

Administrative Policy No. AP-202

Subject: Service Provider Assurance as a Subrecipient

Effective: PY04 - 12/13/2004

BACKGROUND:

WCCNM monitors selected service providers' activities, and the activities of all the entities that receive WIA Title I financial assistance from the WCCNM, to make sure that its subrecipients are not violating their nondiscrimination and equal opportunity obligations [29 CFR 37.25(b); see also 37.7(e)].

POLICY:

In accordance with the Disability-Related Non-Discrimination Policy, WCCNM does not use criteria that subjects qualified persons with disabilities to discrimination. As for contracted service providers, WCCNM will monitor and investigate the service providers' activities, and the activities of all the entities that receive WIA Title I financial assistance from the WCCNM, to make sure that its sub recipients are not violating their nondiscrimination and equal opportunity obligations [29 CFR 37.25(b); see also 37.7(e)].

- a. Service providers shall comply with the WCCNM's non-discriminatory notice. The WCCNM's non-discriminatory notice will be available to all qualified individuals with disabilities who are applicants, registrants or participants who are considered for the aid, benefits, services, training, or employment. The service provider must:
 - i. Place the non-discriminatory notice prominently in reasonable places where it will be available to qualified individuals with disabilities who are applicants, registrants, or participants.
 - ii. Disseminate in internal communications about the non-discriminatory notice.
 - iii. Explain and give to qualified individuals with disabilities the non-discriminatory notice with grievance procedures during orientation where it can be read and signed by the customer.
 - iv. Include the non-discriminatory notice in internal and external handbooks and manuals.
 - v. Make the non-discriminatory notice available to each qualified individual with disabilities and make it part of each customer's file.
 - vi. Make the non-discriminatory notice available in alternative formats, for example, audio tape, Braille, large print, etc. for people with disabilities who have effective communication access needs.

- b. Contracting service providers shall have a general nondiscriminatory policy in services and employment similar to that of the WCCNM.
- c. To assure that no disability related discrimination occurs through contract, WCCNM requires all contracting service providers to have the following non-discrimination practices, policies, and procedures in place at the time of contract. Contracting service providers shall have and shall adhere to disability related service policies and practices that will:
 - i. Anticipant of the universal access needs of people with various disabilities and will provide program access of its aids, services, benefits, and training in the most integrated setting, including providing full architectural access in all of its present or future facilities.
 - ii. Not provide different, segregated, or separate opportunity to individuals with disabilities or any class of individuals with disabilities, unless such action is absolutely necessary to provide qualified individuals with disabilities with an opportunity that is as effective as that provided to others.
 - iii. Not deny a qualified individual with a disability the opportunity to participate in WIA Title I financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.
 - iv. Not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program or activity being offered.
- d. Service Providers contracting with WCCNM shall have in place and shall adhere to the following practices concerning:
 - i. The requirements regarding the inquiry of the presence of disability with applicants, registrants, or participants.
 - 1. Confidentiality of the information obtained must be assured.
 - 2. Inquiries will only be made for the following purposes:
 - a. Reporting nondiscriminatory compliance to the USDOL Civil Rights Center and the WCCNM.
 - b. Enacting the reasonable accommodation process for qualified individuals with disabilities who are applicants, registrants, participants.

- ii. The provision of Reasonable Accommodations¹ for qualified individuals with disabilities must be made to create equal opportunity of participation, unless providing the accommodation would cause undue hardship.
 - 1. Reasonable accommodations must be made for qualified applicants, registrants, participants to ensure the opportunity of equal participation of aids, benefits, training, and services.
 - 2. Reasonable accommodations must be made for qualified service provider employees or applicants for employment, to assure equal employment opportunity.
 - 3. Reasonable accommodation policies and procedures must contain a reasonable and efficient process from the initial request to provision of the reasonable accommodation.
 - 4. The policy may contain a provision where, if needed for the provision of reasonable accommodation, the requirement of requesting proof of a Section 188 disability from the applicants, registrants, participants, or employees or employee applicants.

