

U. S. Nuclear Waste Technical Review Board
Policy for Processing Requests for Reasonable Accommodation

1. **PURPOSE:** To establish policies and procedures for the processing of requests for reasonable accommodation by the U. S. Nuclear Waste Technical Review Board (Board).

2. **SCOPE:** The provisions of this policy apply to all Board employees and applicants with disabilities.

3. **AUTHORITY:**

a. Executive Order 13164, July 26, 2000.

b. Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101-12117.

c. Rehabilitation Act of 1973, 29 U.S.C. 701 et reg.

d. Equal Employment Opportunity Commission (EEOC) Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, October 20, 2000.

e. Federal Sector Equal Employment Opportunity, 29 C.F.R. § 1614, November 9, 1999.

4. **DEFINITIONS:**

a. *Essential Functions:* Those job duties that are so fundamental to the position that the individual cannot do the job without performing them. A function can be “essential” if among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on ability to perform. Determination of the essential functions of a position must be done on a case-by case basis so that it reflects the job as actually performed.

b. *Extenuating Circumstances:* Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. When there is a delay in processing a request for, or delivering, a reasonable accommodation, the agency must investigate whether there are temporary measures that could be taken to assist the individual with a disability.

c. *Qualified Individual with a Disability:* An individual with a disability is qualified if (1) s/he satisfies the requisite skill, experience, education and other job-related requirements

of the position; and (2) s/he can perform the essential functions of the positions, with or without reasonable accommodation.

d. *Undue Hardship*: If a specific type of reasonable accommodation causes significant difficulty or expense, then the agency does not have to provide that particular accommodation. Determination of undue hardship must be made on a case-by-case basis, considering factors such as the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

e. *Reasonable Accommodation*: Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

5. POLICY:

It is the policy of the Board to ensure that requests for reasonable accommodation are handled in an effective and expeditious manner. It is the obligation of the Board to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause undue hardship to the Board. Within this framework, the Board has established the following objectives:

- a. To enable the individual employee to perform the essential functions of the position, or to gain access to the workplace.
- b. To enable an employee with a disability an opportunity to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.
- c. To allow an employee with a disability an opportunity to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

6. MISSION STATEMENT:

The Board is an independent agency in the Executive Branch established under the Nuclear Waste Policy Amendments Act, Public Law 100-203. The Board currently consists of 11 part time Board members and a full-time staff of 15. Of these 15 staff members, ten are excepted service employees hired because of their subject knowledge/expertise. The remaining five employees handle the various administrative functions necessary to the conduct of Board business. Because the staff is so small there is little overlap in function between any of these positions. All functions not handled by the staff are contracted out. The General Services Administration, Agency Liaison Division (GSA/ALD) currently handles personnel functions for the Board.

Because of the Board's size, there is also a very simple chain of command. All excepted service employees report directly to the Executive Director, and all administrative employees report to

the Director of Administration, who is an excepted service employee. These are currently the only supervisory/managerial positions at the Board.

In addition, while the Chairman of the Board is the head of the agency, he works only on a part-time basis and is rarely at the Board headquarters. Because of this each Chairman has chosen to delegate the responsibility for the day to day running of the Board to the Executive Director and the Director of Administration (DoA). These two positions make up the Board's EEO Team which, in consultation with the Chairman, shall handle any requests for reasonable accommodation.

ASSIGNMENT OF RESPONSIBILITIES

The Chairman of the Board or his delegate shall:

Ensure a continuing affirmative application and vigorous enforcement of the policy and procedures contained in this order.

Provide sufficient resources for program implementation to ensure efficient and successful processing of requests for reasonable accommodation.

Recognize and reward individuals who have demonstrated superior efforts in supporting the spirit of the law.

The Executive Director shall:

Act as a part of the EEO Team.

Advise the Chairman on agency-wide policies and procedures.

Provide technical guidance to the DoA about the processing of reasonable accommodation procedures.

