Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

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Originating Office: Commerce Regulatory Compliance

Subject: Equal Access for Job Seekers with Disabilities

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Program: Programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of the Workforce Innovation and Opportunity Act (WIOA).

Purpose: To implement the nondiscrimination and equal opportunity provisions contained in WIOA Section 188 and to transmit state policy guidance to ensure equal access for job seekers with disabilities.

References: Americans with Disabilities Act (ADA) regulations at 28 CFR Part 35.149-35.150; WIOA Section 188 Non-Discrimination Regulations at 29 CFR Part 38 and 29 CFR Part 33.

Background: Recipients shall operate each service, program, or activity so that the service, program or activity, when viewed in its entirety is readily accessible to and useable by individuals with disabilities. Recipients must administer WIOA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Action: As required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA make this policy available to all programs and activities that are part of the one-stop delivery system and operated by one-stop partners listed in section 121(b) of WIOA.

Contact: Questions should be directed to WIOA EO Officer John M. Ybarra, Commerce Regulatory Compliance, (785) 296-5092; TDD: 1-800-766-3777, e-mail: John.Ybarra@ks.gov. ADA related questions may be directed to the State ADA Coordinator Anthony Fadale at 785-296-1389 or Anthony.Fadale@dcf.ks.gov.

Attachments:

1. USDOL Civil Rights Center (CRC) WIOA Section 188 Disability Reference Guide.
2. Americans with Disabilities Act Title II: A Primer for State and Local Governments
3. USDOJ ADA Title II guidance to State/Local Government Employment Service Systems
4. Information Technology Policy 1210-State of Kansas Web Accessibility Requirements
5. Kansas Department of Administration ADA Coordinator Resource Website

Equal Access for Job Seekers with Disabilities

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Equal Access for Job Seekers with Disabilities

Background

WIOA Section 188 and Federal non-discrimination regulations at 29 CFR Part 38 are modeled after the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 and the implementing regulations and guidance issued by the United States Department of Justice (DOJ), as well as the implementing regulations and guidance issued by the United States Equal Employment Opportunity Commission (EEOC). WIOA Section 188 and 29 CFR Part 38 will promote consistent application of nondiscrimination obligations across Federal enforcement programs and accordingly enhance compliance among entities subject to WIOA Section 188 and the various titles of the Americans with Disabilities Act (ADA).

Discrimination Prohibited

WIOA Section 188 and Title 29 CFR Part 38 prohibit discrimination on the bases of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA.

Policy Applicability

This policy applies to any recipient, as defined in 29 CFR Part 38.4; to programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the one-stop delivery system; as required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA; and as provided in 29 CFR Part 38.18, to the employment practices of a recipient and/or one-stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as part of the WIOA Title I or the one-stop delivery system.

The term “recipient” means any entity to which financial assistance under Title I of WIOA is extended, directly from USDOL or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). Entities connected to the workforce development system may be recipients for purposes of Section 188 and these procedures even if they do not receive assistance in the form of money. For example, recipients subject to these procedures include entities with agreements, arrangements, contracts, sub-contracts, or other instruments for the provision of assistance or benefits under WIOA Title I. For this policy, one-stop partners, as defined in section 121(b) of WIOA are treated as “recipients,” and are subject to these non-discrimination and equal opportunity requirements.

“Recipient” includes but is not limited to: State-level agencies that administer, or are financed in whole or in part, with WIOA Title I funds; State Workforce Agencies; State unemployment compensation agencies; State and Local Workforce Development Boards; Local Workforce Development Area (LWDA) grant recipients; One-Stop Operators; service providers including eligible training providers (ETP); On-the-Job Training (OJT) employers; Job Corps contractors and center operators; outreach and admissions agencies, placement agencies and other National Program recipients including: Migrant and

Seasonal Farmworkers Programs, Native American Programs, National Dislocated Worker Grant Programs, and Youthbuild programs. The United State Department of Labor Civil Rights Center (CRC) notes however, that whether an entity is an additional one-stop partner subject to Section 188 is based on whether that entity has signed a Memorandum of Understanding as an additional partner per the requirements of Section 121 of WIOA and not merely whether that entity is working with or contributing something to a WIOA Title I program.

