

1495.01 POLICY AGAINST DISABILITY DISCRIMINATION-EMPLOYMENT

It is the College's policy not to discriminate against qualified individuals with disabilities and to provide reasonable accommodations as required by law to otherwise qualified applicants, faculty or staff with disabilities in all employment practices. This staff procedure is intended to carry out policy 1495.00 Policy Against Disability Discrimination-Employment.

- I. Definitions of "Disability," "Qualified Individual with A Disability" And "Otherwise Qualified"
 - A. A "*disability*" with respect to an applicant, faculty or staff person is: (1) one or more physical or mental impairment(s) that substantially limit one or more of the major life activities of such individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment. Individuals with disabilities may include persons who are mobility impaired; sensory impaired; cosmetically disfigured; mentally ill; mentally retarded; emotionally troubled; learning disabled; neurologically, psychologically, physiologically or otherwise impaired; or have suffered an anatomical loss. "Major life activities" include caring for oneself, performing manual tasks, walking, sitting, standing, lifting, reaching, seeing, hearing, speaking, breathing, learning, and working.
 - B. A "*qualified individual with a disability*" means, with respect to employment, "an individual with a disability who satisfies the requisite skill, experience, education and other job-related selection requirements of the employment position such individual holds or desires, and who, *with or without reasonable accommodation* can perform the essential functions of such position."
 - C. An applicant, faculty or staff person with a disability is "*otherwise qualified*" if he or she is qualified for a job, "in that he or she satisfies all of the skill, experience, education and other job-related selection criteria", *except that*, because of the disability, he or she needs a reasonable accommodation to be able to perform the essential functions of the position in question.
- II. Scope of Reasonable Accommodation
 - A. It is the College's intention to hire, employ or promote the best-qualified candidate for a job whether disabled or not. When requested, the College is prepared to modify or adjust the job application process or the job or work environment to make "reasonable accommodation" to the known physical or mental limitations of the applicant, faculty or staff person to enable him or her to be considered for the position he or she desires, to perform the essential functions of the position in question or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated faculty or staff persons without disabilities, *unless*: (1) the accommodation would impose an "undue hardship" on the operation of the

College's business, (2) taking into account the disabled applicant's faculty or staff person's qualifications with the requested accommodation, he or she is not the best qualified candidate, or (3) the applicant, faculty or staff person would still pose a direct threat of substantial harm to the health or safety of himself or herself or others.

- B. Subject to the determinations referenced in Paragraph II.-A., reasonable accommodations may include: making existing facilities used by faculty or staff persons readily accessible to and usable by individuals with disabilities; restructuring jobs by reallocating or redistributing marginal job functions; altering when or how an essential job function is performed; modifying or making work schedules part-time; reassigning faculty or staff persons with disabilities to vacant positions; acquiring or modifying equipment or devices; adjusting or modifying employment tests, training materials or policies; permitting use of accrued leave or leave without pay for necessary medical treatment; providing reserved parking for faculty or staff persons with mobility impairments; allowing faculty or staff persons to provide equipment or devices that the College is not required to provide; and other similar accommodations.
- C. In determining the College's ability to offer reasonable accommodation to an otherwise qualified applicant, faculty or staff person with a disability, each request for an accommodation will be evaluated on a case-by-case basis. Factors to be examined include, among others, the purpose and essential functions of the job; the precise job-related abilities and functional limitations of the applicant, faculty or staff person and how those limitations could be overcome with reasonable accommodation(s); the nature and cost of the accommodation needed in relation to the College's and the facility's respective financial resources; the impact financially and otherwise of such an accommodation upon the operation of the College and the facility; and other federal and state regulatory requirements.
- D. The College is not required to offer or provide an accommodation or to employ or continue to employ the individual with a disability when: (1) an applicant, faculty or staff person with a disability is not otherwise qualified to perform a particular job, (2) reasonable accommodation would not overcome the effects of a person's disability, (3) reasonable accommodation would cause undue hardship to the College, (4) an applicant, faculty or staff person would still pose a direct threat of substantial harm to the health or safety of himself or herself or others, or (5) the accommodation request is deemed "unreasonable" for other legitimate reasons.

III. Procedure for Applicants

- A. Questions directed to an applicant must focus on the applicant's ability to perform the essential job functions. An applicant may also be asked about his or her ability to perform additional job functions.

