

<p align="center">GEORGIA DEPARTMENT OF JUVENILE JUSTICE</p>	<p align="center">Transmittal #17-14</p>	<p align="center">Policy # 3.21</p>
<p>Applicability: <input checked="" type="checkbox"/> All DJJ Staff <input type="checkbox"/> Administration <input type="checkbox"/> Community Services <input type="checkbox"/> Secure Facilities</p>	<p>Related Standards & References: Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1990 Section 504 of the Rehabilitation Act of 1973 Americans With Disabilities Act Amendments Act of 2008 Fair Employment Practices Act O.C.G.A. §§45-2-40 <i>et seq.</i>, 45-19-20 <i>et seq.</i> Controlled Substances Act (21 U.S.C. 812) State Personnel Board Rules ACA Standards: 4-JCF-6C-06, 4-JCF-6D-07, 3-JDF-1C-05-2, 3-JDC-1C-14 DJJ 3.22, 3.23, 3.51, 3.57</p>	
<p>Chapter 3: PERSONNEL</p>	<p>Effective Date: 12/15/17 Scheduled Review Date: 12/15/18</p>	
<p>Subject: AMERICANS WITH DISABILITIES</p>	<p>Replaces:7/15/16 Office of Human Resources</p>	
<p>Attachments: A – Equal Employment Opportunity Notice B – ADA Physician’s Statement C – Authorization for Release of Protected Health Information D – Model for Analysis and Resolution of ADA Issues</p>	<p>APPROVED:  <hr/> Avery D. Niles, Commissioner</p>	

I. POLICY:

The Department of Juvenile Justice shall comply with the Americans with Disabilities Act Amendments Act of 2008 (ADA) and other applicable laws, rules, and regulations regarding the prohibition of employment discrimination on the basis of disability. Department of Juvenile Justice employees shall not retaliate against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation or reasonable accommodation processes.

II. DEFINITIONS:

ADA: Americans with Disabilities Act Amendments Act of 2008.

Disability: A physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such an impairment, or being regarded as having such an impairment. (Note: Individuals who are “regarded as” having a disability are not entitled to reasonable accommodation.)

Drug: A controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Essential Job Function: A fundamental job duty of a position, as opposed to a marginal function of that position. The reason the position exists is to perform the “essential functions” of that position, with or without reasonable accommodation.

Chapter	Subject	Policy #	Page
PERSONNEL	AMERICANS WITH DISABILITIES	3.21	2 of 7

Illegal Use of Drugs: The use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). This does not include the use of a drug taken under supervision of a licensed health care professional or other uses as authorized by the Controlled Substances Act or other provisions of Federal law.

Major Life Activity: Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Also includes the operation of a major bodily function, including but not limited to: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Qualified Individual with a Disability: An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or desires. This does not include an individual who is currently engaging in the illegal use of drugs, when actions are taken on the basis of such use.

Reasonable Accommodation: A modification or adjustment either in the way work is customarily done, or in the work environment, permitting an employee to continue to perform the essential functions of a job. Accommodations may include specialized equipment, facility modifications, and adjustments to work schedules or job duties.

Undue Hardship: An action that if granted as an accommodation would require significant difficulty or expense when considered in light of the following factors:

- The nature and cost of the accommodation;
- The overall financial resources of the organization(s) involved in the provision of the reasonable accommodation;
- The number of employees affected by the accommodation; and
- The impact of such accommodation upon the operation of the organization.

III. GENERAL PROCEDURES:

- A. The Department of Juvenile Justice will comply with the ADA. Refer to the Department of Justice's ADA website for full information regarding the Act and its implications for employees and managers: www.ada.gov.
- B. The Office of Human Resources (OHR) manages all employment related discrimination issues involving applicants and DJJ employees. OHR will provide guidance, coordination, and technical assistance to Department managers and supervisors on the application of this policy, equal opportunity diversity training, monitoring, and corrective action of unlawful discrimination management activities. Each

Chapter	Subject	Policy #	Page
PERSONNEL	AMERICANS WITH DISABILITIES	3.21	3 of 7

facility/office/program will post a copy of the Equal Employment Opportunity Notice (Attachment A) on the official bulletin board.

- C. Department managers and supervisors will ensure that qualification standards, tests, or selection criteria are job related and consistent with business necessity. (See DJJ 3.51, Recruitment and Selection.)
- D. Confidentiality:
 - 1. Health information of employees and requests for accommodations is confidential.
 - 2. Managers, supervisors, and human resources staff will not provide other staff members the reason for an accommodation or any other information regarding an accommodation request.

IV. PRE-EMPLOYMENT INQUIRIES:

- A. If an applicant requests reasonable accommodations for the interview under the ADA, the Hiring Manager will contact the Office of Human Resources for guidance.
- B. Supervisors and managers will not make any pre-employment inquiries about the existence, nature, or severity of an applicant's disabilities prior to a conditional offer of employment.
- C. Supervisors may make pre-employment inquiries about the ability of an applicant to perform essential job functions only if the inquiry is made of all applicants.
- D. During the interview, if an applicant requests an accommodation for the position, the supervisor/manager will advise the applicant that the accommodation will be taken into consideration if he/she is selected. The supervisor/manager will consult with the Office of Human Resources about the request before making the selection for the position.

