

Appendix 609

INDIVIDUALIZED ASSESSMENT OF POSSIBLE DIRECT THREAT

Purpose

To provide additional information and guidance on the direct-threat assessment process currently outlined in PRH Chapter 1, Section 1.4, R3. This supersedes information in PRH Change Notice 11-03.

Background

Job Corps requires, as a qualification standard, that an applicant not pose a direct threat to the health or safety of himself/herself or others, including students and staff. Like any qualification standard, this requirement must apply to all applicants, not just to those with disabilities. If, however, an individual poses a direct threat as a result of a disability, Job Corps must determine whether a reasonable accommodation would either eliminate the risk or reduce it to an acceptable level.

This document provides Job Corps Health and Wellness staff, including Trainee Employee and Assistance Program (TEAP) specialists, with guidance designed to help them properly and lawfully assess an individual applicant's ability to safely participate in the Job Corps program.

If the assessor determines that the individual poses a direct threat and the threat results from a disability, the assessor must consider whether any accommodations or modifications would reduce the risk, and list any suggested accommodations or modifications. Please note that the assessor must not consider whether, in his/her view, a particular accommodation or modification is "reasonable;" that determination must be made by the Center Director or his/her designee, on the basis of a number of specific factors that are required by law.

Instructions

The attached form may be used to conduct an individualized assessment of an applicant's possible direct threat to self or others.

Federal disability nondiscrimination laws define a "direct threat" as **a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation or modification.** A "significant risk" means a high, not a slight, probability; a speculative or remote risk is insufficient.

Determining whether an individual poses a significant risk of substantial harm to himself/herself or others must be made on a case-by-case basis. Job Corps should identify the specific risk posed by the disability. For individuals with psychiatric disabilities, Job Corps must identify the specific behavior of the individual that would pose the direct threat. Federal disability nondiscrimination laws make clear that an individual does not pose a direct threat simply because he or she has a history of psychiatric disability, or is currently receiving treatment for a psychiatric disability.

When evaluating whether an individual with a disability or medical condition poses a direct threat, please keep in mind that there are special rules governing when disability-related inquiries, i.e., questions which are likely to elicit information about a disability can be made.

- In the context of evaluating an applicant for Job Corps, a direct-threat assessment may be done whenever Job Corps believes that a known or apparent disability or medical condition poses a direct threat to the health or safety of the individual or others. This typically will occur: (1) *after* the applicant has received conditional assignment to a Job Corps center and has completed the questions on the “Job Corps Health Questionnaire (ETA 653);” *and* (2) after specific, objective, factual information about that particular conditionally enrolled applicant is gathered that is medically related to any “yes” responses given to the questions in sections 8 or 9 of the questionnaire; *if* (3) the initial review of this specific, objective, factual information supports a reasonable belief that the conditionally enrolled applicant may have a medical condition or disability that poses a significant risk of substantial harm to the health or safety of the individual or others, i.e., direct threat. If all of these criteria are satisfied, the Health and Wellness Manager will forward the applicant’s information to the appropriate licensed health provider employed by the center for a detailed direct-threat assessment.

Who May Conduct the Assessment?

The clinical assessment of risk and degree of potential harm that may be caused by the individual’s medical condition or disability is generally a medical matter properly determined by licensed health providers. Such providers employed by Job Corps include nurses, physicians, Center Mental Health Consultants, dentists, and TEAP specialists. This group, therefore, has a significant role to play in determining whether, in a given Job Corps setting, a particular individual’s medical condition or disability poses a significant risk of substantial harm to the health or safety of himself/herself or others. Medical health conditions that may pose a direct threat should be assessed by nurses and/or physicians; mental health conditions should be assessed by mental health consultants; oral health conditions should be assessed by dentists; and conditions related to substance use should be assessed by TEAP specialists. In some cases, it may be necessary to consult an outside specialist with expertise in the particular medical condition or disability and its effects.