- B. The NMC employment application asks all applicants to respond yes or no to two questions:

Yes _____ No _____	I have read the written job description of the essential job functions for the position for which I am applying.
Yes _____ No _____	I can perform, with or without a reasonable accommodation, the essential functions of the position for which I am applying.

An applicant must not be interviewed until they have answered both of these questions. If the applicant has answered NO to the question regarding reading the written job description, or has not given a response, the interviewer should give them a copy of the job description, have them read it, and then initial and date the application. If a job description does not exist, the interviewer should describe for and review with the applicant the essential and other functions of the job for which the applicant applied, and document that this was done.

The applicant should answer YES to the question on their ability to perform the essential functions of the position.

- C. The interviewer may ask an applicant whether he or she is able to perform essential functions of the job with or without reasonable accommodation. If an applicant indicates in response to such an inquiry that he or she can perform the essential job functions but *does not* volunteer the need for an accommodation, then no inquiry shall be made about the need for an accommodation. If, however, an applicant indicates in response to such an inquiry that he or she can perform the essential functions of the job but *does* volunteer the need for an accommodation, the interviewer shall ask the applicant how he or she will perform the essential job tasks and with what accommodations.
- D. The interviewer shall not ask the applicant whether he or she has a physical or psychological disability of any kind. If the applicant volunteers information about a disability, the interviewer shall not ask any questions about the disability, including questions related to the nature or the extent of the disability or whether treatment will be necessary because of the disability.
- E. The interviewer shall not ask an applicant about his or her medical history, his or her past or current injuries, his or her workers' compensation history, his or her past work absences due to illness, his or her treatment for physical or psychological disabilities, or any matters about which faculty or staff persons are prohibited from inquiring under the Americans With Disabilities Act. For further guidance on this area, contact Human Resources.

- F. The interviewer shall not ask an applicant whether he or she will require or need leaves of absence for medical treatment or other reasons related to disability. However, the interviewer may: (1) provide information about regular hours of work, leave policies and any special attendance needs or requests, and (2) ask if the applicant can meet these requirements.

IV. Requests by Faculty or Staff for Reasonable Accommodation

- A. To request reasonable accommodation under this policy, a faculty or staff person must complete an ADA accommodation request and submit it to the Director of Human Resources or designee. The Human Resources office will assist the individual in filling out this form if requested. The form is available at *S:\Human Resources\Public\Forms\ADA request form.doc* and is included at the end of this procedure. The accommodation request should state reasonable accommodation or at the very least request that some adjustment or change is needed in his or her job because of limitations caused by the disability.
- B. In completing the ADA request, the faculty or staff person with a disability shall also assist the College in determining if and what reasonable accommodation might be provided by identifying: (1) any special methods, skills or procedures which would enable him or her to perform tasks or functions that he or she otherwise might not be able to perform because of his or her disability, (2) the potential accommodations the College might make that would enable him or her to perform the essential functions of the job, properly and safely, including special equipment, changes in the physical layout of the job or other accommodations, and (3) any equipment, aids or services that the faculty or staff person is willing to provide and utilize that the College is not required to provide. If the faculty or staff person requires secretarial or other assistance in preparing the request due to his or his disability, this will be provided upon request.
- C. An otherwise qualified faculty or staff person who identifies himself or herself as having a disability and requests reasonable accommodation may be required to provide documentation, including medical records, sufficient to establish the existence of the claimed physical or mental impairment and the need for accommodation. The Director of Human Resources or designee may make such a request when the need for an accommodation is not obvious or when otherwise appropriate.
- D. Unless extended by the Director of Human Resources or his/her designee, a deadline of one (1) week (7 calendar days) from the date of receipt of the request for such documentation will be allowed in which the documentation, including medical records, must be provided to the Director of Human Resources or designee. The faculty or staff person shall also provide a medical release from each health care provider from whom medical records are requested permitting the College to receive and the College's representatives to review such medical records. All

documentation received by the College will become the property of the College and will be treated as confidential.

