

BLACK HILLS STATE UNIVERSITY

Policy and Procedure Manual

SUBJECT: Americans with Disabilities Act Compliance

NUMER: 4:1

Office/Contact: Human Resources and Disability Services

Source:

Black Hills State University (BHSU) operates in accordance with the policies of the South Dakota Board of Regents (SDBOR). University policies are established to elaborate on how the SDBOR policy will be implemented at BHSU. Please refer to SDBOR policy for further guidance in regards to this policy. Specific policy sources to reference are as follows:

- [SDBOR Policy 1.4.3](#)
 - [Americans with Disabilities Act](#)
 - [Section 504 of the Rehabilitation Act](#)
 - [South Dakota Human Relations Act of 1972 \(SDCL CH. 20-13\)](#)
 - [BHSU Policy 4:3](#)
 - [BHSU Policy 4:8](#)
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1. Purpose

Each person who has met the academic and technical standards for admission to or participation in university programs, and applicants for employment and employees shall receive the accommodations needed to ensure equal access to educational opportunities, programs and activities. This policy and its procedures facilitate University compliance with the applicable requirements of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, state law, and their implementing regulations and amendments thereto.

2. Definitions

- a. Americans with Disabilities Act (“ADA”): A wide-ranging federal civil rights law that prohibits discrimination based on ability.

- b. Disability: A physical or mental impairment that substantially limits one or more major life activity, a record of such impairment, or being regarded as having such an impairment, as defined by ADA at 42 U.S.C. § 12102 et seq.
- c. Essential Functions: The basic job duties that an employee must be able to perform, with or without reasonable accommodation.
- d. Qualified Individual with Disability: A person with a disability who, with respect to education, meets the standards set forth in 42 U.S.C. § 12132, or any amendments thereto and regulations derived therefrom; or, with respect to employment, a person with a disability who meets the standards articulated in 42 U.S.C. § 12111, or any amendments and regulations derived therefrom.
- e. Reasonable Accommodation: A modification or adjustment to a policy, procedure, or practice, or auxiliary aid or service, provided to a qualified individual with a disability to enable the person to:
 - i. Participate in educational programs and activities;
 - ii. Perform the essential functions of a job;
 - iii. Apply for admissions or apply and interview for employment;
 - iv. Access University facilities and events; or
 - v. Have equal use and enjoyment of a University residence hall.

Any accommodation that poses an undue hardship is not a reasonable accommodation.

- f. Regarding participation in university programs, accommodations are steps taken to remove, whenever reasonable, barriers to participation in the educational experience presented by an individual's disability. Determination and responsibility for provision (including financial) of a reasonable accommodation are considered on an individual basis through interactive collaboration between the student, Disability Services Coordinator, faculty, and administration when necessary.

3. Policy

- a. It is the policy of Black Hills State University, in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990,

to ensure that no qualified person shall, solely by reason of disability, be denied access to, participation in, or the benefits of any program or activity operated by Black Hills State University, including employment practices.

- b. Any employee who is found to be in violation of this policy will face disciplinary action up to and including the possibility of termination of employment.
- c. The ADA Employment Coordinator for Black Hills State University is the Human Resources Manager. Any employment issue regarding ADA compliance may be brought to the ADA Employment Coordinator for resolution in accordance with the procedures contained herein. The Disability Services Coordinator serves as the ADA Academic Coordinator. Any academic issues regarding ADA compliance in the classroom should be brought to the ADA Academic Coordinator for resolution.

4. Procedures

a. Employment Practices

- i. Qualified individuals who require reasonable accommodation to access or submit an application for employment should contact Human Resources.
- ii. Black Hills State University, in conjunction with the Board of Regents and the State of South Dakota, will take reasonable steps to ensure that:
 - 1. Applicants are able to make application and take pre-employment tests even if accommodation is needed;
 - 2. Applicants are not discriminated against on the basis of a disability and hiring practices and interview techniques are consistent with the intent of the ADA;
 - 3. Where reasonable, accommodation is made for qualified applicants with disabilities who are offered a position with the University;
 - 4. Employee retention and promotion decisions will not be based on any real or perceived disability; and
 - 5. No other benefits or rights of employment will be denied otherwise qualified individuals with disabilities.

- iii. A qualified individual employee with a disability who seeks accommodation or other work modification will request reasonable accommodation to their supervisor and notify Human Resources. The ADA Employment Coordinator shall be responsible for ensuring application of a fair and consistent process for verifying a disability and providing reasonable accommodation and for maintaining the University's employment records that relate to the disclosed disability. The ADA Employment Coordinator will interact with employees, supervisors, and administrative decision-makers to facilitate communication and agreement about accommodation for employees with disabilities
- iv. The ADA Employment Coordinator shall verify that the individual is a qualified individual with a disability and coordinate the University's response when determining an appropriate accommodation. Every effort will be made to balance the need for employees or representatives of the University to have information in order to fulfill an accommodation request and the disabled individual's interest in maintaining privacy of protected health information
- v. Employees or applicants who feel they have been wrongly discriminated against on the basis of a real or perceived disability must seek redress in accordance with Board of Regents policy [1.4.3](#)- Human Rights Complaint Procedures.

b. Student Practices

- i. Students with disabilities who seek reasonable accommodation must register with Disability Services for assistance with identifying appropriate housing or academic adjustments and resources. Disability Services shall be responsible for ensuring application of a fair and consistent process for verifying a disability and for providing reasonable accommodation and for maintaining the University's educational records that relate to the disclosed disability. Disability Services will interact with students, faculty, and staff to facilitate communication and to coordinate accommodation and services for students with disabilities.

