

# BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE

## OPERATING POLICY

| Effective Date                 | Subject   | Number     | Page   |
|--------------------------------|---|------------|--------|
| April 26, 2014                 | <b>ADA APPLICATION FOR EMPLOYEES / JOB APPLICANTS</b> | B-OP-27-14 | 1 of 4 |
| <b>Supersedes/Supplements:</b> | KV AP IV-35   |            |        |
| <b>Reference:</b>              | Americans with Disabilities Act                       |            |        |

### POLICY STATEMENT

BridgeValley Community and Technical College (College) complies with the provisions of the federal Americans with Disabilities Act (ADA).

### PROCEDURE

The ADA was signed into law effective July 26, 1992, and established a clear, comprehensive federal prohibition of discrimination against persons with disabilities. While this statute applies broadly across various areas of activity at the College, this policy defines and prescribes its responsibilities and actions in the specific area of employment.

The potential need for workplace accommodation under the provisions of the ADA may arise from a number of sources including (1) a statement from an employee or a recruiting applicant that he/she suffers a physical or mental impairment qualifying under the ADA; that the major life activity provisions in the ADA are satisfied; and requesting accommodation; (2) a statement from a supervisor or manager in the case of an employee to the effect that he/she believes the employee may suffer from a physical or mental impairment qualifying under the ADA and may require or benefit from workplace accommodation; and/or (3) other inputs as appropriate from other segments of the College administration including the President or designee or the Chief Human Resources Officer or designee.

Such statements should be in written form signed by the employee or recruiting applicant, by the supervisor or manager in the case of a statement from the latter, and/or by the President or his/her designee or the Chief Human Resources Officer. Statements from employees should be submitted to the supervisor or manager, and a copy of such statement should be submitted to the Human Resources Office. A statement from a recruiting applicant may be submitted to the prospective hiring operating unit or may be submitted to the Human Resources Office in connection with submitting an employment application. A statement from a supervisor or manager should be submitted to the Human Resources Office. As mentioned above, discrimination against the employee or the recruiting applicant is strictly forbidden.

A statement from an employee or a recruiting applicant should include signed medical documentation that satisfies the definition requirement for physical impairment or mental impairment, unless the provisions for being regarded as having a qualifying impairment as set forth below are applicable.

As set forth above, the ADA's definition of disability include provision for persons regarded as having a qualifying impairment. Regarded means herein as visually self-evident that the person suffers from a qualifying impairment. Again, discrimination is prohibited when/if a person with a self-evident impairment presents as an employee or as an applicant for employment.

The Chief Human Resources Officer or designee will upon receipt of communications as outlined above confer with the responsible person(s) in the operating unit or the potentially hiring operating unit and serve as lead in the formulation of a possible workplace accommodation.

A confidential file will be created by the Human Resources Office that will outline the specific actions recommended or taken by the operating unit to provide sufficient and suitable workplace accommodation. The file will include (1) the nature and effective date of the proposed workplace accommodation; (2) the expected duration of the workplace accommodation (since impairments may not be permanent); (3) the anticipated expenses for the acquisition of necessary products and services to effectuate the workplace accommodation; and (4) the funding source for any such expenses. Any proposal for workplace accommodation that will require financial expenditures greater than what the operating unit can absorb from its own allocated financial resources will be reviewed by the College's Chief Financial Officer or his/her designee in consultation with the President or his/her designee in order to determine where the expense will be charged. Additionally, any proposed workplace accommodation that will require the acquisition of products or services extensive enough to invoke the College's bidding requirements shall be reviewed and facilitated by the College's Chief Procurement Officer.

Such proposed workplace accommodation will be reviewed and approved by any intervening levels of supervision or management between the actual or potential (in the case of recruiting applicants) responsible supervisor or manager or the President of the College.

Human Resources shall work with the responsible (or potentially responsible) supervisor or manager to implement an approved workplace accommodation and shall ensure that the limitations if any placed upon allowable costs for the workplace accommodation are not exceeded. (However, in the case that the College appears obligated to provide an appropriate workplace accommodation even if allowable expenditure levels would be exceeded, the Chief Human Resources Officer will discuss the matter with appropriate persons in the College administration in order to verify that additional financial resources are available or unavailable.)

The Chief Human Resources Officer or designee will write to the person who is the beneficiary of the workplace accommodation (with copy of such correspondence to the responsible supervisor or manager) outlining what steps and actions the College will take in order to provide a sufficient workplace accommodation.