- E. The College may require a faculty or staff person to undergo further testing and/or evaluation by medical personnel retained by the College to verify or establish the claimed disability and the need for accommodation and to provide a basis upon which a reasonable accommodation can be developed or implemented. The College will pay the costs of such evaluation and testing. All documentation related to such testing and/or evaluations shall be the property of the College and will be treated as confidential.
- F. The Director of Human Resources or designee, individually or in consultation with medical or other personnel retained by the College, will determine whether the College considers the faculty or staff person to be disabled. If the College determines that the faculty or staff person is not disabled, the faculty or staff person will be advised in writing by the Director of Human Resources or designee that the request for reasonable accommodation is denied.
- G. Within the guidelines of this policy, once a faculty or staff person has requested reasonable accommodation and is determined to be disabled, an assessment of the essential job functions that the faculty or staff person is capable of performing will be made based on the individual's precise job-related abilities and functional limitations and whether and/or how reasonable accommodation would enable the faculty or staff person to overcome those limitations and perform all of the essential job functions of the position. This assessment shall be made by the Director of Human Resources or designee individually or in consultation with the appropriate department manager or medical or other personnel retained by the College. In making this assessment, the Director of Human Resources or designee shall consult with the faculty or staff person regarding the precise job-related physical or mental limitations imposed by the disability, potential reasonable accommodations to overcome those limitations and the effectiveness of various accommodations in enabling the applicant, faculty or staff person to perform the essential functions of the position in question.
- H. A determination of whether and/or what reasonable accommodation will be offered to the faculty or staff person will be made by the College. This determination shall be the responsibility of the Director of Human Resources or designee individually or in consultation with medical or other appropriate personnel. In making the determination of what reasonable accommodation will be offered, the Director of Human Resources or designee will consider but not be bound by the input and preference of the faculty or staff person.
- I. The faculty or staff person will be notified by the Director of Human Resources or designee in writing of the College's decision regarding the provision of reasonable accommodation.

V. Faculty or Staff with Obvious or Known Disabilities Who Are Not Performing the Essential Functions of the Job

If a faculty or staff person with an obvious or known disability is having difficulty performing his or her job, the Director of Human Resources or designee, in consultation with the faculty or staff person's department manager, may ask the faculty or staff person whether he or she is in need of a reasonable accommodation. If the faculty or staff person then requests reasonable accommodation, the conditions and procedures stated in Section IV of this policy shall be applied. However, if the faculty or staff person does not request reasonable accommodation, an accommodation will not be offered or provided.

VI. Applicants or Faculty or Staff Who Reject Reasonable Accommodation

If an applicant, faculty or staff person with a disability rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the applicant, faculty or staff person to perform the essential functions of the position desired or held, the applicant, faculty or staff person will not be considered a qualified individual with a disability if the individual cannot perform the essential functions of his or her job without such accommodation.

VII. No Retaliation or Harassment

Pursuant to the Americans With Disabilities Act (ADA), it is against College policy to retaliate against an individual because that person has opposed a violation of disability law or filed a charge or complaint, testified, or assisted, or participated in an investigation, proceeding, or hearing related to a disability discrimination charge. Further, consistent with the College's policy against unlawful harassment, it is against College policy to engage in conduct, which creates a hostile environment toward an individual with a disability. Charges that individuals have violated the College's disability policy must be promptly reported to the Director of Human Resources or another Department Director at the College.

VIII. Miscellaneous Provisions

- A. Reasonable accommodation does not negate requirements for good job performance, successful completion of assigned training, adherence to generally acceptable standards of behavior, and adherence to supervisory instructions.
- B. A faculty or staff person with a disability who is reassigned to a vacant, lower graded position as an accommodation will receive the salary or wages of the lower graded position.
- C. "Essential job functions" are those functions that are bona fide requisites of the position, as determined by objective criteria such as the fundamental tasks that must be accomplished to do the job, the amount of time required to be spent on the tasks,

and the relevance of the tasks to the mission of the department or facility. Determinations regarding which job functions are essential will be based on, among other things, the job description in question, or if none, then by the Director of Human Resources or designee.