- ii. Disability Services shall verify that the individual is a qualified individual with a disability and coordinate the University's response when determining an appropriate accommodation.
- c. Physical Facilities
- i. Black Hills State University routinely reviews all its physical facilities to identify all physical barriers to access and makes necessary plans for removal.
 - ii. In those instances where barrier removal is readily achievable, the barrier will be removed.
 - iii. Individuals who identify a physical barrier to a program or service offered at BHSU and who want some action taken to eliminate the barrier may make a written request to the Coordinator describing the barrier and requesting its removal. Faculty and staff may route their request through the ADA Employment Coordinator and student requests may be routed through the ADA Academic Coordinator.
 - iv. Individuals who require reasonable accommodation to access or participate in any University program should contact Disability Services. Concerns about physical or architectural access may be communicated to the ADA Coordinator where they will be redirected to the appropriate University office
- d. Educational Programs and Services
- i. It is our mission to provide the comprehensive support necessary in meeting the individual needs of students with disabilities. Specific resources in regard to Services, accommodation planning, Faculty Guide, helpful links, and the process itself can be found on the [Disability Services web site](#).
 - ii. Prospective students who require reasonable accommodation to access or submit an application for any academic program, financial aid, housing, or co-curricular program should contact Disability Services.

- iii. Students who feel they have been wrongly discriminated against on the basis of a real or perceived disability must seek redress in accordance with Board of Regents policy [1.4.3](#) - Human Rights Complaint Procedures.
- iv. Students who want to move forward with a formal grievance process will need to follow the steps below:
 - 1. Students who wish to complete a formal appeal regarding accommodation decisions must submit a written appeal letter to the Vice President for Academic Affairs (VPAA), or designee. Written appeals should clearly define the basis of the appeal and a proposed resolution to the situation. Any relevant documentation should be enclosed with the appeal. The VPAA, or designee will develop an appropriate investigatory process depending on the circumstances surrounding the reasonable accommodation grievance. The VPAA, or designee, will respond to the student filing the appeal in writing within fifteen (15) working days of receiving the appeal.
 - 2. If the response of the VPAA, or designee, is not satisfactory to the student, he or she has five (5) working days, following the receipt of the response, to file an appeal with the University President's Office, or designee. All prior written responses related to the appeal be enclosed with this appeal. The President's Office, or designee will respond to the student filing the appeal within fifteen (15) working days of receiving the appeal. The decision of the President, or designee is final.
- e. Review of Decisions to Deny Requested Accommodations
 - i. In the event that a reasonable accommodation cannot be agreed upon or is denied, individuals may seek review of a department's or unit's decision to deny implementation of a requested accommodations.
 - ii. With regard to education: Review of decisions to deny requests for accommodation in an educational program or activity may be made to the ADA Academic Coordinator, who will review and attempt to resolve the

dispute informally through interactive dialogue with all parties involved and in consideration of the entire situation. If an informal resolution is not possible, the ADA Academic Coordinator shall forward the request for review to the Title IX Coordinator per SDBOR Policy 1.4.3.

- iii. With regard to employment: Review of decisions to deny requests for accommodation in the application process or workplace may be made to Human Resources, who will attempt to resolve the dispute informally through interactive dialogue with all parties involved and in consideration of the entire situation. In the event that an informal resolution is not possible, the ADA Employment Coordinator shall forward the request for review to the Title IX Coordinator per SDBOR Policy 1.4.3.
- iv. Although the preferred accommodation will be provided where reasonable, planning units may provide reasonable alternative accommodation where appropriate.
- v. Federal disability law requires that any accommodation be evaluated in light of the total resources and function of the University and not simply from a given department's resources or function.

f. Student Disability Grievance Procedures

i. Informal Grievance Process:

- 1. Students with questions or a grievance about a decision made by the University related to reasonable accommodations should first communicate with the Coordinator of Disability Services. However, students are not required to complete an informal complaint first; a student can submit a formal complaint at any time. The University and student may agree to resolve any grievance informally at any time during any formal or informal process.

ii. Formal Grievance Process (**A Student or the University may elect to proceed to a formal grievance at any time*)

- 1. Students who wish to complete a formal appeal regarding accommodation decisions must submit a written appeal letter to the

Provost/Vice President for Academic Affairs, or designee. Written appeals should clearly define the basis of the appeal and a proposed resolution to the situation. Any relevant documentation should be enclosed with the appeal. The Provost/Vice President For Academic Affairs, or designee will develop an appropriate investigatory process depending on the circumstances surrounding the reasonable accommodation grievance. The Provost/Vice President For Academic Affairs, or designee, will respond to the student filing the appeal in writing within fifteen (15) working days of receiving the appeal.

2. If the response of the Provost/Vice President for Academic Affairs, or designee, is not satisfactory to the student, he or she has five (5) working days, following the receipt of the response, to file an appeal with the University President's Office, or designee. All prior written responses related to the appeal be enclosed with this appeal. The President's Office, or designee will respond to the student filing the appeal within fifteen (15) working days of receiving the appeal. The decision of the President, or designee is final.

**Nothing in this procedure prevents any individual who believes he or she may have been discriminated against from pursuing legal remedies.*

g. Discrimination

- i. Individuals who believe that they have been discriminated against in any education program or activity or employment situation at the University on the basis of having a disability, a record of a disability, being regarded as disabled, or having association or affiliation with a person who has a disability, may file a complaint with the Title IX Coordinator pursuant to this policy, SDBOR Policy 1.4.3, and University Policy 4:8.

5. Responsible Administrator

The Director of Human Resources, or designee, is responsible for the annual and ad hoc review of this policy. The University President is responsible for approval of this policy.

SOURCE: Approved by President on 9/10/2021. Reviewed 2024.10.22