Discrimination Prohibited Based on Disability (29 CFR Part 38.12)

In providing any aid, benefit, service or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing or other arrangements, on the basis of disability:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings;

- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;

- Provide a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as the provided to others;

- Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provided qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the Rehabilitation Act as amended by WIOA, including those provisions that prioritize opportunities in competitive integrated employment;

- Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

- A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, service, or training to registrants, applicants, or participants.

- A recipient must not deny a qualified individual with a disability the opportunity to participate in WIOA Title I-financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.

- A recipient must administer WIOA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

- A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:
    - That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
    - That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIOA Title I-financially assisted program or activity with respect to individuals with disabilities; or
    - That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same State.

- In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects on the basis of disability:
    - Excluding qualified individuals from a WIOA Title I-financially assisted program or activity;
    - Denying qualified individuals the benefits of such a program or activity; or
    - Subjecting qualified individuals to discrimination; or
    - Defeating or substantially impairing the accomplishment of the disability-related objectives of either:
    - The WIOA Title I-financially assisted program or activity; or the nondiscrimination and equal opportunity provisions of WIOA or this policy.

- A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

- A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.

- A recipient must not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of any aid, benefit, service, training, program, or activity being offered.

- Nothing in this part prohibits a recipient from providing any aid, benefit, service, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

- A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I or this part.

- A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
    - The exclusion of an individual without a disability from the benefits of a program limited by federal law to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part

- This policy does not require a recipient to provide any of the following to individuals with disabilities
    - Personal devices, such as wheelchairs;
    - Individually prescribed devices, such as prescription eyeglasses or hearing aids;
    - Readers for personal use or study; or
    - Services of a personal nature, including assistance in eating, toileting, or dressing.

- Nothing in this policy requires an individual with a disability to accept any accommodation, aid, benefit, service, training, or opportunity provided under WIOA Title I or this part that such individual chooses not to accept.

- Nothing in this policy authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

- Nothing in this policy provides the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted auxiliary aids or services, reasonable modifications, or reasonable accommodations that were denied to an individual without a disability.

Program and Physical Accessibility Requirements

Americans with Disabilities Act (ADA) Title II-5.1000-2000: Program Accessibility- A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

Public entities may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. The public entity may, however, pursue alternatives to structural changes in order to achieve program accessibility. Nonstructural methods include acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternate accessible sites. Public entities should make every effort to ensure that alternative methods of providing program access do not result in unnecessary segregation.

ADA Title II-Program Access Limitations: There are limits to a public entity's program access obligations. Entities are not required to take any action that would result in undue financial and administrative burdens. The decision that an action would result in an undue burden must be made by a

high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions, after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in an undue burden, a public entity must take any other action that would not result in an undue burden but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

Programmatic Accessibility (29 CFR Part 38.13)-All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

Physical Accessibility-No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of the ADA must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the Uniform Federal Accessibility Standards (UFAS). In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA, that is not enforced by CRC. As indicated in 29 CFR Part 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

Reasonable Accommodations/Modifications for Individuals with Disabilities (29 CFR Part 38.14)

With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.

- In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

- The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of “undue hardship” in 29 CFR Part 38.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

- If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services,

training, or employment provided by the recipient. A recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.

- In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.
- The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of "fundamental alteration" in 29 CFR Part 38.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification. If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

Communications with Individuals with Disabilities (29 CFR Part 38.15)

A recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others. For purposes of this policy, "companion" means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate.

Auxiliary Aids and Services-A recipient must furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including beneficiaries, registrants, applicants, eligible applicants/registrants, participants, members of the public, and companions, an equal opportunity to participate in, and enjoy the benefits of, a WIOA Title I-financially assisted service, program, or activity of a recipient. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a recipient must give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

ADA Title II-Public entities are required to give primary consideration to the type of auxiliary aid or service requested by the person with the disability. They must honor that choice, unless they can demonstrate that another equally effective means of communication is available or that the aid or service requested would fundamentally alter the nature of the program, service, or activity or would result in undue financial and administrative burdens. If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the public entity still has an obligation to provide another aid or service that provides effective communication, if possible. The decision that a particular aid or service would result in an undue burden or fundamental alteration must be made by a

high level official, no lower than a Department head, and must be accompanied by a written statement of the reasons for reaching that conclusion.

