

## EMPLOYEE DISABILITY ACCOMMODATIONS

### SECTION IV.E.3. – NOTICE AND COMMENT

The Board of Trustees approved Section IV.E.3. Employee Disability Rights of the Lone Star College Policy Manual on **February 1, 2018**. The notice and comment period for the policy was open to the public from **September 5, 2017 through October 5, 2017**. The Chancellor's Procedures were last updated on **January 29, 2019**. The notice and comment period for the procedures was open to the public from **November 8, 2018 to December 8, 2018**. The policy and procedures were posted for public comment at <http://www.lonestar.edu/proposed-policies.htm>. Commenters could anonymously submit comments to [LSC-PolicyFeedback@lonestar.edu](mailto:LSC-PolicyFeedback@lonestar.edu). We received no policy comments and nine procedure comments.

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**Comment 1:** A procedure commenter expressed satisfaction with the procedures as drafted.

**Response 1:** The Office of the General Counsel thanks the commenter for taking the time to read, review, and comment on the posted procedures.

**Comment 2:** A procedure commenter asked who notifies the employee's supervisor after the accommodation is approved. The commenter also asked which department provides funding for any equipment necessary for a reasonable accommodation if the location's budget funding is insufficient.

**Response 2:** The Executive Director may email the approved accommodation to the employee and copy the employee's supervisor. Generally, the employee's department is responsible for funding the accommodation. The Executive Director may assist in connecting the department with available internal resources.

**Comment 3:** A procedure commenter asked for clarification regarding the confidentiality under Section IV.E.3.5 of the Lone Star College Policy Manual and supervisor involvement. The commenter asked if supervisors are only involved in the process to the extent the employee wishes. The commenter also asked for clarification regarding the trigger for a supervisor to send an employee's accommodation request to the Executive Director within two working days.

**Response 3:** The Office of the General Counsel notes that employee disability records—the employee's medical and or psychological documentation—are considered confidential and should not be shared unless there is an emergency circumstance. The employee's supervisor may be included in the process of determining the employee's reasonable accommodations because the accommodation must be effective and reasonable in the workplace. The supervisor is not entitled to know the employee's diagnosis or see the employee's medical documentation.

The Chancellor's Procedures require supervisors to forward employee accommodations requests they may receive to the Executive Director within two working days since not all employees may realize they should submit accommodation requests to the Executive Director. This is meant to ensure the employee's request is properly processed according to policy and procedure.

**Comment 4:** A procedure commenter stated that the responsibility of verifying a disability should belong to the employee, and suggested adding a statement that the College is not responsible for paying for testing to verify a disability.

**Response 4:** The Office of the General Counsel agrees with the commenter that the responsibility for procuring disability documentation from an appropriate health care provider belongs to the employee. The procedures state that the employee is responsible for submitting the requested documents and a footnote was included clarifying the employee's responsibility for costs associated with acquiring any requested documents.

**Comment 5:** A procedure commenter asked if accommodations that do not fall under "work-related" would still be considered reasonable.

**Response 5:** The Office of the General Counsel notes that non-workplace barriers are generally outside of the College's reasonable accommodation responsibility. However, each employee and his or her situation is unique and a reasonable accommodation may be considered depending on the circumstances.

**Comment 6:** A procedure commenter suggested a two-week maximum limit for reconsideration of accommodation decisions.

**Response 6:** The Office of the General Counsel notes that each employee and his or her situation is unique and may require varying timelines. Reconsideration decisions generally do not take longer than ten working days from the date the reconsideration request is presented to the Associate Vice Chancellor. However, the Associate Vice Chancellor will determine the appropriate timeline in each situation.

**Comment 7:** A procedure commenter suggested any reconsideration of accommodation decisions should be reviewed by a College cabinet-level employee because different College employees should be involved in the initial decision versus the reconsideration decision.

**Response 7:** The Office of the General Counsel notes that the employee reasonable accommodation process should be interactive and thorough. The College's responsibility is to provide qualified employees with a disability an effective workplace accommodation—not necessarily the employee's preferred accommodation. The Associate Vice Chancellor is in the position most qualified to review a reconsideration request in the employee's unique circumstance.

**Comment 8:** A procedure commenter suggested more clearly stating that a new disability is not covered by previous accommodations. The commenter stated that if a disability is changed or added, the employee would need to submit a new request for accommodation.

**Response 8:** The Office of the General Counsel notes that a new disability requiring reasonable accommodation may or may not be supported by the previously submitted documentation. The procedures state that employees needing a revision or change to their approved accommodations may be required to provide additional documents to support any reasonable accommodation changes.

**Comment 9:** A procedure commenter proposed clarifying language to ensure that accommodations are only available to employees under the official procedures. The commenter also asked if costs associated with an accommodation could be considered an undue hardship.

**Response 9:** The Office of the General Counsel notes that Board Policy states that the accommodation request process is described in Chancellor's Procedures and that employees are responsible for identifying themselves as individuals requesting accommodation based on a qualifying disability. The Office of the General Counsel also notes that each employee and his or her situation is unique, thus, procedural variations may be required in certain circumstances. Cost is a consideration for undue hardship, however, it is important to note that the College's overall financial resources are considered when asserting undue hardship.