EQUAL OPPORTUNITY

Chapter 5.1: Serving Individuals with Disabilities (38.12-38.17)

#  Summary

This chapter identifies DEED’s compliance with Chapter 5 of the Nondiscrimination Plan, which requires that recipients of Workforce Innovation and Opportunity Act (WIOA) Title I funds comply and continue to comply with the requirements in 29 CFR 38, the regulations implementing Section 188 of WIOA, and the requirements of Section 504 and 508 of the Rehabilitation Act of 1973, as amended.

# Relevant Laws, Rules, or Policies

[WIOA Section 188 (29 CFR 38)](https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-27737.pdf)

[Rehabilitation Act of 1973 (Section 504)](https://www.section508.gov/sites/default/files/Section504.pdf) [ADA Title I](https://www.ada.gov/pubs/adastatute08.htm)

[ADA Title II](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf)

[Rehabilitation Act of 1973 (Section 508)](https://www.section508.gov/manage/laws-and-policies)

# Effective Date

January 2, 2017

# Last Updated

November 1, 2022

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# Policy

All recipients of WIOA Title I funds have an affirmative obligation not to discriminate based on disability. The overarching principle of federal disability nondiscrimination law is that people with disabilities must be treated as individuals, not based on assumptions and stereotypes about their disabilities. All recipients of WIOA Title I funds are prohibited from discriminating in the registration for and the provision of aid, benefits, services, or training, including core, intensive training, and support services, based on disability. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with, any such program or activity, based on disability. Under this principle, recipients are required to focus on the skills, strengths, and abilities of a particular customer or employee with a disability, and to provide reasonable accommodations/modifications and the auxiliary aids and services that the customer or employee needs to utilize their skills, strengths, and abilities. Recipients should not focus on the limitations caused by the customer’s or employee’s disability.

The programs, services, products, and activities of DEED, including programs or services that are funded by DEED, including WIOA Title I funds, must be accessible to individuals with disabilities. In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, as amended (ADA), Section 188 of WIOA, and the Minnesota Human Rights Act.

# Discrimination Provisions

All recipients of WIOA Title I funds are prohibited from discriminating based on disability. This includes in the registration for, and in the process of providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, directly or through contractual, licensing, or other arrangements. The following is prohibited:

* Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings.
* Providing a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, service, or training that is not equal to that provided to others.
* Providing a qualified individual with a disability with any aid, benefit, service, or training that is not as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that is provided to others.
* Providing different, segregated, or separate aid, benefit, service, or training to individuals with disabilities or any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirement of the Rehab Act as amended by WIOA, including those provisions that prioritize opportunities in competitive integrated employment.
* Denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or otherwise limiting a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity employed by others receiving any aid, benefit, service, or training.
* Aiding or perpetuating discrimination against people with disabilities by providing significant assistance to an agency, organization, or person that discriminates based on disability in providing any aid, benefit, service, or training to registrants, applicants, or participants.
* Denying an individual with a disability participation in WIOA programs or activities despite the existence of permissibly separate or different programs or activities.

*Note:* An individual with a disability is not required to accept an accommodation, aid, benefit, service, training, or opportunity that such an individual chooses not to accept.

# Accessibility Requirements

*Physical Accessibility* - Recipient’s facilities must be accessible and useable by individuals with disabilities. Recipients subject to Title II of the ADA – must follow the ADA Standards for Accessible Design or the Uniform Federal Accessibility Standards. Some recipients may be subject to additional accessibility requirements under Title III of the ADA.

*Programmatic Accessibility* - All WIOA Title I –financially assisted programs and activities must be programmatically accessible, which includes:

* Providing reasonable accommodations for qualified individuals with disabilities,
* Making reasonable modifications to policies, practices, and procedures.
* Administering programs in the most integrated setting appropriate.
* Communicating with persons with disabilities as effectively as with others.
* Providing appropriate auxiliary aids or services free of charge, including assistive technology devices and services, where necessary so individuals with disabilities have an equal opportunity to participate in, and enjoy the benefits of the program or activity.
* Allowing service dogs to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.

*Reasonable Accommodations and Reasonable Modifications for Individuals with Disabilities* -A recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment unless providing the accommodation would cause undue hardship.

*Communications with Individuals with Disabilities* - A recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employee, members of the public, and their companions are as effective as communications with others.