The Director of Administration (DoA) shall:

Act as a part of the EEO Team.

Coordinate and provide assistance on specific requests such as adaptive equipment, removal of architectural barriers (e.g., reconfigure workspaces), facility accessibility, and materials in alternative formats (e.g., Braille, large print).

In coordination with the Executive Director determine the appropriate actions involved to ensure timely completion of individual request.

Recommend alternatives to address specific requests.

Manage requests for reasonable accommodation. Provide reasonable accommodations in a prompt, fair, and efficient manner.

Maintain the records related to an employee's request for accommodation for the duration of the employee's tenure with the agency. See that medical records are kept confidential and maintained in locked files separate from the individual's official personnel file. Make the contents of those files available to others only on a need to know basis. Ensure that all staff members involved with the files have had adequate training in handling and dissemination of confidential information.

Annually prepare a summary statistical report to be made available to all employees.

The DoA also may request relevant supplemental medical information, if the documentation submitted does not clearly explain the nature of the disability, reason for reasonable accommodation, or does not clarify how the requested accommodation will assist the applicant/employee to perform the essential function of the job.

Provide orientation, training, and advice to the Executive Director regarding the implementation of the policies and procedures in this order.

Recognize staff members whose efforts in recruiting, hiring and promoting persons with disabilities are commendable.

General Services Administration, Agency Liaison Division (GSA/ALD) shall:

Process requests for reasonable accommodation from applicants during the recruitment and application process as received.

Make vacancy announcements available to applicants/employees with disabilities.

Ensure that all vacancy announcements include a statement of reasonable accommodation, to ensure compliance with Executive Order 13078. Support the Office of Personnel Management initiatives to increase the representation of people with disabilities in the Federal workforce.

Assist the DoA upon request for reassignment when reassignment is considered to be a reasonable accommodation. Provide guidance with complaints and appeals as needed in accordance with EEO regulations and laws.

The EEO team shall :

Foster an environment that supports the reasonable accommodation procedures contained in this order and ensure that their actions are consistent with the objectives of reasonable accommodations.

Acknowledge receipt of requests for reasonable accommodation, initiate inquiries and dialogue with requestors, and describe what will happen during the processing of the requests.

Make decisions on individual requests for reasonable accommodation.

Ensure that requests for accommodation are processed in a prompt and expeditious manner to avoid any adverse situations that may result in a violation of the Rehabilitation Act.

Seek coordination and consultation with other staff members in making final decisions and implementing such decisions.

Ensure that individuals with disabilities are made aware of the policies and procedures in this order and have opportunities to seek reasonable accommodation to enable them to enjoy the same benefits and privileges of employment as employees without disabilities.

Employees and Applicants shall:

Initiate a request for reasonable accommodation orally or in writing in accordance with the procedures listed below.

Provide sufficient information and documentation, such as a description of the accommodation requested, and an explanation of how it would enable an employee to perform the job or assist an applicant in the selection process.

When requested, provide relevant medical information related to the functional impairment and the requested accommodation when the disability and/or need for accommodation are not obvious.

PROCEDURE

An employee or applicant with a disability or a family member, health professional or other representative who is acting on behalf of the employee/applicant, may initiate a request for reasonable accommodation orally or in writing. An individual's oral request will start the reasonable accommodation process. However, for record keeping purposes, the requestor shall complete the form at *Appendix A*.

The request begins when the individual makes the request to any of the management officials; or in connection with the application process, any agency employee with whom the applicant has contact.

As the first step, within two business days upon receipt of the request, the management officials who receive the request will forward the request to the Director of Administration (DoA) for processing. The DoA will work with the requestor to obtain relevant information and identify the decision-maker¹ on the request; and describe what will happen in the processing of the request. The DoA will then work with the requestor and the Executive Director to identify problems and discuss potential solutions. While the Executive Director has the final responsibility for making

¹ Normally, the Executive Director, however in the case of Senior Staff members cases the Board Chairman may be consulted or asked to make the determination.

the determination, s/he shall do so using the input provided by both the DoA and the requestor. All requests for, and provision of reasonable accommodation must be kept confidential and handled in a prompt and expeditious manner.