Basis for the Assessment

The determination that an individual has a medical condition or disability that poses a “direct threat” must be based on an individualized assessment of the individual’s present ability to safely participate in the Job Corps program. This assessment must be made by a licensed health provider, based on a reasonable medical judgment that relies on the most current medical knowledge and the best available objective evidence. Before conducting a direct-threat assessment, the assessor may need to educate himself/herself about the current state of medical knowledge, and about the specific facts of the particular individual’s medical history and/or the circumstances in which he or she has been or will be placed in the Job Corps program.

As noted above, the assessment must focus on the current medical condition or disability of the specific individual named on the form. The determination cannot be based on generalizations about the medical condition or disability; the assessor must identify the specific risk that is posed by the medical condition or disability of the named individual in the applicable Job Corps context. Additionally, the harm must be serious and likely to occur, not remote and speculative. Subjective perceptions, irrational fears, patronizing attitudes, and stereotypes have no place in the assessment process.

Factors to Be Considered

In determining whether an individual has a medical condition or disability that poses a direct threat, the assessor must consider four specific factors: duration of the risk, nature and severity of the potential harm; likelihood that the potential harm will occur; and imminence of the potential harm.

If the assessor considers these four factors and determines that a direct threat is posed by the medical condition or disability, he/she must consider whether the risk can be eliminated or reduced to an acceptable level by reasonable accommodation or modification.

Relevant factors in making the direct threat assessment (including the consideration of whether the risk may be lessened or eliminated) may include:

- Input from the individual with the medical condition or disability;
- The medical history of the individual, including his or her experience in previous situations similar to those he or she would encounter in the program;
- Opinions of medical doctors, rehabilitation counselors, or therapists who have expertise in the condition involved and/or direct knowledge of the individual.

Under federal disability nondiscrimination laws, the burden is on Job Corps to prove that a particular individual has a medical condition or disability that poses a direct threat. This means that if the objective, factual evidence is equivocal, or is insufficient to prove that the participation of that specific individual would pose a direct threat, the assessor must assume that no direct threat exists.

The four factors for determining direct threat are described below.

1. **Nature and severity of the risk.** In the professional judgment of the assessor:
 - a. What *kind of harm* is potentially posed by this individual's medical condition or disability? **List the specific symptoms or behaviors** and the information on which the judgment is based.

- b. What is the *seriousness of the potential harm* in this particular case (e.g., death, incapacitation, serious injury, minor injury/emotional distress)? List the specific information on which the judgment is based.
2. **Duration of the risk.** In the professional judgment of the assessor, how long will the risk last? List the specific information on which the judgment is based.
3. **Likelihood that the potential harm will occur.** In the professional judgment of the assessor, is the likelihood that potential harm will occur high, moderate, or low? List the specific information on which the judgment is based.
4. **Imminence of the potential harm.** In the professional judgment of the assessor, how soon is the harm likely to occur? List the specific information on which the judgment is based.

Taking all four of these factors into consideration, the assessor should determine whether the applicant's condition poses a significant risk of substantial harm.

Accommodations or Modifications

If the individual is a person with a disability, the center's reasonable accommodation team must convene and consider accommodations and/or modifications that the individual may need. See Appendix 605 for definition of a disability. Once the accommodations and/or modifications have been identified, the qualified licensed professional who conducted the original assessment must review the previous findings to each of the factors giving consideration to the identified accommodations to determine whether or not the accommodations and/or modifications eliminate the threat or reduce it to below the level of threat.

If it is determined that the accommodations and/or modifications will remove the barriers to enrollment and are considered unreasonable, then the team must forward the list of identified accommodations and/or modifications to the Center Director for a "reasonableness" and/or undue hardship determination (see below). If the accommodations and/or modifications identified would not eliminate the threat or sufficiently reduce it to below the level of threat, then the reasonable accommodation team (inclusive of the licensed professional) must indicate which accommodations and/or modifications would be insufficient and explain why.

Examples of Accommodation/Modification Consideration for Direct Threat

- Schedule adjustments to allow the applicant to attend necessary off-center appointments;
- Shortened training day or later start to the training day to adjust for medication side-effects;
- Passes during the training day to allow applicant to leave class and meet with counselor to de-escalate behaviors as needed.