# Definitions:

*Auxiliary Aids and Services* - A recipient must furnish appropriate auxiliary aids and services where necessary to individuals with disabilities and their companions. The type of auxiliary aid or service necessary will vary with the method of communication used by the individual.

Examples include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, relay services, videotext displays, qualified readers, taped texts, audio recordings, Brailled materials or displays, screen reader software, magnification software, acquisition or modification of equipment or devices, etc.

*Direct Threat -* A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

*Effective Communication* – A recipient must take steps to ensure all communications with applicants for services, participants, members of the public with disabilities, and their companions with disabilities are as effective as communication with those without disabilities.

*Interpreters* - A recipient must not require an individual with a disability to bring another individual to interpret for them, nor rely on an adult accompanying an individual with a disability to interpret or facilitate communication except:

1. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available, or
2. When the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication.
3. A recipient must not rely on a minor child to interpret or facilitate communication, except in an emergency.

*Qualified Individual with a Disability -* An individual with a disability who, with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

*Recipient -* A recipient is an entity to which financial assistance under Title I of WIOA is extended, directly from the U.S. Department of Labor or through the Governor or another recipient. In instances in which a Governor operates a program or activity either directly or through a State agency, using discretionary funds appropriated to the Governor, the Governor is also a recipient. One-stop partners (One-Stop Partners as defined in section 121(b) of WIOA) are treated as recipients and are subject to the nondiscrimination and equal opportunity requirements of Title I. Recipients also include, but are not limited to:

* + State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
	+ State Workforce Agencies;
	+ State and Local Workforce Development Boards;
	+ LWDA grant recipients;
	+ One-stop operators;
	+ Service providers, including eligible training providers;
	+ On-the-Job Training (OJT) employers;
	+ Job Corps contractors and center operators;
	+ Job Corps national training contractors;Outreach and admissions agencies, including Job Corps contractors that perform these functions;
	+ Placement agencies, including Job Corps contractors that perform these functions;
	+ Other National Program recipients.

*Service Animal -* A dog, or miniature horse, that is individually trained to do work or perform tasks for a person with a disability. Other species of animals are not service animals for this definition. The work or tasks performed by a service animal must be directly related to the handler’s disability.

*Video Remote Interpreting (VRI)* - A recipient that chooses to provide qualified interpreters via VRI service must ensure that it provides real-time, full-motion video and audio over a dedicated high-speed wide-bandwidth video connection or wireless connection that delivers high-quality video images.

Grievance Procedure

Each recipient must establish a grievance procedure to meet the requirements of the Americans with Disabilities Act of 1990 (“ADA”). It may be used by anyone who wishes to file a complaint alleging discrimination based on disability in the provision of services, activities, programs, or benefits by recipients, including workforce development programs. The WIOA complaint process is also available to individuals. See [Chapter 7.1 Discrimination Complaint](https://apps.deed.state.mn.us/ddp/PolicyDetail.aspx?pol=550) [Procedure.](https://apps.deed.state.mn.us/ddp/PolicyDetail.aspx?pol=550)

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The grievant and/or designee should submit the complaint as soon as possible but no later than 60 calendar days after the alleged violation to the individual assigned the ADA Coordinator responsibilities for the local workforce development area (LWDA).

Complaints that a recipient’s program, service, or activity is not accessible to persons with disabilities can also be sent to via email to DEED.ODEO@state.mn.us or by postal mail to Karen Lilledahl, Diversity and Equal Opportunity Office, Great Northern Building, 180 East Fifth Street, St Paul, Minnesota 55101-1678, by phone at 651-259-7089; or by fax at 651-297-5343.

Within 15 calendar days after receipt of the appeal, the ADA Coordinator or EO Officer will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the ADA Coordinator or Equal Opportunity Officer will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

If the response by the LWDA ADA Coordinator or the LWDA EO Officer does not satisfactorily resolve the issue, the complainant and/or designee may appeal the decision within 15 calendar days after receipt of the response to the State-level EO Officer in DEED’s Office of Diversity and Equal Opportunity. Heather Stein can be reached at 651--259-7094 or heather.stein@state.mn.us.

Within 15 calendar days after receipt of the appeal, the ODEO Director or their designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the ADA Coordinator or their designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by DEED’s ADA Coordinator or their designee, appeals to the Director of the Office of Diversity and Equal Opportunity, and responses from these two offices, will be retained by the DEED for at least three years.

Alternate formats are available to individuals with disabilities by calling 651-259-7094 or by emailing DEED.ODEO@state.mn.us