After the request is received, the DoA will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. Suggested resources, which are available to help both management officials and the requestor to identify possible accommodations, are listed at *Appendix D*. The DoA will work with the Executive Director in making a decision within 20 business days from the date the request was initially made, unless there are extenuating circumstances. If the request is approved the accommodation will be implemented within 30 days of the request, if possible, or as quickly as any needed equipment/materials can be procured. In certain circumstances, time limits for processing requests for and providing reasonable accommodations should be expedited or be as short as reasonably possible, and should not wait for the full 20 days. Expedited processing might be necessary where, for instance, the reasonable accommodation is needed to enable an individual to apply for a job at the Board; or the reasonable accommodation is needed for a specific activity that is scheduled to occur shortly.

If medical documentation is requested by the Board, management will prepare the request for medical documentation with input from the requestor in accordance with EEOC policy guidance on Executive Order 13164. If the medical documentation is unclear, not current, not from a certified medical practitioner or if the Board has reasonable doubts about the quality or currentness of the information the Board may ask the individual to be examined by a medical professional of its choosing. The Board will pay any fees associated with such a request.

If there are extenuating circumstances that will delay processing a request or delivering a reasonable accommodation, the DoA must notify the requestor promptly and keep the employee informed of the approximate date on which the agency may complete the process or issue a decision. The DoA will investigate the possibility of temporary measures that could be taken to assist the requestor. Any changes or developments should be communicated promptly to the requestor and decision-maker.

Upon the granting/denial of the request for reasonable accommodation, the DoA will complete the "Reasonable Accommodation Information Report" (*Appendix B*) and maintain it for future reporting.

When the request is denied, the requestor will be informed in writing of the denial (*See Appendix C*), and will receive an explanation of the reasons of denial and procedures for reconsideration. The denial notice will clearly specify reasons for the denial; for example, why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation; why the requested accommodation would not be effective; or why the accommodation would pose an undue hardship to the agency. The requestor will be notified that s/he has a right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board appeal or grievance.

(a) For an EEO complaint, pursuant to 29 CFR § 1614, contact a GSA/ALD EEO counselor within 45 days from the date of the notice of denial of reasonable accommodation; or

(b) Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 CFR § 1201.3.

Within five business days of receipt of the reasonable accommodation denial notice, a requestor wishing to ask for reconsideration of the decision may submit a new request to the Executive Director for reconsideration of his/her denial. New evidence and sound justification should be presented to support the new request. The Executive Director will issue a reconsideration decision within 10 business days after receipt of the individual's request. (Pursuing reconsideration, or any informal dispute resolution procedures does not affect the time limits for initiating statutory and collective bargaining claims.)

(c) Any employee or applicant for employment, who believes s/he has been discriminated against on the basis of race, sex, color religion, national origin, age, mental or physical disability, and/or reprisal in an employment matter, must contact the Board or the GSA/ALD EEO counselor within 45 days of the effective date of the action.

ADDITIONAL GUIDELINES

a. Request for Reassignment.

If the requestor is unable to continue in their current position, realignment of duties, or reassignment to another position will be considered. Since the Board is an independent micro-agency, each staff member has a unique set of duties that they perform. Possible realignment of duties will be considered if feasible. However, opportunities for reassignment to another position within the Board are very limited. When reassignment is not possible within the Board, the DoA will work with the General Services Administration's Agency Liaison Division (GSA/ALD) to ensure every possible resource is used to assist the requestor in locating appropriate employment at another agency.

b. Medical information.

