

SECTION: Personnel

SUBJECT: Employee Disability and Accommodation Request Procedures

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**Point of Contact:** Human Resource Services

**Other LCSC offices directly involved with implementation of this policy, or significantly affected by the policy:** Student Affairs, Disability Services, Provost, Physical Plant, Security and Academic Affairs.

**Date of approval by LCSC authority:** June 5, 2016

**Date of State Board Approval:** N/A

**Date of Most Recent Review:** New Policy

**Summary of Major Changes incorporated in this revision to the policy:** New Policy

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## **Background:**

Lewis-Clark State College is committed to equal opportunity and access for people with disabilities. In compliance with applicable state or federal law, the College does not exclude otherwise qualified persons with disabilities from participating in employment opportunities and College programs or activities.

An individual with a disability as defined by the Americans with Disabilities Act (ADA) who believes he or she was discriminated against by a faculty or staff member should use the Discrimination Complaint Procedure. Retaliation against any employee or student for making a complaint is prohibited.

### **1. Summary of Applicable Law:**

- A. The Americans with Disabilities Act (ADA): The ADA provides a comprehensive statutory and regulatory approach to eliminating discrimination against qualified persons with disabilities.
- B. Title I of the ADA applies to employment. Any “qualified individual with a disability” is entitled to reasonable accommodation under the ADA, provided the individual, “with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires,” (42 U.S.C. § 12111(8)), and provided that the accommodation does not create an “undue hardship” for the employer, 42 U.S.C. § 12111(10)(A).

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- C. Title III of the ADA applies to public accommodations and services operated by private entities like the College. The general rules of Title III provide: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodation of any place of public accommodation by any person who owns, leases or operates a place of public accommodation,” 42 U.S.C. § 12182(a).

## **2. Qualified Individual with a Disability**

- A. The regulations issued by the U.S. Department of Education and under the ADA broadly define a person with a disability as any person who: (1) has a physical or mental impairment that substantially limits one or more of the major life activities, including among others, walking, caring for oneself, performing manual tasks, seeing, hearing, speaking, breathing, and working; (2) has a record of a disability; or (3) is perceived to be disabled.
- B. In the case of employment, to be “qualified,” a person with a disability must meet the legitimate job requirements and be capable of performing the essential functions of the job in question, with or without reasonable accommodation.

## **3. Confidentiality of Medical Information**

- A. By law, medical information must be maintained confidentially and separate from regular personnel records. For faculty and staff, medical records are retained in the Human Resource Services Office.
- B. You are not required to reveal the diagnosis of your condition or the details of your medical treatment to your immediate supervisor or to coworkers. However, some employees choose to share this kind of information with others. Employees who voluntarily share medical information with co-workers should consider that it may be passed on to others. An employee who has shared some information at one time may later decide that he or she no longer wishes to discuss the condition or its treatment. Such decisions must be respected.

## **4. Procedure for Requesting Accommodation for Employment or Facilities Access**

- A. The disability accommodation process is interactive and requires cooperation and communication between the individual requesting accommodation and the College staff members who respond to the request. Employees and appointees actively participate in the accommodation process by communicating their needs and interests and by attending any meetings that may be necessary to discuss the accommodation request. An LCSC representative will respond to and evaluate all requests to make a reasonable

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accommodation, modification or adjustment in College facilities, programs, policies, jobs, services and activities to ensure equal opportunity for qualified individuals with disabilities. The “qualified individual” criterion and the “reasonable accommodations” requirement are interrelated. Therefore, each request for accommodation will be assessed individually, based on relevant circumstances and factors.

- B. Any disabled person seeking a reasonable accommodation in connection with employment should contact the Affirmative Action Officer in Human Resource Services for assistance. The employee is also encouraged, but not required, to discuss the request with his/her supervisor. The employee is responsible to provide adequate notice, identify the disability and provide any necessary medical verification of a need for an accommodation. To request an accommodation, an employee must complete the Request for Reasonable Accommodation Form. The employee’s doctor may be asked to complete the Employee Disability Verification Form. In some cases, the Affirmative Action Officer may be able to determine eligibility without a doctor’s verification. The completed forms should be returned to the Affirmative Action Officer in Human Resource Services.
- C. Once the paperwork is completed and returned, the Affirmative Action Officer will work with the employee and appropriate College officials to determine whether a reasonable accommodation is available that will enable the employee to perform the essential functions of the job. The College may offer a reasonable accommodation other than the one requested by the employee if the College determines the alternative reasonable accommodation allows the employee to perform the essential job functions. The accommodation request and any personal health information will be kept confidential to the degree practical.
- D. The College will respond to a disability accommodation request as quickly as possible. Requests for minor physical office adjustments (e.g. desk height modifications or ergonomic enhancements) may be implemented by the supervisor without additional assistance.
- E. If a request requires substantial action such as job duty modification, environmental changes, or equipment purchases, the College may need information about your medical condition, capacities or limitations before accommodations can be made. Representatives from Human Resource Services, Disability Services or Risk Management/Workers Compensation (for job related illnesses or injuries) may participate in the review of the request and any discussions or meetings that may be necessary.
- F. If the accommodation request relates primarily to barrier removal, facilities or physical accessibility at the College, the Affirmative Action Officer will consult with the Physical

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Plant Director, the individual's supervisor and any other relevant department or individual.

### **5. Accommodation Appeal Procedure**

- A. The appeal procedure is intended to provide a means for an individual to appeal an accommodation request decision or action. Lewis-Clark State College will process the appeal in a manner that promotes the prompt and equitable resolution of complaint. Therefore, individuals with complaints should bring the request to the attention of appropriate College personnel as soon as possible after the action(s) prompting the complaint.
  
- B. An employee must submit a written appeal for reconsideration within sixty (60) calendar days after the employee is notified of the Affirmative Action Officer's accommodation decision. The employee must direct the appeal to the relevant Dean or Vice President with a copy to the Affirmative Action Officer. The appeal should be as detailed and accurate as possible and should specify the solution or resolution the employee seeks. It should also include all supporting information and documentation. The Vice President or Dean shall make the decision and that decision will be final. The convening Dean or Vice President will convey the decision in writing to the employee within 10 working days of receiving the appeal for reconsideration unless prohibited by unusual circumstances.