V. MEDICAL EXAMINATIONS:

- A. All medical and physical examinations of prospective and current employees must be job related, consistent with business necessity and performed by non-DJJ medical staff.
- B. Post Offer Examinations:
 - 1. A medical examination may not be used to eliminate applicants for employment.
 - 2. A medical examination will be permissible when:
 - a. A conditional offer of employment has been made; and/or

Chapter	Subject	Policy #	Page
PERSONNEL	AMERICANS WITH DISABILITIES	3.21	4 of 7

- b. All entering employees are subjected to an examination regardless of disability.
3. An offer of employment may be made contingent upon an applicant successfully passing a physical examination.
4. All pre-employment medical and physical examinations will be administered in accordance with laws, rules, regulations, and policies governing the State's Medical and Physical Examination Program (MAPEP). (See DJJ 3.57, Medical and Physical Examination Program.)

VI. REASONABLE ACCOMMODATIONS:

A. General Procedures:

1. The Department will attempt to provide a reasonable accommodation if to do so does not interfere with the employee's ability to perform the essential functions of the position or impose an undue hardship on the employee's work unit.
2. Individuals who are "regarded as" having a disability are not entitled to reasonable accommodation.

B. Requesting an Accommodation:

1. An employee must make a written request for an accommodation to the employee's immediate supervisor or the next level manager in the absence of the immediate supervisor. The employee should submit medical validation with the request.
2. The supervisor receiving the request will immediately forward the request to the Manager of the Employee Relations/EEO Section. No formal commitment to the accommodation request will be made at this time.

C. Medical Validation:

1. All requests for reasonable accommodations will require medical validation.
2. The ADA Physician's Statement (Attachment B) will serve as the medical validation and must be completed by the employee's attending physician.
3. A copy of the employee's current job description and individual performance plan (if available) will be attached to the ADA Physician's Statement to assist the physician in his/her medical evaluation of the employee's disability/medical condition in relation to the essential job functions.

Chapter	Subject	Policy #	Page
PERSONNEL	AMERICANS WITH DISABILITIES	3.21	5 of 7

4. In addition, the employee may grant permission, in writing, for the Director of Human Resources, Employee Relations/EEO Section, or appropriate personnel, to communicate directly with the physician regarding the accommodation request. To grant this permission, the employee will be required to sign the Authorization for Release of Protected Health Information (Attachment C).

D. Determination of Reasonable Accommodation:

1. A decision on the request will not be made until the Director of Human Resources and/or Employee Relations/EEO Section receives the medical validation and the information is analyzed.
2. The immediate supervisor, Assistant Commissioner, Deputy Commissioner or Central Office Director, Director of Human Resources, and Manager of the Employee Relations/EEO Section will make a determination using the Model for Analysis and Resolution of ADA Issues (Attachment D).
3. The Office of Human Resources will communicate the determination to the employee, in writing. The confirmation will be filed in the employee's health record and in the Employee Relations/EEO Section.
4. An individual with a disability will not be required to accept the accommodation.
5. The employee must perform the essential functions of his/her position, whether he/she chooses to accept the accommodation or not.

E. Temporary and Modified Work Assignments:

1. The employee may be placed in a modified work environment or given temporary duties or a modified work assignment until a decision on the reasonable accommodation can be made.
2. For the purposes of this policy, a temporary or modified work assignment will not continue after a decision has been rendered regarding the reasonable accommodation request.
3. If the employee is unable to return to work and perform the essential functions of his/her position, family and medical leave may be authorized or other forms of authorized leave with or without pay may be considered.

F. Alternative Employment:

When reasonable accommodation is not possible, an employee may be offered alternative employment to a vacant position for which he/she qualifies.

Chapter	Subject	Policy #	Page
PERSONNEL	AMERICANS WITH DISABILITIES	3.21	6 of 7

VII. ILLEGAL USE OF DRUGS AND MISUSE OF ALCOHOL:

- A. The term “qualified individual with a disability” will include an individual who:
 - 1. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
 - 2. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
 - 3. Is erroneously regarded as engaging in such use, but is not engaging in such use. (Individuals who are “regarded as” having a disability are not entitled to reasonable accommodation.)
- B. An employee who uses drugs illegally or who is an alcoholic will be subject to the same qualification standards for employment, job performance and behavior standards and/or expectations, and terms and conditions of employment that other employees are subject to, even if unsatisfactory performance or behavior is related to the employee’s drug use or alcoholism.
- C. For the purposes of this policy, a test to determine the illegal use of drugs will not be considered a medical examination.

VIII. SEPARATION FROM EMPLOYMENT DUE TO THE INABILITY TO PERFORM ESSENTIAL DUTIES:

- A. An employee may be separated from employment when:
 - 1. There is no reasonable accommodation that can be made without incurring an undue hardship; and/or
 - 2. Additional leave options have been considered and are either determined not to be available or cannot be granted without undue hardship.
- B. Classified employees with permanent status may only be separated pursuant to State Personnel Board Rules and applicable Department policy.

IX. COMPLAINTS:

- A. Employees are encouraged to use internal procedures to address any complaint concerning the Department’s administration of the ADA. Complaints may be filed in accordance with the following policies, as applicable:
 - 1. DJJ 3.22, Harassment; and/or

Chapter	Subject	Policy #	Page
PERSONNEL	AMERICANS WITH DISABILITIES	3.21	7 of 7

2. DJJ 3.23, Employee Complaint Procedure.

B. Employees may also file complaints directly with the Georgia Commission on Equal Opportunity (GCEO) or the Equal Employment Opportunity Commission (EEOC).

X. LOCAL OPERATING PROCEDURES REQUIRED: NO