If the DoA believes that medical information is necessary to evaluate a request for reasonable accommodation, s/he will make a request to obtain such information. However, the Board will only request documentation that is relevant to making a decision about reasonable accommodation, including:

- The nature, severity, and duration of the individuals impairment;
- The activity or activities that the impairment limits;The extent to which the impairment limits the individuals ability to perform the activity or activities; and/or
- Why the individual requires reasonable accommodation, the type of accommodation being requested, as well as how the accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

Where medical documentation provided by an employee requesting accommodation is insufficient, the Board will give a written explanation to the employee why the documentation is insufficient and will identify the information still needed. The agency's request for medical information will follow the requirements set forth in the EEOC's Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (available on EEOC's internet and intranet sites).

The Board has the right to request relevant supplemental medical information if the information submitted: does not clearly explain the nature of the disability the need for reasonable accommodation; does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace; or, in the case of an applicant, assist him or her with the application process. If the Board finds the information supplied to be insufficient, it may request that the medical information be reviewed, or the individual examined by a medical expert of the Board's choosing at the agency's expense.

c. Information Tracking.

The Board will ensure that medical records are kept confidential, meaning maintained in files separate from the employee's official personnel file kept at the General Services Administration. The Board maintains a small information file accessible only to the DoA and human resources administrator.

The Board will make known to whom and under what circumstances medical information may be disclosed, subject to the exceptions listed in the EEOC regulations. These include Board members or other staff members who must be aware of the necessary restrictions/accommodations needed by the employee; First Aid/Safety personnel must be informed of any special needs or accommodations for the employee in case of emergency; and other official in the course of their fulfilling official duties of the Federal Government. In all such cases, the informant will make those parties aware of the confidentiality of the information being given.

The Board will maintain the records related to an employee who has requested accommodation for the duration of the employee's tenure with the agency. The agency also will retain for at least three years information or any cumulative records used to track the agency's performance with regard to reasonable accommodation and will be able to provide such information to the EEOC.

EFFECTIVE DATE:

This order will be effective upon issuance and be reviewed periodically by the Board.

{Signed by}

William Barnard
Executive Director
Nuclear Waste Technical Review Board
2300 Clarendon Blvd., Suite 1300
Arlington, VA 22201

Appendix A – Request for Reasonable Accommodation
Appendix B – Reasonable Accommodation Information Report
Appendix C – Denial of Reasonable Accommodation Request
Appendix D – Recruitment Resources

Confirmation of Request for Reasonable Accommodation

Date of Request _____

1. Name of Employee/Applicant _____

2. Telephone Number _____

3. Office/Organization _____

4. Accommodation Requested. Please be as specific as possible (e.g., adaptive equipment, reader, and interpreter.)

5. Reason for Request. (If accommodation is time-sensitive, please explain.)

Signature

Date

Return Form to NWTRB

Case No.: _____ (The BOARD will assign a case number)

Signature: _____ Date: _____

All requests for accommodation will be handled in a prompt and expeditious manner. All records of reasonable accommodation must be kept confidential. A copy must be furnished to General Services Administration, Agency Liaison Agency, for information tracking purpose.

Reasonable Accommodation Information Report

Name of Employee/Applicant: _____

Position Title _____

Telephone _____ Fax _____

1. Date of Request: _____

2. Reasonable accommodation needed for (check one).

Application Process

Performing job functions or accessing the work environment

Accessing a benefit or privilege of employment. (e.g., attending a training program or special event).

3. Types of reasonable accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier.).

4. Types of reasonable accommodation provided (if different from what was requested).

5. Reasonable accommodation (check one)

Approved by _____ Date _____

Denied by _____ Date _____

(If denied, attach copy of the written denial letter/memo)

6. Date reasonable accommodation provided _____

7. If time limits outline in the reasonable accommodation procedures were not met, please explain why.

8. Explain the medical information and documents required to process this request, if applicable.

9. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, Disability Program Manager, and Disability Organization).

Comments:

Submitted by: _____ Telephone Number: _____

Attach copies of ALL documents obtained or developed in processing this request.