- iii. The requirement of making reasonable modifications for qualified individuals with disabilities who are applicants, registrants, participants, in existing policies, practices, or procedures when the modifications are necessary to avoid discrimination;
 - 1. Unless making modifications would fundamentally alter the nature of the service, program, or activity. The service provider must consider and make any other modification that would not result in a fundamental alteration that would create maximum access for the person with a disability to the services and programs.
 - 2. This includes the periodic examination of existing policies and practices that are formally written as well as the “unwritten” operational practices

¹ The term “reasonable accommodation” means modifications or adjustments to an application/registration or employment process that enables a qualified individual with a disability to be considered for the aid, benefits, services, training, or employment; modifications or adjustments that enable a qualified individual with a disability to receive aid, benefits, services, or training or employment opportunities equal to that provided to non-disabled individuals or to perform the essential functions of a job; or modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges as are enjoyed by other similarly situated individuals without disabilities.

for intentional and unintentional discriminatory effects of customers with various disabilities.

- iv. Effective communication with beneficiaries, registrants, applicants, participants, and members of the public who are individuals with disabilities is as effective as with those without disabilities.
 - 1. The policy should include the procedures for furnishing appropriate auxiliary aids and services where necessary unless it would result in a fundamental alteration in the nature of a service, program, or activity. The service provider must consider and take any other actions that would not result in a fundamental alteration that would create maximum access for the person with a disability to the services and programs.
 - 2. The method or device desired by the individuals with disabilities who are applicants, registrants or participants and members of the public who are individuals with disabilities should be given primary consideration. The service provider can choose the final means of auxiliary aids and services as long as it results in effective communication.
 - 3. Auxiliary aids and services can include (not exclusive list) the provision of qualified interpreters, assistive listening headsets, closed and open captioning on videos, telecommunications devices for deaf persons (TDDs and TTYs), computers that allow voice input and output, readers, taped texts, Brailled materials, videotext displays, and transcription services.
- v. The inclusion of outreach to potential customers with disabilities should be in the existing Marketing and Outreach policies and procedures. Practices should include:
 - 1. Mentioning of serving people with disabilities in general marketing and recruiting materials.
 - 2. Information that the service provider is an equal opportunity employer, which includes hiring people with disabilities.
 - 3. Positive images of people with disabilities.
 - 4. Outreach to community and government service agencies that serve and/or advocate for/with people with disabilities.
- vi. The practice of assuring initial and ongoing disability civil rights related training to all staff.

- vii. A component of the service provider's Emergency Evaluation Policies that include procedures that addresses the needs of people with disabilities including mechanisms of alert for people who are deaf or hard of hearing and for people with mobility impairments.
- viii. Undue Financial and administrative burden claims (in complying with Section 188 of Workforce Investment Act (WIA) (29 CFR Part 37), Title I and II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended) should have the following procedures (per federal regulations):
 1. Direct service staff cannot decide that an action, which would allow program access by a person with a disability, is unfeasible. The decision must be made by a member of senior management and the service provider contractor must determine the appropriate official to make such decisions (the Center Director, Chair of the Local Workforce Investment Board, state oversight officials, etc.) and must communicate this determination to all staff.
 2. The determination that undue financial burden would result must be based on all resources available for use in the operation of the contractor keeping in mind that it is likely that in making this determination, arbitrators and courts may consider the resources of the state's entire workforce development system, not just the funding available to an individual Contractor.
 3. If it is determined that an action would result in undue hardship, this decision must be given in writing to the individual or individuals who requested the accommodation. This statement must include the reasons that the accommodation would result in an undue hardship.
 4. The service provider must consider and take any other actions that would not result in undue hardship, but which would allow maximum access for the person with a disability to the services and programs of the contractor.

APPLICABILITY:

Service providers contracting with WCCNM to provide WIA services.

INQUIRIES:

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