- D. Accommodations will not be offered that would impose “undue hardship” on the operation of the College’s business. An accommodation that would be unduly costly, extensive, substantial or disruptive or that would fundamentally alter the nature or operation of the College’s business, would impose such an “undue hardship.” In making this determination, the College will take into consideration the availability of tax credits and deductions and outside funding sources. If the College determines that it would be an undue hardship to offer an accommodation, the faculty or staff person or applicant requesting the accommodation may be given the option of providing the needed accommodation or paying that portion of the cost which constitutes the undue hardship.
- E. The College will also deny employment opportunities to an applicant, faculty, or staff person when no reasonable accommodation exists that would either eliminate or reduce to an acceptable level any significant, direct threat of substantial harm that an applicant, faculty, or staff person with a disability would pose to the health or safety of himself or herself or others.
- F. If the essential job functions and/or duties of a position occupied by a faculty or staff person with a disability are expanded, revised or modified, the conditions and procedures stated in this section and Sections IV., V., VI., of this policy shall apply to any evaluation of the faculty or staff person’s ability to perform the essential functions of the changed, revised or modified position, and the College’s determination whether reasonable accommodation will be provided.
- G. A faculty or staff person who has a complaint about the application of this procedure should contact the Director of Human Resources at 231.995.1025.

The Executive Director of Administrative Services will develop specific procedures dealing with facility issues. The Director of Human Resources will develop specific procedures dealing with accommodations related to applicants as well as current faculty and staff. (See Staff Policy 1497.01 Discrimination and Harassment Complaint Procedure.)

AUTHORIZATION OF STAFF PROCEDURE

Director of Human Resources’ authorization: William L. Hendry Date Authorized: 7/23/04

**NORTHWESTERN MICHIGAN COLLEGE
ACCOMMODATION REQUEST AND RESPONSE FORM - DISABLED EMPLOYEE**

Northwestern Michigan College is responsible for notifying employees of its obligation to provide reasonable accommodations for otherwise qualified individuals with disabilities. Disabled is defined as:

1. Having a physical or mental impairment which substantially limits a major life activity;
2. Having a history of such impairment; or
3. Being regarded as having such an impairment.

In meeting this obligation, please complete the following*:

Part I - To be completed by employee.
 Part II - To be completed by supervisor and sent to the Director of Human Resources.
 Part III - To be completed by Director of Human Resources.

PART I - Accommodation Request

Name:	SSN:
Department:	Supervisor:
Job Title:	

Are you able to perform the essential functions of the job with or without reasonable accommodation*? Medical certification may be required.

1. If you have a disability which might affect your performance or create a hazard to yourself or others in connection with your job, please state the skills and procedures you use to perform the job, notwithstanding the disability.

2. What is the nature of your physical or mental disability and how does it affect your ability to do your job?

3. Please help us in determining what reasonable accommodation might be provided by identifying (1) any special methods, skills or procedures which would enable you to perform tasks or functions that you otherwise might not be able to perform because of your disability, (2) the potential accommodations the College might make that would enable you to perform the essential functions of the job properly and safely, including special equipment, changes in the physical layout of the job or other accommodations, and (3) any equipment, aids or services that you are willing to provide and utilize that the College is not required to provide.

*If you need help completing this form, please contact the Department of Human Resources for assistance.

**"Reasonable accommodation" is defined as any modification or adjustments to a job, an employment practice, or the work environment that enable an individual with a disability to enjoy equal employment opportunities. Reasonable accommodations are those that can be made without undue hardship to the College.

There are three categories of reasonable accommodation:

1. Accommodation required to ensure equal opportunity in the application process;
2. Accommodation that enables a qualified individual with a disability to perform the essential functions of the job;
3. Accommodation that enables an employee with a disability to enjoy equal benefits and privileges of employment.

In some cases, the appropriate accommodation may not be easy to identify. If you need to know more about the equipment being used or the exact nature of the worksite to suggest an accommodation, please notify Human Resources. If there are several effective accommodations that would provide an equal employment opportunity, the reasonable accommodation that best serves the needs of the individual and the College may be selected. This accommodation request and response form will be given consideration, but its receipt does not imply that the accommodation will be granted.

PART II - Response

I have reviewed the Accommodation Request and have determined the following:

There is or is not a reasonable accommodation that would enable the employee to perform the essential functions of the job.

Explanation: _____

Define the need for an accommodation and the nature of the accommodation identified.

Explanation: _____

The estimated acquisition/installation cost is \$ _____. (Attach relevant documentation)

The potential impact upon existing work area and staff is as follows:

Comments: _____

Supervisor

Date

Executive Officer

Date

Please send to the Director of Human Resources.

PART III

The recommendation stated above is:

Approved Not approved

If not approved, explanation:

Director of Human Resources

Date