

Definitions and Documentation Requirements Related to Reasonable Accommodations for Applicants and Students with Disabilities

Who is entitled to reasonable accommodations? Under federal law, only a person with an *actual, current disability* is entitled to reasonable accommodations for that disability.¹ The regulations implementing Section 188 of the Workforce Investment Act (WIA) of 1998 and Section 504 of the Rehabilitation Act of 1973 (Section 504) define such a disability as “a physical or mental impairment that substantially limits one or more of [a person’s] major life activities.” Whether a particular person has an impairment that satisfies this definition, and whether a specific accommodation is appropriate for a particular person, must be determined on a case-by-case basis, by someone with appropriate expertise in the field.

What is a physical impairment? The regulations define a **physical impairment** as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

- Neurological
- Special sense organs
- Cardiovascular
- Digestive
- Hemic and Lymphatic
- Endocrine
- Musculoskeletal
- Respiratory (including speech organs)
- Reproductive
- Genitourinary
- Skin

This list is all-inclusive.

What is a mental impairment? The regulations define a **mental impairment** as “any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” By contrast with the list in the definition of physical impairment, this list is not all-inclusive; rather, it is intended only to provide examples of possible mental impairments.

Examples of physical or mental impairments. The regulations also list as examples the following contagious and noncontagious diseases and conditions:

- Orthopedic
- Visual
- Speech
- Hearing
- Heart disease
- Mental retardation
- Specific learning disabilities
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Diabetes
- Emotional illness
- Tuberculosis

¹ People who have a record of a disability, or who are regarded as having a disability, are protected from discrimination by federal disability nondiscrimination laws. However, these people are not entitled to the positive actions, such as reasonable accommodations, that must be provided to people with actual, current disabilities.

- HIV disease (symptomatic or asymptomatic)
- Drug addiction and alcoholism
- Cerebral palsy

The following conditions, situations, or orientations are not considered **physical or mental impairments**:

- Homosexuality and bisexuality
- Normal pregnancy
- Environmental, cultural, and economic disadvantages (e.g., a prison record or a lack of education)
- Limited English proficiency/English as a second language

In addition, federal disability nondiscrimination laws do not protect people with the following conditions, even if the conditions would otherwise satisfy the definition of “disability”:

- Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders
- Compulsive gambling, kleptomania, or pyromania
- Psychoactive substance use disorders resulting from current illegal use of drugs²

What are major life activities? According to the U.S. Supreme Court, a major life activity is an activity that is “of central importance to daily life.” There is no exhaustive list of major life activities; the activities affected by physical or mental impairments differ from person to person. However, the regulations implementing federal disability nondiscrimination laws provide some examples of major life activities. These examples include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning.³ Courts and federal agencies have also recognized other functions such as concentrating, interacting with others, sleeping, and reproducing as major life activities.

What is a substantial limitation? Not all limitations caused by a physical or mental impairment are “substantial” enough to constitute a disability. Some impairments may be disabling for particular persons but not for others, depending on the stage of the illness or disorder, the presence of other impairments that combine to substantially limit the person’s major life activities, or any number of other factors.

In general, a substantial limitation is one that either:

² Later in this appendix, you will find an explanation of how federal disability nondiscrimination laws relating to drug addiction and alcoholism interact with Job Corps’ zero tolerance policy. See discussion below of alcoholism and drug addiction.

³ The regulations implementing federal disability nondiscrimination laws also list “working” as a major life activity; however, the Supreme Court has cast doubt on whether this classification is correct. Therefore, the effect of an impairment on a person’s general ability to “work” should not be considered in determining whether he or she has a disability. The qualified person making the determination may, however, consider whether an impairment affects his or her ability to perform specific manual tasks, such as brushing teeth.

- *Prevents* the person from performing a major life activity that the average person can perform, or;
- *Significantly restricts* the person in performing such an activity (as compared to the average person).

What is a significant restriction? There are no hard-and-fast rules. In general, however, the qualified person making the determination should look at whether the impairment restricts (and, if so, how much):

- *Conditions under which* the person can perform the activity
- *Manner (way)* in which she or he can perform the activity
- *Duration (length of time)* for which she or he can perform the activity

What are mitigating measures? In determining whether an impairment substantially limits a person's major life activities, the effects of any mitigating measures must be taken into consideration. Mitigating measures may include medication; devices such as crutches, prostheses, hearing aids, or glasses; or anything else that *mitigates* (lessens) the effect that a particular impairment has on a person's ability to perform major life activities. For example, in deciding whether a person's visual impairments substantially limit her major life activity of seeing, the consideration must include how well her vision can be corrected with eyeglasses or contact lenses.

It is important to keep in mind that in determining the impact of a mitigating measure on a particular person, both the *positive* and *negative* effects that the measure may have on the person's ability to function must be considered. For example, certain medications have negative side effects that, either alone or combined with the effects of an impairment, may constitute a substantial limitation on the major life activities of the person taking the medications.

