a reasonable accommodation request to determine if it:

- a. Makes it possible for the employee to do the essential functions of the job.
- b. does not fundamentally alter the nature of the job;
- c. consider other accommodations available that would also make it possible for the employee to perform the essential functions of the job; and/or

### 5-4. Separation Due to Disability

If an employee can no longer perform the essential functions of their job, with or without reasonable accommodation, or if there is not reasonable accommodation possible or available, including placement in an alternative position, the employee will be separated from university employment. Such separations will comply with the provisions of all applicable laws, policies and labor agreements. A qualified employee with a disability can refuse an accommodation, but if the employee is unable or unwilling to perform the essential functions of a job at a satisfactory level without the accommodation, they will be separated from employment.

## 6. PUBLIC ACCESS

The University ADA /Section 504 Compliance Officer is the university point of contact for issues regarding an accommodation for architectural access, or to remove barriers to access on campus.

Section 50.50 of the State Administrative and Accounting Manual (SAAM) includes specific requirements for scheduling events in state and non-state facilities. The intent of the section is to ensure that state agencies conduct hearings, conventions, conferences, meetings and formal training sessions in barrier-free facilities so that individuals with disabilities are not excluded from participation. University employees are responsible for adhering to these requirements when planning events.

### 6-1. Events and Activities

It is the responsibility of the EWU faculty, staff or student who oversees a program or activity to ensure that the program or activity is accessible and that proper notice regarding requests for accommodation has been made. Technical assistance is available from the University ADA/Section 504 Compliance Officer and Disability Support Services. The person(s) responsible for the event or activity shall:

1. Collect information regarding access needs and provide reasonable accommodations for events and activities that they sponsor.
2. Ensure that all notices, e.g., fliers, advertisements, posters or brochures, which publicize a program, activity or service, include a reasonable accommodation statement. For example:  

“If you need a reasonable accommodation to fully participate in this event please contact [person] at [phone number and e-mail address] or TTY Relay Station 1-800-833-6384. Please make your needs known as soon as possible to allow sufficient time for effective accommodations, preferably by [insert day of week and date of 4 business days prior to the event]. All notices for meetings open to the public are subject to this requirement.
3. Ensure that registration forms include reasonable accommodation statements.
4. Ensure that the facility where the program, activity or event is held is accessible.
5. Work with the person who requested accommodation to determine the most appropriate and reasonable accommodation.
6. Document all actions pertaining to addressing the need for accommodation.

Public accommodation features of facilities and equipment that are required to be readily accessible to persons with disabilities shall remain in operable working condition.

Individuals with disabilities shall be permitted to be accompanied by their service animals, not emotional support animals, in all areas of a public entity’s facility where members of the public are allowed entry.

EWU shall not require an individual with a disability to pay a surcharge for their service animal.

**7. COMPLAINTS/GRIEVANCES**

**7-1. Complaints/Grievances**

Individuals who believe they have been subjected to discrimination based on their disability or their perceived disability, or who believe the university has violated the ADA may file a complaint/grievance by contacting the Director of Equal Opportunity. Complaints are handled as prescribed in EWU 402-02: Diversity & Nondiscrimination and EWUG 401-01 Investigations. If the Director of Equal Opportunity has a conflict in reviewing the complaint/grievance, the grievance will be reviewed by the Associate Vice President for Civil Rights, Compliance & Enterprise Risk Management.

**7-2. Complaint/Grievance Procedure**

1. People who believe that they have experienced discrimination on the basis of disability or perceived disability, or who believe the university has violated the ADA, may seek resolution through the Director of Equal Opportunity. Information and consultation on these procedures are available through the Director of Equal Opportunity, or by calling Disability Support Services or Human Resources.
2. These rules are construed to protect the substantive rights of interested people, meet appropriate due process standards and assure that Eastern Washington University complies with the ADA, Section 504, the Washington State Law against Discrimination and their implementing regulations.
3. At any time, individuals also have the right to file a complaint with the appropriate state and/or federal enforcement agencies.

**7-3 External Agencies**

Discrimination on the basis of a disability may be resolved through the university. However, an aggrieved individual also has the right to file a complaint with and/or seek additional information from one or more of the following agencies:

Equal Employment Opportunities Commission  
 Seattle Field Office  
 909 First Avenue  
 Suite 400  
 Seattle, WA 98104-1061  
 Telephone: (800) 669-4000  
 Fax: (206) 220-6911  
 TTY: 1 (800) 669-6820  
 SAL Video: (844) 234-5122

Washington State Human Rights Commission  
 Spokane District Office  
 1330 N. Washington St., Suite 2460  
 Spokane, WA 99201  
 Telephone: (509) 456-4473

Washington State Human Rights Commission  
 Olympia Headquarters  
 402 Evergreen Plaza  
 711 South Capitol Way, Suite 402  
 Olympia, WA 98504  
 Telephone: 1 (800) 233-3247  
 TTY 1 (800) 300-7525

U.S. Department of Justice  
 Civil Rights Division  
 950 Pennsylvania Avenue, N.W.  
 Disabilities Rights Section – 1425 NYAV

Washington, DC 20530  
Telephone: 1(800) 541-03014609  
TTY: 1 (800) 514-0383  
Fax: (202) 307-1197

Seattle Office  
Office of Civil Rights  
U.S. Department of Education  
915 Second Avenue Room 3310  
Seattle, WA 98174-1099  
Telephone: (206) 607-1600  
TDD: (800) 877-8339  
Email: [OCR.Seattle@edu.gov](mailto:OCR.Seattle@edu.gov)