The Human Resources Office will make and maintain calendar entries sufficient to ensure that the workplace accommodation is reviewed on a periodic basis in order to ensure that it continues to be needed and that it is proving effective in allowing the person with the physical or mental impairment to function at an acceptable level in an employment position.

No action toward the provision of workplace accommodation should be started or implemented until consultation with the Chief Human Resources Officer or designee has been completed. Certain accommodations to employee disability could be provided quickly, effectively and inexpensively by supervisors without external assistance. However, since the College is subject to external audit for its compliance with the provisions of the ADA and related federal policies, all workplace accommodations at the College must be registered with and approved by the Chief Human Resources Officer or designee.

All documentation relating to a workplace accommodation that is medically related will be treated confidentially by the operating unit hosting the employee(s) with the workplace accommodation(s) and by the Human Resources Office. Documentation on a workplace accommodation shall not be placed in a personnel file but shall rather be stored in a confidential medical file.

All persons involved in the provision of a workplace accommodation under the provisions of the ADA shall maintain the confidentiality of any documentation or information related to the accommodation and shall not discuss the accommodation with persons without a legitimate need to know.

## **DEFINITIONS**

Disability (under the ADA) - In order to be deemed disabled under the ADA an individual must (1) have a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

Essential Functions - Under the ADA, a job's essential functions are its fundamental job duties, as opposed to its marginal functions. Among other reasons, a particular job function may be essential because the position exists to perform the function, because performance of the function can be distributed among only a limited number of employees, or because the function is so highly specialized that the incumbent in the position was hired for his special expertise or ability to perform the function. The following factors are relevant in determining whether a particular job function is essential: (1) the employer's judgment; (2) written job descriptions that were prepared before advertising or interviewing applicants for a job; (3) the amount of time actually spent performing the function; (4) the consequences of not requiring performance of the function; (5) the work experience of current workers in similar positions; (6) the nature of the work operation; and/or (7) the employer's organizational structure. Under the provisions of the ADA, the College is free both to establish and to alter the essential functions of a particular position unless otherwise affected by the higher education job evaluation system.

Major Life Activity - To qualify for coverage under the ADA, an individual's impairment must substantially limit at least one major life activity. Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Mental Impairment - Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Operating Unit - A term used in this procedure to refer to a specific division, program, department, or office of the College that is the location of a proposed or existing workplace accommodation.

Physical Impairment - A physiological disorder, 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, genitourinary, lymphatic, skin and endocrine.

Protected Persons - The ADA prohibits discrimination on the basis of disability against any qualified individual with a disability. In order to qualify for coverage under the ADA, an individual must show that he has a disability, as that term is defined by the ADA, and that he is qualified to

perform the duties attached to a specific employment position if provided suitable workplace accommodation.

Reasonable Accommodation - Reasonable accommodation means modifications or adjustments to the manner in which the job is usually performed that enable a qualified individual with a disability to perform the position's essential functions. In specific cases reasonable accommodation is defined and implemented through the application of procedural steps set forth below. The ADA requires employers to make reasonable accommodations to the known physical or mental limitations of otherwise qualified applicants and employees, unless to do so would impose an undue hardship.

Undue Hardship - The College is not required to provide an accommodation that would impose an "undue hardship" on the accomplishment of its mission. "Undue hardship" results from an act of accommodation requiring significant institutional difficulty or expense and encompasses more than just financial difficulties. It refers to any accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature of the College's mission. The following factors are considered if a determination of undue hardship is to be made: (1) the overall nature and cost of the accommodation; (2) the impact on the financial resources of the operating unit providing the accommodation [or the College if the cost of the accommodation must be supported at the College level]; (3) the number of employees in the operating unit; (4) other non-financial impacts the accommodation would have on the operating unit [including potentially adverse impact on the ability of other employees to perform their mission]; and/or (5) the proportion of overall institutional mission provided by the operating unit. Depending upon the specific circumstances various other relevant criteria for decision-making may be utilized.

Substantial Limitation - An individual meets the requirement of being substantially limited by an impairment if that person is either completely unable to perform at least one basic activity that the "average" person can perform, or if the ability to do so is "significantly restricted." With respect to the issue of whether one's impairment substantially limits his ability to work, the term "substantially limits" means the impairment significantly restricts the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

Workplace Accommodation - Workplace accommodation is a term used to refer to a specific accommodation compliant with the ADA that is contemplated or provided in a specific operating unit setting. Workplace accommodation refers to all actions taken, equipment provided or modified, environmental or workflow changes made, etc., in order to effectuate a reasonable accommodation to a specific, documented physical impairment or mental impairment.

**Approved by:** Cabinet **Date:** 4/26/2014