How do federal disability nondiscrimination laws relating to drug addiction and alcoholism interact with Job Corps's Zero Tolerance Policy and alcohol-related policies? The definition of "individual with a disability" under federal law explicitly excludes persons who are *currently* engaging in the illegal use of drugs. This exclusion means that even though a particular person's drug addiction constitutes a disability, it is not against the law to take adverse action against that person—to separate him or her from Job Corps, or otherwise give him or her less favorable treatment than others—because of that drug addiction.

It is important to note that only people who are *currently* using drugs illegally are excluded from protection under the relevant federal laws. The following categories of persons *are* considered individuals with disabilities under those laws, and are therefore protected from discrimination on the basis of *the drug addiction itself*.

- Persons who have successfully completed a supervised drug rehabilitation program (an in-patient, out-patient, or employee assistance program), and who are no longer using drugs illegally

- Persons who have been rehabilitated successfully in some other way (e.g., recognized self-help programs such as Narcotics Anonymous), and who are no longer using drugs illegally
- Persons who are currently participating in a supervised rehabilitation program, and who are no longer using drugs illegally

Persons who are not using drugs illegally, but who are mistakenly believed to be doing so, are also protected from discrimination (but not entitled to reasonable accommodations) under these federal laws.

To ensure that a student's or applicant's past drug use is not recurring, a center may request evidence that the person is participating in a rehabilitation program or has been rehabilitated successfully in some other way, or may request the results of a drug test.

A person who casually used drugs illegally in the past, but did not become addicted, is not an individual with a disability, and therefore is not protected from discrimination. Only addiction qualifies as a physical or mental impairment that is substantially limiting under federal disability nondiscrimination law.

Alcoholics⁴—even those who are currently using alcohol—are protected by federal disability nondiscrimination laws from adverse actions taken because of *the alcoholism itself*. However, students are subject to the center's disciplinary policies and measures regarding the use and abuse of alcohol, as well as to the Job Corps' Zero Tolerance Policy regarding the use of drugs.

It is important to understand the difference between taking adverse action against someone because of his or her *alcoholism itself*, and taking adverse action against him or her because of the *behavior that the alcoholism causes*. Taking adverse action *because of someone's behavior* (rather than because of his or her status as an alcoholic) is not considered discrimination.

For example, suppose a student who is an alcoholic is discovered drinking alcohol on-center – an action that is prohibited under the center's disciplinary policy. In this case, it is not discriminatory for the center to take action to discipline the student: the center is taking this action not because the center staff knows the student is an alcoholic, but because the student has violated the standards of conduct -- in other words, because of the student's *behavior*. The policy is not intended to punish students for *being* alcoholics; it prohibits and punishes the *actual use of* alcohol – in other words, the *behavior*. For these reasons, the policy does not violate federal disability nondiscrimination law.

⁴ "Alcoholism" and "alcoholic" are medical terms used to refer to, respectively, the condition of being addicted to alcohol, and a person who has that condition. As with illegal use of drugs, a person's use of alcohol does not constitute a disability unless it is an addiction that substantially limits one or more of the person's major life activities.

Documentation of a Disability When a Student or Applicant Requests Accommodation

When the disability and/or the need for accommodation is not obvious, the center may ask the student or applicant, for reasonable documentation about his or her disability and functional limitations. The center is entitled to know that the person actually has a covered disability for which she/he needs a reasonable accommodation.

Reasonable documentation means that the center may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. Thus, a center, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

A center may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, centers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person (or his or her parent or other representative) can be asked to sign a limited release allowing the center to submit a list of specific questions to the health care or vocational professional. The center must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from. If a person provides insufficient documentation of a disability in response to the center's initial request, the center should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

As an alternative to requesting documentation, a center may simply discuss with the student or applicant, (or his or her parent or representative) the nature of the person's disability and functional limitations. The center should make it clear the information is being requested to verify the existence of a disability and the need for a reasonable accommodation.

Under federal disability nondiscrimination law, a center cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the person has already provided the center with sufficient information to substantiate that she or he has an actual, current disability and needs the reasonable accommodation requested.

If a student's or applicant's disability or need for reasonable accommodation is not obvious, and she/he refuses to provide the reasonable documentation requested by the center, then she or he is not entitled to reasonable accommodation.

On the other hand, failure by the center to initiate or participate in an interactive process with the individual after receiving information indicating the possible need for reasonable accommodation (see the Job Corps Disability Web site [www.jobcorpsdisability.com] or Program Instruction 00-08 for information about the Job Corps reasonable accommodation process) could result in liability for failure to provide a reasonable accommodation.

Examples of Possible Types of Documentation for Specific Disabilities

Learning Disability

Assessment (intellectual assessment, level of achievement) by a qualified professional with a summary of results, a statement of diagnosis, a list of functional limitations, and recommendations for accommodation.

Traumatic Brain Injury

Neuropsychological assessment by a qualified neuropsychologist, with a statement of diagnosis, a list of functional limitations, and recommendations for accommodation.

Psychological Disability

Evaluation or treatment summary by licensed psychologist or psychiatrist with a diagnosis, a list of functional limitations, and accommodation recommendations.

Blindness or Visual Impairment

Medical certification of vision loss by ophthalmologist or other qualified physician or medical professional, and a list of functional limitations.

Deafness or Hard of Hearing

Audiogram by certified audiologist or other qualified professional, and a list of functional limitations.