Every effort should be made to identify appropriate accommodations and/or modifications, and reasonable accommodation teams are encouraged to use identified resources (e.g., Job Accommodation Network) to assist them, as appropriate.

Center Director Reasonableness Determination

If there is a recommendation for an applicant to be enrolled with accommodations or modifications which you believe are not reasonable and/or pose an undue hardship, the **Center Director is responsible for making that determination** using the “Accommodation Recommendation of Denial Form” found on the Job Corps Disability website and including that form along with the applicant file that is being submitted to the Regional Office with a recommendation for denial. The final determination is made by the Regional Office.

Guidance on how to make this determination is available in the “Evaluating a Request and Denying a Request” sections of Appendix 605. Please attach the completed “Accommodation Recommendation of Denial Form” found on the Job Corps Disability website.

For more information on direct threat, see the Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities (<http://www.eeoc.gov/policy/docs/psych.html>).

FORM FOR INDIVIDUALIZED ASSESSMENT OF POSSIBLE DIRECT THREAT

Applicant's Name: _____ **Date of Review:** _____

Center Name: _____ **ID #:** _____

Interview conducted by: Telephone In person Videoconference

In determining whether, in your professional judgment, the individual named above has a medical condition or disability that poses a direct threat, consider the following and respond accordingly.

Factors to be considered in determining whether a "significant risk of substantial harm" exists include: (1) duration of the risk, (2) nature and severity of the potential harm, (3) likelihood that the potential harm will occur, and (4) imminence of the potential harm.

Under the law, the burden is on Job Corps to prove that a specific individual poses a direct threat. Therefore, if the objective, factual information about the specific individual named above is equivocal, or is insufficient to *prove* that a direct threat exists, you must assume that the individual's disability or medical condition does not pose a direct threat.

If you determine that a "significant risk of substantial harm" exists, consider whether any accommodations or modifications would reduce the risk, and list any suggested accommodations or modifications. Do not consider whether, in your view, a particular accommodation or modification is "reasonable." That determination must be made by the center director or his/her designees.

1. What is the nature and severity of the potential harm?

a. What kind of harm is potentially posed by this individual's medical condition or disability? (Check the specific symptom(s) or behavior(s) or list under "Other")

- Threat of violence – assaultive behavior
- Threat of sexually inappropriate behavior
- Suicidal behavior
- Self injury
- Serious or life threatening medical condition
- Homicidal behavior
- Severely impaired concentration
- Severely impaired judgment
- Severely impaired impulse control
- Severe sensory impairment
- Paranoid thinking
- Abusive behavior towards authority and/or peers
- Unpredictable changes in behavior
- Drug and alcohol use/dependence
- Other (specify): _____

b. What is the seriousness of the potential harm in this particular case (e.g., death, incapacitation, serious injury, minor injury/emotional distress)?

2. What is the duration of the risk (i.e., how long will the risk last)?

3. What is the likelihood that the potential harm will occur (i.e., high, moderate, or low)?

4. What is the imminence of the potential harm (i.e., how soon is the harm likely to occur)?

5. Reasonable Accommodation Consideration

Is this applicant a person with a disability? Yes No
 (i.e., documentation of a mental health, medical, substance-abuse, cognitive, or other type of disability is present in the applicant file or the disability is obvious (i.e., blind, deaf).

If no, please skip to # 6. If yes, convene the reasonable accommodation committee (RAC) along with the applicant and list below any accommodations and/ or modifications discussed with the applicant that could either remove or reduce the direct threat.

Note: Accommodations or modifications are not things that treat the impairment; they are things that will help the individual participate in the program. See Program Instruction 08-26 “Reasonable Accommodation and Case Management” for guidance.

- The RAC has been unable to identify any accommodations appropriate to support this applicant.
- The following accommodations/modifications listed below have been discussed with the applicant and considered as a part of this assessment:

Please avoid suggesting extreme accommodations already known to likely be unreasonable unless the applicant has requested a specific support (i.e., 24 hour supervision). If unsure if a support or modification is really an accommodation or is actually a case management support, please contact your regional health and disability consultants for assistance.