Denial of Reasonable Accommodation Request
(Must complete items 1-4)

To: *(name of the requestor)* _____

Type(s) of reasonable accommodation requested: _____

Request for reasonable accommodation denied because *(may check more than one box)*:

- Accommodation ineffective
- Accommodation would cause undue hardship
- Medical documentation inadequate
- Accommodation would require removal of an essential function
- Accommodation would require lowering of performance or productive standard
- Other (please identify) _____

Detailed reason(s) for the denial of reasonable accommodation (must be specific, e.g., why accommodation is ineffective or causes undue hardship):

If the requestor proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.

If an individual wishes to request reconsideration of this decision, s/he may take the following steps:

Within five business days of receipt of the denial notice, a requestor wishing to request reconsideration of the decision may submit the request to the Executive Director for reconsideration of his/her denial. New evidence and sound justification should be presented to support the request. The Executive Director will issue a reconsideration decision within 10 business days after receipt of the individual's request. (Pursuing reconsideration, or any informal dispute resolution procedures does not affect the time limits for initiating statutory and collective bargaining claims.)

For an EEO complaint, pursuant to 29 CFR § 1614, contact a General Services Administration, Agency Liaison Division (GSA/ALD) EEO counselor within 45 days from the date of the notice of denial of reasonable accommodation; or

Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 CFR § 1201.3.

Any employee or an applicant for employment, who believes s/he has been discriminated against on the basis of race, sex, color religion, national origin, age, mental or physical disability, and/or reprisal in an employment matter, must contact the Board or the GSA/ALD EEO counselor within 45 days of the effective date of the action.

Name and Signature of Deciding Official

Date

Selected Resources for Locating Reasonable Accommodations

1. U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

<http://www.eeoc.gov>

The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title 1 regulations (also known as the “Appendix” to the regulations), 29 C.F.R. pt 1630 app. §§1630.2(o), (p), 1630.9; (2) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, 8 FEP Manual 405:7601 (1999); and (3) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992) (Technical Assistance Manual). The Technical Assistance Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405, 7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers’ Compensation and the ADA at 15, 20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance. The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405 7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act. The American with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405: 7371, 7374-76 (1996); and (5) Enforcement Guidance Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405; 7701, 7711, 7712-14, 7715-16 (2000).

All of the above-listed documents, with the exception of the Technical Assistance Manual and the poster, are also available through the Internet at www.eeoc.gov. All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. § 791.

2. Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://jan.wvu.edu>

A service of the President’s Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

3. ADA Disability and Business Technical Assistance Centers (DBTCAC)

1-800-949-4232 (Voice/TT)

The DBTAC consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small business. The DBTAC can make referrals to local sources of expertise in reasonable accommodations.

4. Registry of Interpreters for the Deaf

301-608-0050 (Voice/TT)

<http://www.rid.org>

The Registry offers information on locating and using interpreters and transliteration services.

5. RESNA Technical Assistance Project

703-524-6686 (Voice) 703-524-6639 (TT)

<http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities.

6. U.S. Department of Labor, Employment Policy Programs Employment Assistance Referral Network (EARN)

866-EARNNOW (866) 327-6669

Monday through Friday 9 a.m. to 10 p.m. EST

www.earnworks.com

7. Computer/Electronic Accommodations Program (CAP)

5111 Leesburg Pike, Suite 810

Falls Church, VA 22041

703-681-3976

<http://www.tricare.osd.mil/cap/>

CAP provides assistive technology accommodations and services to persons with disabilities at the Department of Defense (DOD) and other federal agencies at no cost to the requesting organization. CAP provides accommodations for individuals with hearing, visual, dexterity, cognitive and communication disabilities. CAP has been granted the authority to provide assistive technology, devices, and services to any department or agency in the Federal government upon the request of the head of the agency.

8. Sign Interpreter Associates, Inc.

301-946-9710

www.signlanguage.com