Interpreters-A recipient must not require an individual with a disability to bring another individual to interpret for him or her. A recipient must not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except:

- In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- Where the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
- A recipient must not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

Video Remote Interpreting (VRI) Services-A recipient that chooses to provide qualified interpreters via VRI services must ensure that it provides:

- Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of the individual's body position;
- A clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

Electronic and Information Technology-When developing, procuring, maintaining, or using electronic and information technology, a recipient must utilize electronic and information technologies, applications, or adaptations which:

- Incorporate accessibility features for individuals with disabilities;
- Are consistent with modern accessibility standards, such as Section 508 Standards (36 CFR part 1194) and the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) 2.0 AA; and
- Information Technology Policy 1210 Revision 2 - State of Kansas Web Accessibility Requirements (See Attachment); and
- Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits provided by the electronic and information technologies are provided to individuals with disabilities in an equally effective and equally integrated manner.

Telecommunications-Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and/or members of the public, text telephones (TTYs) or equally effective telecommunications systems must be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.

When a recipient uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids

and services, including TTYs and all forms of FCC-approved telecommunications relay systems, including internet-based relay systems. A recipient must respond to telephone calls from a telecommunications relay service established under title IV of the Americans with Disabilities Act (ADA) in the same manner that it responds to other telephone calls.

Information and Signage-A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities. A recipient must provide signage at the public entrances to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the Standards for Accessible Design under the Americans with Disabilities Act. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information. See 36 CFR part 1191, appendix B, section 103. The international symbol for accessibility must be used at each primary entrance of an accessible facility.

Fundamental Alteration-This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a WIOA Title I-financially assisted service, program, or activity. In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIOA Title I-financially assisted program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.

The decision that compliance would result in such an alteration must be made by the recipient after considering all resources available for use in the funding and operation of the WIOA Title I-financially assisted program, activity, or service, and must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. If an action required to comply with this section would result in the fundamental alteration described above, the recipient must take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

Service Animals (29 CFR Part 38.16)

Generally, a recipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. A recipient may ask an individual with a disability to remove a service animal from the premises if:

- The animal is out of control and the animal's handler does not take effective action to control it; or
- The animal is not housebroken.

If an animal is properly excluded-If a recipient properly excludes a service animal the recipient must give the individual with a disability the opportunity to participate in the WIOA Title I-financially assisted service, program, or activity without having the service animal on the premises.

Animal under handler's control-A service animal must be under the control of its handler. A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means). Additional guidance regarding service animals is available at 29 CFR part 38.16.

Mobility Aids and Devices (29 CFR Part 38.17)

Use of wheelchairs and manually-powered mobility aids-A recipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

Use of other power-driven mobility devices-A recipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient can demonstrate the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements the recipient adopted. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification a recipient must consider:

- The type, size, weight, dimensions, and speed of the device;
- The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- The facility's design and operational characteristics (*e.g.,* whether its WIOA Title I-financially assisted service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
- Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws.

Attachment A: USDOL Civil Rights Center WIOA Section 188 Disability Reference Guide

http://www.dol.gov/oasam/programs/crc/Section188Guide.pdf

Attachment B: Americans with Disabilities Act Title II: A Primer for State and Local Governments

https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html

Attachment C: USDOJ ADA Title II guidance to State/Local Government Employment Service Systems

https://www.ada.gov/olmstead/olmstead_guidance_employment.htm

Attachment D: Information Technology Policy 1210-State of Kansas Web Accessibility Requirements

https://oits.ks.gov/kito/itec/itec-policies/itec-policy-1210

Attachment E: Kansas Department of Administration ADA Coordinator Resource Website

https://admin.ks.gov/offices/personnel-services/policies-and-programs/ada