Based on the specific symptoms and/or behaviors checked in Section 1a, please check the appropriate accommodations below discussed with the applicant. *Please note: This list is not all inclusive. These are suggestions for your use and you may need to consider functional limitations and accommodations beyond this list which can be entered in the "Other" section.*

Are there any changes we can make to our center policies, procedures, or practices to eliminate or reduce the level of threat?

- Schedule adjustments to allow the student to attend necessary off-center appointments Yes No
- Shortened training day or later start to the training day to adjust for medication side effects Yes No
- Modified first 30 days on center with a reduction in tasks to minimize stress Yes No
- Provide applicant with pass to leave class if he/ she begins to feel anxious, angry or upset and go to designated “calm down” area Yes No
- Allow frequent breaks during the day Yes No
- Allow telephone calls during work hours to doctors and others for needed support Yes No
- Reduce mandatory participation in large group activities Yes No
- Provide additional orientation on conduct and behavioral expectations Yes No
- Other _____

Are there any physical changes or placement considerations in the dorm we can make to eliminate or reduce the level of threat?

- Provide single dorm room Yes No
- Modified door/window locks for safety Yes No
- Placement in residential dorm with fewer students and/or more experienced Residential Advisors (RA) Yes No

- Provide dorm room closer to RA's office Yes No
- Allow mobility coach Yes No
- Allow refrigerator in room Yes No
- Other _____

Can we adjust our level of supervision or structure at the center to eliminate or reduce the level of threat?

- Provide staff mentor as needed (like a job coach) Yes No
- Provide student mentor as needed Yes No
- Other _____

Can our instructors and/or RA staff adjust their communication methods in a way to eliminate or reduce the level of threat?

- Provide detailed guidance Yes No
- Provide frequent feedback Yes No
- Provide praise and positive reinforcement Yes No
- Other _____

Is there any special equipment or device to consider that can eliminate or reduce the level of threat?

- Provide visual barriers to reduce startle responses Yes No
- Use of headphones to minimize distractions Yes No
- Other _____

Allow special medical equipment in room and in trade

- Permission to use a service animal Yes No
- Other _____

Summarize any special considerations and findings of the RAC as well as the applicant's input:

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Please Note: Job Corps cannot impose accommodations upon an individual. If the applicant does not accept or agree to a specific accommodation, there is no need to consider that specific accommodation in your determination of whether the accommodations listed will reduce the barriers to enrollment sufficiently or not nor is there a need to complete a reasonableness review related to that specific accommodation.

Reasonable Accommodation Considerations:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	Did the applicant participate in the RAC meeting? <i>(Note: The applicant must be a part of the discussion for reasonable accommodation).</i>

RAC Participants:			
Name:		Position:	
Name:		Position:	
Name:		Position:	

If there is a recommendation for an applicant to be enrolled with the accommodations or modifications listed in # 5 above which you believe are not reasonable and/or pose an undue hardship, the **Center Director is responsible for making that determination** using the “Accommodation Recommendation of Denial Form” found on the Job Corps Disability website and including that form along with the applicant file that is being submitted to the regional office with a recommendation for denial. The final determination is made by the regional office.

Guidance on how to make this determination is available in the “Evaluating a Request and Denying a Request” sections of Appendix 605. Please attach the completed “Accommodation Recommendation of Denial Form.”

If there are agreed upon accommodations between the RAC and applicant listed above, then consider whether those accommodations reduce or eliminate the direct threat to allow for the applicant to be enrolled.

- If the accommodations would sufficiently reduce or eliminate the direct threat, then you do not need to complete the remainder of this assessment and the center can assign the applicant a start date. Retain all the paperwork included in completing this assessment within the applicant’s Student Health Record.
- If the accommodations would NOT sufficiently reduce or eliminate the direct threat, please proceed to #6.

6. Based on the factors above, does the named individual have a medical condition or disability that poses a significant risk of substantial harm to the safety of himself/herself or of others if he or she participates in Job Corps?

- In my professional judgment, the individual’s participation poses a direct threat.
- In my professional judgment, the individual’s participation does not pose a direct threat.

Printed or Typed Name and Title of Licensed Health Provider Completing Form

Signature of Licensed Health Provider Completing Form

Date